

urgently wish he would resign, do not want to see the President in jail.

But consider the logical consequences. If the House were to impeach, there would be a blitz to switch four or five Senate votes now in the Nixon column that, with impeachment's momentum behind it, might well succeed.

Since impeachment could only succeed centered on an "indictable crime," such as obstruction of justice, it would then be impossible to sing hallelujah to a new chief and go home; if Congress found President Nixon guilty of a specific crime, then the special prosecutor would be duty-bound to seek indictment of private citizen Nixon for that crime.

No citizen is above the law, the prosecutor would argue with great logic; ex-President or no, a crime requires that justice be done. Since Mr. Nixon is not the type to plead bargain or assert anything but his innocence, it can be expected that a District of Columbia grand jury would indict and a D.C. petit jury would convict. And the ensuing public clamor for clemency would not necessarily restrain a judge from entering the history

books by imposing a short jail sentence.

Far-fetched? Somewhere along the line, would there not be a deal, a resignation, a bill of abatement, a hung jury or an accident to stem the flow of consequences? Perhaps.

But perhaps not. I have taken the reader down this highly hypothetical road to show that it can happen here and to urge some consideration of the consequences of impeachment.

The impeachment lobby does not want the public to think about the consequences to the nation of an imprisoned ex-President, for good reason: fear of arriving at the ultimate destination might cause us to turn off at the first exit. One step at a time, say the impeachers; let justice take its course; it is not helpful for them to admit the possibility that the paths of impeachment lead but to the clink.

Then, of course, would come revision: What have we done? That question would quickly change to "What have they done?" In this "Ox-Bow Incident" reaction, the majority who only wanted a President rebuked or censured would blame the politicians for the incarceration of a political opponent.

The Representative who voted for im-

peachment would then be hard put to explain that all that flowed from his vote had nothing to do with him.

Before the grand inquest becomes the grand inquisition, let us stop to think. Are we ready to go all the way?

The nation is not in such present danger of tyranny for us to set a precedent for the legal overthrow of elected leaders, and to open the possibility for their absolute degradation. Does anyone seriously suggest that the Nixon experience of the last year is not enough to deter some future President from taking a similar course, that only legal punishment will make the point?

Liberals who have fought Mr. Nixon over the years have a special responsibility now to take the long view. To consider all the consequences—including those that seem as remote as impeachment itself did not so long ago—before running the risk of being gripped by the momentum of retribution.

The road we are on is a rumor-greased expressway with fewer exits, than we think, and—as Jefferson wrote to Madison—"Impeachment has been an engine more of passion than justice."

## HOUSE OF REPRESENTATIVES—Wednesday, May 15, 1974

The House met at 12 o'clock noon.

The Reverend R. Joseph Dooley, president, International Conference of Police Chaplains, offered the following prayer:

O Lord, our God, this day, Peace Officers Memorial Day, set apart by Presidential proclamation, we pray for the blessing of peace on all our dedicated law enforcement officers, who have given their lives in the performance of their duties.

We pause this spring day to remember the record-setting toll of 134 local, county, State, and Federal law enforcement officers killed in 1973—as well as the 39 officers who have died already this year. They placed the preservation of law and order above personal safety.

Truly, this is a tragic count. Even more tragic, Lord, than the loss of these valiant officers' lives, is the fact that their deaths left nearly three times their number in immediate family survivors.

Bless, guide, and inspire, Lord, the many men and women who work in governing our country. Grant them the humility they need to represent the people they serve, the generosity to give their very best, and the determination to serve America with love and dedication—as these peace officers have done. Amen.

### THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Without objection, the Journal stands approved.

There was no objection.

### MESSAGE FROM THE SENATE

A message from the Senate by Mr. Arrington, one of its clerks, announced that the Senate had passed without amendment a bill of the House of the following title:

H.R. 3418. An act to amend section 505 of title 10, United States Code, to establish

uniform original enlistment qualifications for male and female persons.

The message also announced that the Senate had passed with an amendment in which the concurrence of the House is requested, a bill of the House of the following title:

H.R. 14368. An act to provide for means of dealing with energy shortages by requiring reports with respect to energy resources, by providing for temporary suspension of certain air pollution requirements, by providing for coal conversion, and for other purposes.

The message also announced that the Senate insists upon its amendments to the bill (H.R. 14368) entitled "An act to provide for means of dealing with energy shortages by requiring reports with respect to energy resources, by providing for temporary suspension of certain air pollution requirements, by providing for coal conversion, and for other purposes," requests a conference with the House on the disagreeing votes of the two Houses thereon, and appoints Mr. RANDOLPH, Mr. MUSKIE, Mr. MONTROYA, Mr. BAKER, Mr. BUCKLEY, Mr. JACKSON, Mr. BBLE, and Mr. FANNIN to be the conferees on the part of the Senate.

The message also announced that the Senate had passed a concurrent resolution of the following title, in which the concurrence of the House is requested:

S. Con. Res. 85. Concurrent resolution to proclaim October 14, 1974, a Day of National Observance for the 200th Anniversary of the First Continental Congress, and for other purposes.

### POSTAL SERVICE FAILS MOTHER'S DAY TEST

(Mr. FUQUA asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. FUQUA. Mr. Speaker, the U.S. Postal Corporation is up to its usual inefficient manner. On Thursday morning of last week I mailed a very nice Mother's Day card to my mother, a very dear, sweet, and loving mother. To my amaze-

ment, I found that the card was delivered Tuesday, 2 days after Mother's Day.

Mr. Speaker, I hope the Postal Service can improve its service just a little bit better than that displayed on this occasion.

### ADMISSION OF WOMEN TO THE SERVICE ACADEMIES

(Mr. FISHER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. FISHER. Mr. Speaker, due to considerable interest expressed by Members of the House and the commitment made by the chairman of the House Armed Services Committee on this floor on March 18, 1974, I wish to announce that the Subcommittee on Military Personnel, of which I am chairman, will commence hearings on several measures calling for the admission of women to the service academies on May 29, 1974.

The ranking minority member of the subcommittee, Mr. DICKINSON of Alabama joins me in stating that we intend to pursue our legislative inquiry into these proposals in considerable detail and to offer complete, open, and objective hearings on all facets of the issues involved.

We will commence our hearings on May 29 with testimony from Members of the House.

### WHO WRITES THE LAWS?

(Mr. RONCALIO of Wyoming asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. RONCALIO of Wyoming. Mr. Speaker, upon returning from Wyoming last week, I called the Office of Federal Energy Administrator to find what date the price rollback of propane would take effect, pursuant to our note in the House on the Alexander amendment, and the conference report agreed to by the Sen-

ate last week. The price of propane was to be rolled back to the May 1973 level.

Mr. Speaker, despite the obvious legislative intent that the rollback ensue, I was told by the FEA that there may be no rollback of the price of propane. They hold that language is discretionary in the statute, and that despite the obvious legislative intent of the House and the Senate, no rollback is to be put into effect. Meanwhile, in Wyoming, propane has jumped up another 3 cents wholesale.

Mr. Speaker, I ask my colleagues, who writes the law of the land, the elected Representatives of the people or the administration downtown? This is the question.

#### FOOD FOR THOUGHT

(Mr. BURKE of Massachusetts asked and was given permission to address the House for 1 minute, to revise and extend his remarks and include extraneous matter.)

Mr. BURKE of Massachusetts. Mr. Speaker, may I bring to the attention of the U.S. Congress an editorial that appeared in last Sunday's edition of the New York Sunday News, entitled "Food for Thought." Yes, it is food for thought, with vegetable prices soaring higher and higher each day and vegetables reaching heights out of reach for the average consumer.

My bill would cost the Federal Government \$6 million a year and produce hundreds of millions of dollars in nutritious food and rekindle the spirit of self-sufficiency that has played such an important part in this Nation's development.

The editorial follows:

#### FOOD FOR THOUGHT

Rep. James Burke (D-Mass.) has suggested that the Agriculture Department supply Americans with free seed so they could grow some of their own food. Besides beating inflation, Burke said, home gardening would bring families together and teach urban youths that vegetables don't "come from the backroom of the supermarket."

It's an intriguing idea. But it would also help the battle against rising living costs if someone would devise a program to teach Congress that money doesn't grow on trees.

#### TERRORIST ABOMINATION

(Mr. BINGHAM asked and was given permission to address the House for 1 minute, to revise and extend his remarks and include extraneous matter.)

Mr. BINGHAM. Mr. Speaker, the Palestinian terrorists have achieved a new level of barbarity with their latest abomination.

The whole world should cry out in revulsion at the deliberate killing of children to achieve political ends.

What will the Arab States say now? Will they still seek to block action by the U.N. Security Council expressly condemning such atrocities?

There can be no excuse for silence now. Meanwhile, we grieve for the families of those Israeli children who lost their lives before they had had a chance to live.

#### FEDERAL WASTE OF TAXPAYERS' MONEY

(Mr. ROBERT W. DANIEL, JR., asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ROBERT W. DANIEL, JR. Mr. Speaker, it has come to my attention that in 1972 the Department of Health, Education, and Welfare spent \$23,000 of the taxpayers' money to conduct a study of why children fall off their tricycles.

The study concluded that children fall off their tricycles because they lose their balance or they run into objects.

It cost the Federal Government \$23,000 to learn what every American mother knows. Over a week ago, I asked HEW for an explanation, but I have not yet received a satisfactory response.

As we all know, inflation is rampant throughout the Nation. Most sound economists agree that excessive Government spending is one of the major causes of this terrible inflation. We should not allow foolish programs such as this to waste the taxpayers' dollars and feed the fires of inflation.

There is currently no way Congress can learn of these absurd expenditures before the fact. They can only be uncovered through the audit procedures from the GAO or through an investigative reporter from the news media.

Consequently, the only corrective measures are disciplinary actions by the bureaucracy against the individuals responsible for wasteful programs.

#### PUBLIC OPINION AND CONGRESSIONAL REFORM

(Mr. MARTIN of Nebraska asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MARTIN of Nebraska. Mr. Speaker, the recent action of the Democratic Caucus in sidetracking House Resolution 988 shows a callous disregard for the concern which the American people are showing in the performance of this body.

More than 77 percent of the American people believe Congress is doing either a "poor" or "only fair" job, according to a recent public opinion survey conducted by the Sindlinger firm of Philadelphia. A mere 2 percent thought Congress was doing an "excellent" job.

The American people are clearly subjecting Congress to close scrutiny. They want their legislative institutions to work better than they have in the past, and they will expect us to work toward that end.

In this light, it is shocking that the Democratic Caucus, meeting in secret session on May 9, decided to delay and perhaps even kill the committee reform package reported by the Select Committee on Committees. Reform of our organization and procedure is becoming more necessary with every passing day, and the American people realize this. The action of the Democratic Caucus is not a worthy response to the concern expressed by the public.

Mr. Speaker, I think the American people expect us to act promptly, fairly, and publicly on the issue of congressional reform. Therefore I hope that House Resolution 988 will be speedily brought to the floor of the House for full public debate.

#### WHEAT AND BREAD PRICES

(Mr. SEBELIUS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SEBELIUS. Mr. Speaker, I call for an end to silence within the baking industry. After the American Baker's Association leadership announced to the public that bread would soon be \$1 a loaf and that this spring bread shortages would produce lines that would make the customers forget gas lines, we have heard nothing from this organization.

At the time, I stated that this was a shameful and factless scare tactic. Since that time, wheat prices have declined almost 50 percent. What has happened to bread prices? They have not declined one penny and in many instances have actually increased. Why?

If the earlier comments were not self-serving, I ask the ABA to state their case and make a full explanation to the American consumer. They should explain why a twofold increase should precipitate a threefold increase in bread prices when a similar decline in wheat prices does not produce even a marginal reduction in the price of bread.

Without such a followup, I can only question the motivation of these statements and the call for a wheat export embargo. I call upon consumers and producers to draw their own conclusions about the credibility and attitude of the ABA and their high officials toward the two segments of our national food chain which are vital to their survival.

Perhaps it is time that the American consumer purchase their own flour and make their own bread. There is no substitute for homebaked bread and pastry for taste and nutrition. Wheat and wheat food products have been referred to as the very staff of life. Bread is one of the four food groups that we need every day. I think it is time that consumers buy their own flour, which has declined about 20 cents on a 10-pound bag, and rediscover the taste of what our mothers and grandmothers baked.

There is nothing wrong, it seems to me, for some old-fashioned competition to serve the best interests of the American consumer.

#### VIETNAM VETERANS NEED HELP IN SECURING BENEFITS

(Mr. WOLFF asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WOLFF. Mr. Speaker, a serious problem confronts us today. It is the question of extending the time limitation during which Vietnam veterans must use their education benefits. Three months ago, the House passed and sent

to the Senate a bill containing a 2-year extension from 8 to 10 years. This bill also contained the 13.6-percent increase in the subsistence allowance. For 3 months, the Senate has dragged its feet on this bill with the result that today the rights of 300,000 veterans whose education benefits are due to expire on May 31 have been placed in jeopardy. Now the Senate has sent back to us a bill containing only the 2-year extension.

There will be an attempt made on the floor here today to substitute the House passed bill for the Senate passed measure. I hope that the House will give grave consideration to this, inasmuch as the benefits of 300,000 Vietnam veterans will end on May 31, and we must remember that if a conference between the House and Senate does not resolve the problem by May 31, the education of 300,000 vets will come to a halt, cutting off hopes for careers and ending job opportunities for many. I might also point out that thousands of veterans are faced with the dilemma of having to register for school before May 31 without the guarantee that GI benefits will be forthcoming. Even a week's delay in enacting the 2-year extension will cause grave problems.

Mr. Speaker, I think the Members should be alerted to the fact that the rights of these veterans are in jeopardy today. Congress must enact the 2-year extension without further delay.

#### CALL OF THE HOUSE

Mr. ROUSSELOT. Mr. Speaker, I make the point of order that a quorum is not present.

The SPEAKER. Evidently a quorum is not present.

Mr. O'NEILL. Mr. Speaker, I move a call of the House.

A call of the House was ordered.

The call was taken by electronic device, and the following Members failed to respond:

[Roll No. 221]		
Broomfield	Hawkins	Rangel
Burke, Calif.	Hébert	Reld
Carey, N.Y.	Helstoski	Rogers
Carter	Huber	Roncallo, N.Y.
Chisholm	Hudnut	Rooney, N.Y.
Clancy	Johnson, Pa.	Shuster
Clark	Leggett	Slack
Clausen,	Litton	Steiger, Ariz.
Don H.	McCloskey	Stubblefield
Clay	McCormack	Stuckey
Conte	Martin, N.C.	Sullivan
Conyers	Mills	Talcott
Davis, Ga.	Mollohan	Thompson, N.J.
Diggs	Morgan	Tiernan
Dorn	Mosher	Williams
Drinan	Nelsen	Wright
Dulski	Nix	Wyatt
Gray	Pettis	Young, S.C.
Green, Oreg.	Pike	
Gunter	Quillen	

The SPEAKER. On this rollcall 376 Members have recorded their presence by electronic device, a quorum.

By unanimous consent, further proceedings under the call were dispensed with.

#### PRESENTATION OF FLAG OF UNITED STATES FOR DECEASED MEMBERS OF READY RESERVE

Mr. FISHER. Mr. Speaker, I ask unanimous consent to take from the Speaker's

desk the bill (H.R. 5621) to amend title 10, United States Code, to provide for the presentation of a flag of the United States for deceased members of the Ready Reserve, with Senate amendments thereto, and concur in the Senate amendments.

The Clerk read the title of the bill.

The Clerk read the Senate amendments, as follows:

Strike out all after the enacting clause and insert: That section 1482 of title 10, United States Code, is amended by adding the following new subsection at the end thereof:

"(f) The Secretary concerned may pay the necessary expenses for the presentation of a flag to the person designated to direct the disposition of the remains of a member of the Reserve of an armed force under his jurisdiction who dies under honorable circumstances as determined by the Secretary and who is not covered by section 1481 of this title if, at the time of such member's death, he—

"(1) was a member of the Ready Reserve; or

"(2) had performed at least twenty years of service as computed under section 1332 of this title and was not entitled to retired pay under section 1331 of this title."

Amend the title so as to read: "An Act to amend title 10, United States Code, to provide for the presentation of a flag of the United States for deceased members of the Ready Reserve and for deceased members of the Reserve who die after completing twenty years of service, but before becoming entitled to retired pay."

The SPEAKER. Is there objection to the request of the gentleman from Texas?

Mr. GROSS. Mr. Speaker, reserving the right to object, and I shall not object, I do so to ask the gentleman if the amendments are germane to the bill?

Mr. FISHER. Mr. Speaker, if the gentleman will yield, the gentleman is correct.

Mr. GROSS. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Texas?

There was no objection.

The Senate amendments were concurred in.

A motion to reconsider was laid on the table.

#### AUTHORIZING ADDITIONAL APPROPRIATIONS TO CARRY OUT PEACE CORPS ACT

Mr. ZABLOCKI. Mr. Speaker, I ask unanimous consent to take from the Speaker's desk the bill (H.R. 12920) to authorize additional appropriations to carry out the Peace Corps Act, and for other purposes, with a Senate amendment thereto, and disagree to the Senate amendment.

The Clerk read the title of the bill.

The Clerk read the Senate amendment, as follows:

Page 3, after line 6, insert:

Sec. 3. (a) Section 5(c) of the Peace Corps Act (22 U.S.C. 2504(c)) is amended by striking out "\$75" and "\$125" and inserting in lieu thereof "\$115" and "\$190", respectively.

(b) Section 6(1) of such Act (22 U.S.C. 2505(1)) is amended by striking out "\$125" and inserting in lieu thereof "\$190"

(c) There are authorized to be appropriated such additional sums as may be necessary to carry out the amendments made by subsections (a) and (b) of this section. Such amendments are to be effective for any fiscal year only to such extent and in such amounts as are specifically provided for such purpose in appropriation Acts.

(d) (1) Section 105(a)(1) of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4955(a)(1)) is amended by striking out "\$50" and "\$75" and inserting in lieu thereof "\$75" and "\$115", respectively.

(2) There are authorized to be appropriated in addition to the sums authorized to be appropriated pursuant to section 501 of such Act, such additional sums as may be necessary to carry out the amendments made by paragraph (1) of this subsection. Such amendments are to be effective for each fiscal year only to such extent and for such amounts as are specifically provided for such purpose in such appropriation Acts.

The SPEAKER. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

The Senate amendment was disagreed to.

#### PROVIDING 10-YEAR DELIMITING PERIOD FOR PURSUIT OF EDUCATIONAL PROGRAMS BY VETERANS, WIVES, AND WIDOWS

Mr. TEAGUE. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 3398) to amend title 38, United States Code, to provide a 10-year delimiting period for the pursuit of educational programs by veterans, wives, and widows, and ask for its immediate consideration.

The Clerk read the title of the bill.

The SPEAKER. Is there objection to the request of the gentleman from Texas?

Mr. HAMMERSCHMIDT. Mr. Speaker, reserving the right to object—and I shall not object, I do so to ask the distinguished gentleman from Texas the reason for his request and to give him time enough to explain it to the House.

Mr. TEAGUE. Mr. Speaker, in February of this year, after very careful consideration by the House Committee on Veterans' Affairs, that committee brought to this floor a bill pertaining to GI education, the main provisions being to provide a 2-year extension of time and then an increase of, for example, from \$220 for a single veteran to \$250. The cost was \$1.1 billion. It meant approximately \$50 million a month to our veterans.

That has been over in the other body since February. They have taken no action on the total bill, but they did send a bill back to this House doing nothing but extending the time for 2 years. What I propose to do here today is to take that bill and substitute the bill we sent over there unanimously, by a vote of 382 to 0, and which would also put in the \$250 a month for veterans, and send it back to the other body for their action.

Mr. HAMMERSCHMIDT. Mr. Speaker, reserving the right to object, I support the gentleman's request. The effect of this action will be to return to the other

body for their further consideration a bill that is identical to the bill that passed this House on February 19 by a record vote of 382 to 0.

On February 19th, Mr. Speaker, the House passed H.R. 12628, the Veterans Education and Rehabilitation Amendments of 1974. Among other things, the measure authorized a 13.6 percent increase in monthly allowances payable to veterans and dependents attending school under the veterans benefit programs. The bill also contained a 2-year extension of the 8-year period during which educational benefits must be utilized.

The 2-year extension authorized by the House-passed bill, H.R. 12628, becomes critical, Mr. Speaker, because the 8-year period expires on May 31 of this year for a substantial number of veterans, many of whom are currently in school.

For some unexplained reason, the Committee on Veterans' Affairs in the other body, with more than 2 months in which to complete action on the House passed measure, has not done so. Now, ignoring the increase in monthly allowances, they have belatedly extracted from the House bill the provision relating exclusively to the 2-year extension and passed it.

I said belatedly because it is apparent that they have already waited too long to insure the timely receipt of monthly allowances by veterans attending school. The Veterans' Administration has informed the distinguished chairman of the Committee on Veterans' Affairs that processing time alone would prevent checks from being mailed prior to June 3. Unfortunately the need for an appropriation of \$77 million to fund this authorization will delay even further the timely delivery of education allowances.

Mr. Speaker, this body has already demonstrated its strong support of the 2-year extension by a unanimous vote on February 19. In the same vote, the House of Representatives expressed its strong support for a 13.6-percent increase in monthly educational allowances.

Each day of delay or failure of the other body to take action on H.R. 12628 deprives eligible veterans of more than \$1.5 million in additional benefits. Mr. Speaker, I cannot be a party to such costly delays.

I therefore must support the proposed amendment which, if approved, will reiterate to the other body our strong resolve to increase monthly allowances as well as extend entitlement for 2 years.

Mr. Speaker, I withdraw my reservation of objection.

Mr. WOLFF. Mr. Speaker, reserving the right to object, I take this time to ask the gentleman from Texas what happens to the 300,000 veterans whose rights run out on May 31, when the length of time, the 8-year period runs out, that is in the event that the Senate does not accept our bill?

Mr. TEAGUE. Mr. Speaker, if no action is taken, those some 300,000 veterans would lose their entitlement. It would certainly be the hope, and as the gentleman from New York well knows,

we have consulted with the Speaker and some of the leadership, we would hope to see those rights of veterans are protected before May 31.

Mr. WOLFF. Mr. Speaker, further reserving the right to object, I certainly do not object to the additions of the House position, because as one of the original cosponsors of this legislation, I feel very strongly it must be enacted to take care of the problems of the veterans of our Nation; however, I want to be sure it will not cause a cessation of any benefits to those veterans who are now in school and who will be interrupted in their education because the 8-year program runs out. I am satisfied that the solution you and I worked out with the Speaker will insure the 2-year extension.

Mr. Speaker, I withdraw my reservation of objection.

Mr. BINGHAM. Mr. Speaker, reserving the right to object, I wonder if the gentleman from Texas would not agree it would make sense to have a short extension of the existing law, perhaps 2 months, to protect the veterans' benefits that my colleague, the gentleman from New York, speaks of, so as to allow time to work out the differences between the Senate and the House on the more comprehensive bill.

I understand, for example, that the Senate is considering a tuition assistance program which goes beyond what the House did and which appeals to me very much as a program that would put the veterans' benefits in line with the GI benefits following World War II.

Assuming that the Senate accepts the House bill, that would not be included. Would it not be desirable to have a short extension of 2 months to the existing program to allow time to work out the differences between the Senate and the House?

Mr. TEAGUE. Mr. Speaker, first of all, the gentleman from Texas does not agree with the gentleman from New York about the discrepancy between the veterans of Vietnam and World War II. That is the first difference.

Certainly this bill has merit and if passed, we would hope it would take care of that.

Mr. BINGHAM. Mr. Speaker, I further want to ask the gentleman, what is the position of the gentleman and the position of the committee with regard to the tuition assistance program being considered in the Senate?

Mr. TEAGUE. Our committee has voted three times on that proposition and we have voted it down. As far as the gentleman from Texas, speaking for myself and not for the committee, I am 1,000 percent opposed to it.

I might say to the gentleman that the Committee on Education is holding hearings on that matter now in our committee.

Mr. WOLFF. Mr. Speaker, will the gentleman yield?

Mr. BINGHAM. I yield to my colleague, the gentleman from New York.

Mr. WOLFF. For the gentleman's information, the subcommittee, as the gentleman indicated, is holding hearings on

the direct tuition plan and anticipates it will offer that bill very shortly.

Mr. BINGHAM. I thank the gentleman.

Mrs. HECKLER of Massachusetts. Mr. Speaker, reserving the right to object, I yield to my distinguished colleague, the gentleman from Arkansas, the distinguished ranking minority member on the committee.

Mr. MAYNE. Mr. Speaker, will the gentleman yield?

Mrs. HECKLER of Massachusetts. I yield to the distinguished gentleman from Iowa (Mr. MAYNE).

Mr. MAYNE. Mr. Speaker, I want to commend the gentlewoman and the gentleman from Texas for the fight they are putting up to see that this period of eligibility is extended for another 2 years.

This is a matter of vital importance which I believe all Members of the House should get behind to the fullest extent possible.

I thank the gentlelady from Massachusetts (Mrs. HECKLER) for yielding. Mr. Speaker, earlier today I introduced legislation identical to S. 3398 as passed by the Senate yesterday, legislation which would simply extend the period of time during which veterans must complete training from the present 8 years following last discharge or release to 10 years. Without such an extension, many veterans now in the midst of their education or training would no longer be able to utilize the educational assistance for which their service otherwise entitled them, for their eligibility would expire on June 1, 1974. Time is of the essence in this connection. Failure of the Congress to enact and the President to sign into law legislation extending eligibility beyond June 1, 1974, certainly for a minimum of 2 years, would be a national tragedy, working great hardships on those veterans who were delayed, often through no fault of their own, in starting their education or training or in working toward the advanced degree to which their service entitled them.

However, I have been convinced by the distinguished Member from Texas, the chairman of the House Veterans' Affairs Committee's Subcommittee on Compensation and Pension (Mr. TEAGUE), in his statements on the floor today, of the wisdom of his move to substitute the language of the Veterans' Education and Rehabilitation Amendments of 1974, H.R. 12628 as passed by the House with my strong support on February 19, 1974, for that of S. 3398, the simple 2-year extension of veterans training eligibility passed by the Senate yesterday, and to then return it to the Senate for its approval. The improvements in the educational assistance programs provided in H.R. 12628 are indeed urgently needed, and they might well fall by the wayside, mired in the Senate Veterans' Affairs Committee's apparent inability to arrive at a solution to its impasse regarding the details of this legislation, if the House concurs in the simple 2-year extension of benefits. In view of the sadly deficient level of present veterans training assistance payments under the exist-

ing law, failure to insist upon enactment of at least the benefit increases and improvements contained in H.R. 12628 as passed by the House would work serious hardships upon veterans and their families, and upon the institutions in which they are enrolled. In fact, failure to increase benefit rates at the same time eligibility is extended may make the extension of eligibility somewhat an exercise in futility, for many veterans would find it an economic impossibility to seek to continue their training or education under the present program's benefit schedules.

I strongly urge the Members of this House to vote in support of the motion, thereby giving the Members of the other body opportunity to accept. S. 3398 as amended by the language of H.R. 12628. I urge the Members of the Senate to approve this package, though the benefits may appear lower in some instances than those some Senators might advocate, for certainly this is a case where a bird in hand is indeed worth two in the bush. I further urge the President to make every effort to sign this important and urgently needed legislation into law and to implement it fully and speedily. There has been far too much delay on this matter already. Let us show not only ourselves but all America just how efficiently and speedily our institutions of Government can move to meet this real crisis and to provide the benefits America's veterans and their dependents have been promised and which they fully deserve.

Mrs. HECKLER of Massachusetts. Mr. Speaker, I would like to propound a question to the distinguished gentleman from Texas. As the original author of the legislation which he is suggesting to substitute for the Senate bill today, I certainly support all of those objectives, and indeed every provision in the bill is meritorious, desirable, and overdue.

My greatest concern is that we enact the extension of the GI bill eligibility period for the Vietnam era veterans, because this is a crucial question for over 300,000 veterans whose benefits will expire May 31. It seems to me that should be our first priority and that the other provisions, as important as they are, can be considered after we consider this extension issue.

Mr. Speaker, my question goes to the issue of the need for an authorization. Is it not true that the Veterans' Administration yesterday advised the chairman of the committee that it does not have enough funds in its account to continue the monthly payments beyond May 31?

Mr. TEAGUE. That is correct. The Administrator of the Veterans' Administration advised the committee that they need \$77 million.

Mrs. HECKLER of Massachusetts. Is it not true that an extension of this program would require an authorization before a supplemental appropriation would be in order before this House?

Mr. TEAGUE. That is correct.

Mrs. HECKLER of Massachusetts. Then, it seems to me that the need for an appropriation lends added urgency to the question of extending the entitlement period for 2 years. I simply cannot understand the lack of foresight on the part of the Veterans' Administration in not providing for the anticipated con-

tinuation of this program. Nevertheless the fact is that they need to have an authorization.

Should this issue go to conference—and I have tremendous respect for the gentleman's leadership in the conference—will it be possible to urge the Senate to act within this limited time span, within the May 31 deadline, so that these Vietnam veterans will receive equal treatment with their colleagues from other wars?

Mr. TEAGUE. It is my understanding that the other body is meeting today to take some action in this regard.

Mrs. HECKLER of Massachusetts. Mr. Speaker, I thank the gentleman for his comments. I feel it is absolutely crucial that we enact an authorization, so that we can get to work on passing an emergency supplemental appropriation to continue the payments beyond May 31. The extension of the eligibility for the 300,000 veterans in this program must be our highest priority, and I urge the conferees on this legislation to come to an agreement as soon as possible in order to meet this priority. We simply must not allow this program to lapse.

Mr. Speaker, I withdraw my reservation of objection.

Mr. BIAGGI. Mr. Speaker, reserving the right to object, let me say that I anticipated this development several weeks ago. Therefore, I introduced a bill that dealt with a simple 2-year extension, a bill devoid of any other complications.

After the other body passed a simple 2-year extension bill on Monday, I started a push for passage of my bill. I have over 50 cosponsors after only 24 hours. I anticipated arriving at this point today. The House acted unanimously in the early part of this year to provide additional benefits for veterans. The other body, unfortunately, is providing the problem. We find ourselves in somewhat of a crunch. The chairman is as concerned as I am with some \$50 million a month that is being denied veterans each month we delay action. Yet if we fail to provide at least an extension before the end of this month, more than 300,000 veterans will be cut off completely.

Mr. Speaker, the question I ask is, assuming that the Senate does not respond to the action we take today, and assuming we then proceed under suspension on May 20 to deal with a simple extension as we have agreed upon, just what will be the result?

Mr. TEAGUE. First, the other body in the last 3 months has kept \$150 million out of the pockets of the GI's going to school. I personally am very much interested in the extension, and also in that \$50 million a month. Certainly, I will not expect us to do nothing just because the other body does nothing. I certainly want the House to do whatever is necessary to retain the extension rights of those 300,000 veterans.

Mr. BIAGGI. Mr. Speaker, I withdraw my right to object.

The SPEAKER. Is there objection to the request of the gentleman from Texas?

There was no objection.

Mr. HILLIS. Mr. Speaker, I rise in support of S. 3398 as amended. While I

am fully aware of the impending deadline of June 1, 1974, when educational entitlement will be terminated for some of our veterans, because the 8-year period in which they must use their educational benefits will have tolled. I am also concerned about all of our veterans who have been awaiting a long overdue increase in their educational allowances. Many of them, too, will terminate their educational programs, but for a different reason. They will not be able to afford to remain in school.

In my estimation, both of these groups are equally in need of immediate legislative action. In February, the House sent to the Senate a bill, H.R. 12628. It contained provisions which with timely action by the other body would have avoided the concern and anxiety many of our veterans are now undergoing.

I favor completely the extension of the 8-year delimiting period to 10 years, but in good conscience I cannot support a bill that will only eliminate a hardship for some while others fully as deserving will lose out because of inadequate allowances. In view of this I can support S. 3398 only as amended to include the increase in the educational allowances.

Mr. DORN. Mr. Speaker, on February 19, the House of Representatives passed, by a vote of 382 to 0, a bill which would give Vietnam veterans a 2-year extension of training time, granting a cost-of-living increase of 13.6 percent and equalizing the vocational rehabilitation program with provisions of the World War II program.

This bill has languished in the Senate, with no action being taken until Monday of this week when the Senate, in an effort to extract themselves from the problem which has been created by their delay, passed a bill (S. 3398) which takes only one provision of the House-passed bill, H.R. 12628, relating to the 2-year extension, and sent it back to the House for action. No action has been taken on the more comprehensive House-passed bill. No action has been taken on the proposal to grant veterans a cost-of-living increase.

There is no argument that there is merit to extending Vietnam veterans training time from 8 to 10 years. If action is not taken promptly to extend the period, on May 31 several thousand veterans who are in training, or who would like to go to school, will have their plans temporarily disrupted, and we certainly do not wish to see this. On the other hand, failure to pass the cost-of-living increases would adversely affect more than a million veterans enrolled in training. Each month that the other body has delayed has cost the veterans of this country about \$50 million. It is incomprehensible to me as to why the other body would delay further on the cost-of-living increase and I see no reason that benefit cannot be passed along with the 2-year extension and the other provisions of the House-passed bill.

Information is being disseminated that if the House does not act immediately, veterans whose eligibility would otherwise expire on May 31, 1974, will be interrupted and will not receive their next check on time. Unfortunately, the other body has delayed acting on this legislation so long now that it appears

there is no way to prevent disruption in training eligibility for those whose time expires on May 31. We have been advised by the Veterans' Administration and OMB that the agency has no funds for the payment of education assistance benefits to veterans whose eligibility under current law expires May 31, 1974, and to continue in training beyond that date if Congress extends entitlement. The Veterans' Administration has estimated that it will need \$77 million for this purpose by June 30, 1974, and that the agency does not have funds available in other appropriations to meet this expense.

In addition, the agency is pointing out that there will be complicated administration problems and it will need additional operating expenses to carry out the extension. OMB has indicated that if Congress extends the eligibility period from 8 to 10 years that a supplemental appropriation will be needed to fund this additional benefit.

The report which I have received from the Administration regarding its need for additional funds is as follows:

VETERANS' ADMINISTRATION,  
Washington, D.C., May 14, 1974.

HON. W. J. BRYAN DORN,  
Chairman, Committee on Veterans' Affairs,  
House of Representatives, Washington,  
D.C.

DEAR MR. CHAIRMAN: This has reference to your letter of this date concerning legislation (S. 3398) currently being considered by the Congress to extend the time period for utilization of GI bill benefits. As you know, this legislation would extend from 8 to 10 years the time period within which veterans of service after January 31, 1955 have to utilize their educational assistance benefits. With limited exceptions, approximately 4 million post-Korean veterans whose eligibility would otherwise expire May 31, 1974 would continue to be eligible for such benefits for an additional two years.

Implementation of this legislation will impose major administrative and funding difficulties during the balance of this fiscal year:

1. Cases to be reviewed for a possible extension of the current enrollment period must be identified. Each such case must be individually reviewed to verify that the current enrollment period extends beyond May 31, 1974. For each case so verified a separate award must be prepared by the regional office and referred to the Data Processing Center at Hines, Illinois for payment. Time constraints preclude making such payments by the June 1 delivery date. *The earliest possible date these checks could be mailed would be June 3.*

2. No funds have been provided for payment of educational assistance benefits to veterans whose eligibility under current law expires May 31, 1974, and who continue in training beyond that date under an extended entitlement. We currently estimate that a 1974 Readjustment Benefit supplemental appropriation of approximately \$77 million will be required for this purpose by June 30, 1974. In this connection it is pointed out that higher-than-anticipated 1974 Compensation and Pensions obligation levels preclude any possibility of a transfer of funds from that appropriation account. Further, additional General Operating Expenses costs will be incurred in implementing the proposed legislation.

I will be pleased to provide any additional information you may desire in this connection.

Sincerely,

DONALD E. JOHNSON,  
Administrator.

It is most regrettable that the other body did not take up this problem in a more expeditious fashion so that these additional funds could have been included in the supplemental appropriation which the Congress sent to the President a few days ago. I have no doubt that our Appropriations Committees will cooperate to furnish such additional funds for any benefits authorized by the Congress through extending training time, but this will take some time and spokesmen for OMB and VA indicate that it is not likely that this can all be accomplished and prevent a delay in benefits even though the extension provision which we are considering becomes effective June 1, 1974.

Mr. Speaker, it is most unfortunate that veterans, Members of Congress and veteran organizations are being led to believe that the simple solution to this problem is for the House to take up the piecemeal bill which the Senate has passed. Unfortunately, this is not true. We should make a decision now about what we are going to do not only on the 2-year extension, but on increased benefits resulting from the cost-of-living raise, so that the increased funding needs for this legislation can be handled in an orderly fashion by our Appropriations Committee.

It is for this reason that our committee is amending S. 3398 by adding all of the original provisions of the House-passed bill and sending it back to the Senate. We urge the other body to act immediately on this bill so that veterans can have their extension and their cost-of-living increase, and so that Congress can immediately set about to appropriate the funds necessary for these increased benefits.

I am well aware that there are all sorts of novel tuition schemes being considered in the other body, which is certainly their privilege. If the other body chooses to hold extended hearings on these subjects, certainly it is their right to do so. But I do not think that more than a million veterans in training at this time should be deprived of their cost-of-living increase while talks continue about this controversial subject.

The time to act is now and I can think of no legitimate reason for further delay on the part of the other body.

The Clerk read the Senate bill, as follows:

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1662 of title 38, United States Code, is amended—*

- (1) by deleting "eight" in subsection (a) and inserting in lieu thereof "ten";
- (2) by deleting "8-year" in subsection (b) and inserting in lieu thereof "10-year";
- (3) by deleting "8-year" and "eight-year" in subsection (c) and inserting in lieu thereof "10-year" and "ten-year", respectively; and
- (4) by deleting at the end thereof the following new subsection:

"(d) In the case of any veterans (1) who served on or after January 31, 1955, (2) who became eligible for educational assistance under the provisions of this chapter or chapter 36 of this title, and (3) who, subsequent to his last discharge or release from active duty, was captured and held as a prisoner of war by a foreign government or

power, there shall be excluded, in computing his ten-year period of eligibility for educational assistance, any period during which he was so detained and any period immediately following his release from such detention during which he was hospitalized at a military, civilian, or Veterans' Administration medical facility."

SEC. 2. Section 1712 of title 38, United States Code, is amended—

- (1) by deleting "eight" in subsection (b) and inserting in lieu thereof "ten"; and
- (2) by deleting "eight" in subsection (f) and inserting in lieu thereof "ten".

SEC. 3. Section 604(a) of Public Law 92-540 (82 Stat. 1333, October 24, 1972) is amended by deleting "eight" and inserting in lieu thereof "ten".

AMENDMENT OFFERED BY MR. TEAGUE

Mr. TEAGUE. Mr. Speaker, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. TEAGUE: Strike out all after the enacting clause of S. 3398 and insert in lieu thereof the provisions of H.R. 12628, as passed on February 19, 1974, as follows:

That this Act may be cited as the "Veterans' Education and Rehabilitation Amendments Act of 1974".

SEC. 2. Chapter 31 of title 38, United States Code, is amended as follows:

- (1) by amending paragraphs (1) and (2) of subsection (a) of section 1502 to read as follows:

"(1) arose out of service during World War II, the Korean conflict, or the Vietnam era; or

"(2) arose out of service (A) after World War II and before the Korean conflict, (B) after the Korean conflict but before August 5, 1964, or (C) after the Vietnam era, and is rated for compensation purposes as 30 per centum or more, or if less than 30 per centum, is clearly shown to have caused a pronounced employment handicap."; and

- (2) by amending the table contained in section 1504(b) to read as follows:

"Column I	Column II	Column III	Column IV	Column V
Type of training	No dependents	One dependent	Two dependents	More than two dependents
Institutional:				
Full-time.....	\$193	\$240	\$282	\$20
Three-quarter-time.....	145	180	212	15
Half-time.....	97	120	141	10
Farm cooperative, apprentice, or other on-job training:				
Full-time.....	168	203	235	16."

SEC. 3. Chapter 34 of title 38, United States Code, is amended as follows:

- (1) by deleting in the last sentence of section 1677 (b) "\$220" and inserting in lieu thereof "\$250";

- (2) by amending the table contained in paragraph (1) of section 1682(a) to read as follows:

"Column I Type of program	Column II No dependents	Column III One dependent	Column IV Two dependents	Column V More than two dependents
Institutional:				The amount in column IV, plus the following for each dependent in excess of two:
Full-time.....	\$250	\$297	\$339	\$20
Three-quarter-time.....	188	223	254	15
Half-time.....	125	149	170	10
Cooperative.....	201	236	268	16";

(3) by deleting in section 1682(b) "\$220" and inserting in lieu thereof "\$250";

(4) by amending the table contained in paragraph (2) of section 1682(c) to read as follows:

"Column I Basis	Column II No dependents	Column III One dependent	Column IV Two dependents	Column V More than two dependents
Full-time.....	\$201	\$236	\$268	\$16
Three-quarter-time.....	151	177	201	12
Half-time.....	101	118	134	8";

(5) by deleting in section 1696(b) "\$220" and inserting in lieu thereof "\$250";

(6) by inserting in clause (3) of section 1652(a), immediately after "1661(a)," the following: "except as provided therein,";

(7) by adding at the end of section 1661(a) the following:

"For purposes of this subsection, in determining the period to which any eligible veteran is entitled to educational assistance under this chapter, the initial period of active duty for training performed by him under section 511(b) of title 10 shall be deemed to be active duty if at any time subsequent to the completion of such period of active duty for training such veteran served on active duty for a consecutive period of one year or more,";

(8) by amending section 1662—

(a) by deleting "eight" in subsection (a) and inserting in lieu thereof "ten";

(b) by deleting "8-year" in subsection (b) and inserting in lieu thereof "10-year";

(c) by deleting "8-year" and "eight-year" in subsection (c) and inserting in lieu thereof "10-year" and "ten-year", respectively; and

(d) by adding at the end thereof the following new subsection:

"(d) In the case of any veteran (1) who served on or after January 31, 1955, (2) who became eligible for educational assistance under the provisions of this chapter or chapter 36 of this title, and (3) who, subsequent to his last discharge or release from active duty, was captured and held as a prisoner of war by a foreign government or power, there shall be excluded, in computing his ten-year period of eligibility for educational assistance, any period during which he was so detained and any period immediately following his release from such detention during which he was hospitalized at a

military, civilian, or Veterans' Administration medical facility.";

(9) by deleting in section 1673(d) "chapter 31, 34, or 36" and inserting in lieu thereof "chapter 31, 35, or 36";

(10) by adding at the end of section 1682 a new subsection as follows:

"(d) (1) Notwithstanding the bar in section 1671 of this title prohibiting enrollment of an eligible veteran in a program of education in which he is 'already qualified', a veteran shall be allowed up to six months of educational assistance (or the equivalent thereof in part-time assistance) for the pursuit of refresher training to permit him to update his knowledge and skills and to be instructed in the technological advances which have occurred in his field of employment during the period of his active military service.

"(2) A program of education pursued under this subsection must be commenced within twelve months from the date of the veteran's discharge or release from active duty and must be pursued continuously (except for interruptions for reasons beyond the veteran's control).

"(3) A veteran pursuing refresher training under this subsection shall be paid an educational assistance allowance based upon the rate payable as set forth in the table in subsection (a) (1) or in subsection (b) (2) of this section, whichever is applicable.

"(4) The educational assistance allowance paid under the authority of this subsection shall be charged against the period of entitlement the veteran has earned pursuant to section 1661(a) of this title.";

(11) by amending section 1685—

(a) by deleting "\$250" wherever it appears in subsection (a) and substituting "500" in each case;

(b) by deleting "one hundred hours" wherever it appears in subsection (a) and substituting "two hundred hours" in each case; and

(c) by deleting "(not to exceed eight hundred man-years or their equivalent in man-hours during any fiscal year)" in subsection (c).

Sec. 4. Chapter 35 of title 38, United States Code, is amended as follows:

(1) by amending section 1732(a) (1) to read as follows:

"(a) (1) The educational assistance allowance on behalf of an eligible person who is pursuing a program of education consisting of institutional courses shall be computed at the rate of (A) \$250 per month if pursued on a full-time basis, (B) \$188 per month if pursued on a three-quarter-time basis, and (C) \$125 per month if pursued on a half-time basis.";

(2) by deleting in section 1732(a) (2) "\$220" and inserting in lieu thereof "\$250";

(3) by deleting in section 1732(b) "\$177" and inserting in lieu thereof "\$201";

(4) by amending section 1742(a) to read as follows:

"(a) While the eligible person is enrolled in and pursuing a full-time course of special restorative training, the parent or guardian shall be entitled to receive on his behalf a special training allowance computed at the basic rate of \$250 per month. If the charges for tuition and fees applicable to any such course are more than \$78 per calendar month, the basic monthly allowance may be increased by the amount that such charges exceed \$78 a month upon election by the parent or guardian of the eligible person to have such person's period of entitlement reduced by one day for each \$8.35 that the special training allowance paid exceeds the basic monthly allowance.";

(5) by amending section 1723(c) by deleting "any course of institutional on-farm training,"; and

(6) by amending section 1732 by redesignating subsection (c) as subsection (d) and by inserting immediately after subsection (b) the following new subsection:

"(c) (1) An eligible person who is enrolled in an educational institution for a 'farm cooperative' program consisting of institutional agricultural courses prescheduled to fall within forty-four weeks of any period of twelve consecutive months and who pursues such program on—

"(A) a full-time basis (a minimum of ten clock hours per week or four hundred and forty clock hours in such year prescheduled to provide not less than eighty clock hours in any three-month period),

"(B) a three-quarter-time basis (a minimum of seven clock hours per week), or

"(C) a half-time basis (a minimum of five clock hours per week),

shall be eligible to receive an educational assistance allowance at the appropriate rate provided in paragraph (2) of this subsection, if such eligible person is concurrently engaged in agricultural employment which is relevant to such institutional agricultural courses as determined under standards prescribed by the Administrator. In computing the foregoing clock hour requirements there shall be included the time involved in field trips and individual and group instruction sponsored and conducted by the educational institution through a duly authorized instructor of such institution in which the person is enrolled.

"(2) The monthly educational assistance allowance to be paid on behalf of an eligible person pursuing a farm cooperative program under this chapter shall be computed at a rate of (A) \$201 per month if pursued on a full-time basis, (B) \$151 per month if pursued on a three-quarter-time basis, and (C) \$101 per month if pursued on a half-time basis."

Sec. 5. Chapter 36 of title 38, United States Code, is amended as follows:

(1) by deleting in section 1786(a) (2) "\$220" and inserting in lieu thereof "\$250";

(2) by amending the table contained in paragraph (1) of section 1787(b) to read as follows:

"Column I Periods of training	Column II No dependents	Column III One dependent	Column IV Two dependents	Column V More than two dependents
First 6 months.....	\$182	\$203	\$223	\$9
Second 6 months....	136	158	177	9
Third 6 months.....	91	112	132	9
Fourth and any succeeding 6-month periods....	45	67	86	9";

(3) by amending section 1787(b) (2) to read as follows:

"(2) The monthly training assistance allowance of an eligible person pursuing a program described under subsection (a) shall be (A) \$182 during the first six-month period, (B) \$136 during the second six-month period, (C) \$91 during the third six-month period, and (D) \$45 during the fourth and any succeeding six-month period.";

(4) by amending section 1784(b) to read as follows:

"(b) The Administrator may pay to any educational institution, or to any joint apprenticeship training committee acting as a training establishment, furnishing education or training under either chapter 34, 35, or 36 of this title, a reporting fee which will be in lieu of any other compensation or reimbursement for reports or certifications which such educational institution or joint apprenticeship training committee is required to report to him by law or regulation. Such

reporting fee shall be computed for each calendar year by multiplying \$3 by the number of eligible veterans or eligible persons enrolled under chapter 34, 35, or 36 of this title or \$4 in the case of those eligible veterans and eligible persons whose educational assistance checks are directed in care of each institution for temporary custody and delivery and are delivered at the time of registration as provided under section 1780(d) (5) of this title, on October 31 of that year; except that the Administrator may, where it is established by such educational institution or joint apprenticeship training committee that eligible veteran plus eligible person enrollment on such date varies more than 15 per centum from the peak eligible veteran plus eligible person enrollment in such educational institution or joint apprenticeship training committee during such calendar year, establish such other date as representative of the peak enrollment as may be justified for such educational institution or joint apprenticeship training committee. The reporting fee shall be paid to such educational institution or joint apprenticeship training committee as soon as feasible after the end of the calendar year for which it is applicable.";

(5) by adding at the end of section 1788(a) the following:

"Notwithstanding the provisions of clause (1) or (2) of this subsection, an educational institution offering courses on a clock-hour basis below the college level may measure such courses of a quarter- or semester-hour basis (with full-time measured on the same basis as provided by clause (4) of this subsection), provided that (A) the academic portions of such courses require outside preparation and are measured on not less than one quarter or one semester hour for each fifty minutes net of instruction per week per quarter or semester; (B) the laboratory portions of such courses are measured on not less than one quarter or one semester hour for each two hours of attendance per week per quarter or semester; and (C) the shop portions of such courses are measured on not less than one quarter or one semester hour for each three hours of attendance per week per quarter or semester: *Provided*, That in no event shall such course be considered a full-time course when less than twenty-five hours per week of attendance is required.

SEC. 6. (a) Chapter 3 of title 38, United States Code, is amended by adding at the end thereof the following new subchapter:

"SUBCHAPTER V—VIETNAM ERA VETERANS COMMUNICATION CENTER

"§ 251. Establishment of the Center

"(a) There is established in the Veterans' Administration a Vietnam Era Veterans Communication Center (hereinafter referred to in this subchapter as the 'Center') which shall be headed by a core group composed of not less than five employees of the Veterans' Administration, each of whom is a veteran of the Vietnam era. There shall be at least one employee of the Veterans' Administration in each veterans' assistance office established pursuant to section 242 of this title who shall be a Vietnam era veteran and who shall be responsible to the core group.

"(b) The Center shall consist of such other employees as the Administrator deems necessary to carry out the purposes of this subchapter.

"§ 252. Functions of the Center

"The Center shall make an initial evaluation (and report the results of such evaluation to the Administrator and to the Congress within three months after the effective date of this subchapter) and thereafter make a periodic evaluation of—

"(1) the effectiveness of the veterans outreach services program established by subchapter IV of this chapter, particularly as it applies to Vietnam era veterans; and

"(2) make recommendations, based on its evaluations under subparagraph (A), to the

Administrator and to the Congress for establishing new, and improving existing, methods and procedures to be implemented by the Veterans' Administration (whether through such subchapter IV or otherwise) to insure that all veterans are made aware of, and are assisted in applying for, all benefits and services under laws administered by the Veterans' Administration.

"§ 253. Reports to the Congress and the Administrator

"In addition to the initial report required under section 252 the Center shall make a report to the Congress and to the Administrator every six months on its activities under section 252."

(b) The table of sections at the beginning of chapter 3 of title 38, United States Code, is amended by adding at the end thereof the following:

"SUBCHAPTER V—VIETNAM ERA VETERANS COMMUNICATION CENTER

"251. Establishment of Center.

"252. Functions of Center.

"253. Reports to the Congress and the Administrator.

SEC. 7. Any veterans who becomes eligible for an additional period of educational assistance under chapter 34 of title 38, United States Code, by virtue of the enactment of item (7) of section 3 of this Act and who was discharged or released from active duty (qualifying him for such additional period) prior to the date of enactment of this Act shall have a period of twenty-four months from the date of such enactment to use such additional period of educational assistance.

SEC. 8. The rate increases provided by this Act shall become effective on the first day of the second calendar month which begins after the date of enactment.

Mr. TEAGUE (during the reading). Mr. Speaker, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The SPEAKER. Is there objection to the request of the gentleman from Texas?

There was no objection.

The SPEAKER. The question is on the amendment offered by the gentleman from Texas.

The amendment was agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed.

The title was amended so as to read: "A bill to amend title 38, United States Code, to increase the rates of vocational rehabilitation, educational assistance, and special training allowances paid to eligible veterans and other persons; to make improvements in the educational assistance programs; and for other purposes."

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. TEAGUE. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill just passed.

The SPEAKER. Is there objection to the request of the gentleman from Texas?

There was no objection.

PERMISSION FOR COMMITTEE ON RULES TO FILE CERTAIN PRIVILEGED REPORTS

Mr. SISK. Mr. Speaker, I ask unanimous consent that the Committee on

Rules may have until midnight tonight to file certain privileged reports.

The SPEAKER. Is there objection to the request of the gentleman from California?

There was no objection.

APPOINTMENT OF CONFEREES ON S. 1769, FEDERAL FIRE PREVENTION AND CONTROL ACT

Mr. TEAGUE. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (S. 1769) to reduce the burden on interstate commerce caused by avoidable fires and fire losses, and for other purposes, with House amendments thereto, insist on the House amendments, and agree to the conference asked by the Senate.

The SPEAKER. Is there objection to the request of the gentleman from Texas? The Chair hears none and appoints the following conferees: Messrs. TEAGUE, DAVIS of Georgia, SYMINGTON, MOSHER and BELL.

APPOINTMENT OF CONFEREES ON H.R. 13998, NATIONAL AERONAUTICS AND SPACE ADMINISTRATION AUTHORIZATION ACT, 1975

Mr. TEAGUE. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 13998) to authorize appropriations to the National Aeronautics and Space Administration for research and development, construction of facilities, and research and program management, and for other purposes, with a Senate amendment thereto, disagree to the Senate amendment, and request a conference with the Senate thereon.

The SPEAKER. Is there objection to the request of the gentleman from Texas? The Chair hears none, and appoints the following conferees: Messrs. TEAGUE, HECHLER of West Virginia, FUQUA, SYMINGTON, MOSHER, BELL, and WYDLER.

EGG RESEARCH AND CONSUMER INFORMATION ACT

Mr. SISK. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 1100 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 1100

*Resolved*, That upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 12000) to enable egg producers to establish, finance, and carry out a coordinated program of research, producer and consumer education, and production to improve, maintain, and develop markets for eggs, egg products, spent fowl, and products of spent fowl. After general debate, which shall be confined to the bill and shall continue not to exceed one hour, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Agriculture, the bill shall be read for amendment under the five-minute rule. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments

as may have been adopted, and the previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit.

The SPEAKER. The gentleman from California (Mr. Sisk) is recognized for 1 hour.

Mr. SISK. Mr. Speaker, I yield 30 minutes to the gentleman from California (Mr. DEL CLAWSON) pending which I yield myself such time as I may consume.

Mr. Speaker, House Resolution 1100 provides for an open rule with 1 hour of general debate on H.R. 12000, the Egg Research and Consumer Information Act of 1974.

H.R. 12000 allows the egg industry of the United States, with the cooperation of the U.S. Department of Agriculture, to draft and put to referendum a national plan through which individual egg producers might assess themselves up to 5 cents for each case of commercial eggs. Funds received would be used for the purpose of consumer education and information programs, research, advertising, promotion to enhance the utility, desirability, and image of eggs, egg products, spent fowls, and spent fowl products.

H.R. 12000 provides that an egg board, if approved by the referendum, composed of 18 members recommended by certified egg industry organizations and appointed by the Secretary of Agriculture, will control all collected funds and contract with agencies, organizations, and universities, and so forth, for specific work to be done in promotion and research.

Mr. Speaker, I urge the adoption of House Resolution 1100 in order that we may discuss and debate H.R. 12000.

Mr. GROSS. Mr. Speaker, will the gentleman yield?

Mr. SISK. I yield to the gentleman from Iowa.

Mr. GROSS. Mr. Speaker, can the gentleman give us any information with respect to the bill, S. 3231, the poultry indemnification bill? Has that "chicken" bill been scratched?

Mr. SISK. Mr. Speaker, so far as I know, it has been, temporarily. I might say to my good friend, the gentleman from Iowa, by the way, that this is a case of the egg coming before the chicken, inasmuch as we have the egg research and consumer information bill before us for consideration now. I hope the gentleman recognizes that fact.

The bill which the gentleman has just referred to, as I understand it, is off the calendar for this week. I cannot give the gentleman any further information.

Mr. GROSS. Does the bill have a rule?

Mr. SISK. Mr. Speaker, the committee on Rules has brought a resolution out. Of course, that resolution has not been adopted on the floor of the House as yet.

Mr. GROSS. Mr. Speaker, let me ask the gentleman this:

Would it be possible that points of order are waived as far as that bill is concerned, or does the gentleman know?

Mr. SISK. Which bill is the gentleman referring to?

Mr. GROSS. The chicken indemnification bill.

Mr. SISK. As I recall, there will be a waiver in connection with an amendment that will be offered. That is a committee amendment. There is no general waiver on the bill, no.

Mr. GROSS. There is a waiver in connection with some amendment to the bill. Would that be for the purpose of making an amendment germane to the bill?

Mr. SISK. Well, of course, any germane amendment would be in order because the rule, as proposed, will be a completely open rule.

Mr. GROSS. So what is proposed with respect to that bill, if I understand correctly from what the gentleman has said, is to do what we have long and often protested in the House, which is to agree to make an ungermane amendment germane to a Senate bill; is that correct?

Mr. SISK. Yes. We were requested to make in order an amendment by the committee which would require a waiver, or else it would be subject to a point of order, and the Committee on Rules is so recommending that procedure to the floor. Of course, it will be up to the Members, at the time the resolution is called up, as to the disposition of that matter.

Mr. GROSS. So when that matter arrives on the floor of the House we will be in the position of doing what we condemn on the part of the Senate.

Mr. SISK. Well, I suppose, if the gentleman desires to put it that way, we could be considered to be in that position.

Mr. GROSS. Mr. Speaker, I thank the gentleman.

Mr. SISK. Mr. Speaker, I urge the adoption of the resolution.

Mr. DEL CLAWSON. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, as has been noted, House Resolution 1100 provides for an open rule with 1 hour of general debate on the Egg Research and Consumer Information Act, H.R. 12000.

H.R. 12000 is specific enabling legislation which would allow the egg industry, in cooperation with the Department of Agriculture, to draft and put to referendum a national plan through which individual egg producers may assess themselves up to 5 cents for each case—30 dozen—of commercial eggs. These funds would be used for consumer education and information programs, research, advertising, and promotion. This bill would cover participation only of commercial producers with laying flocks of 3,000 or more.

If approved in referendum, an Egg Board, composed of 18 members recommended by certified egg organizations and appointed by the Secretary of Agriculture, will control all collected funds. The Agriculture Department estimates that \$7.5 million would be available annually to the Egg Board. All expenditures of the Egg Board must be approved by the Secretary of Agriculture.

Minority views were filed by Mr. Goodling arguing that "H.R. 12000 should be amended to require administrative expenses for operating the egg promotion program to be paid from egg research and promotion checkoff receipts."

Mr. Speaker, I support this rule.

Mr. SISK. Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

The SPEAKER. The question is on the resolution.

The resolution was agreed to.

A motion to reconsider was laid on the table.

Mr. JONES of Tennessee. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 12000) to enable egg producers to establish, finance, and carry out a coordinated program of research, producer and consumer education, and promotion to improve, maintain and develop markets for eggs, egg products, spent fowl, and products of spent fowl.

The motion was agreed to.

The SPEAKER. The Chair designates the gentleman from Indiana (Mr. BRADEN) as Chairman of the Committee of the Whole and requests the gentleman from California (Mr. HOLIFIELD) to assume the Chair temporarily.

#### IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill H.R. 12000 with Mr. HOLIFIELD (Chairman pro tempore) in the chair.

The Clerk read the title of the bill.

By unanimous consent, the first reading of the bill was dispensed with.

The CHAIRMAN pro tempore. Under the rule, the gentleman from Tennessee (Mr. JONES) will be recognized for 30 minutes, and the gentleman from Minnesota (Mr. ZWACH) will be recognized for 30 minutes.

The Chair recognizes the gentleman from Tennessee.

Mr. JONES of Tennessee. Mr. Chairman, today we have before us a piece of legislation which, believe it or not, is a request from the commercial egg industry for permission to tax itself. This industry wants the Government only to help it design an egg research and promotion program and then hold a referendum on the program.

If this referendum is successful, commercial egg producers would assess themselves up to 5 cents per case of eggs. A case, incidentally, equals 30 dozen eggs. The U.S. Department of Agriculture estimates that should the program become operational, about \$7.5 million annually would be raised. Let me point out that there are no Government matching funds or appropriations for the research and promotion programs.

Administrative costs of the Government would be only about \$100,000 per year. The initial cost—to hold hearings, design the program, and conduct the referendum—would be about \$150,000, a one-time cost. These amounts appear almost insignificant compared to what we spend on other programs.

In an effort to answer questions before they are raised on the floor, I want to bring up some subjects that have caused confusion in our consideration of the bill so far. First, let me say that this bill, the Egg Research and Consumer Information Act, has absolutely no relation to the poultry indemnity bill which has received a lot of publicity. That bill

will be brought up at a later date, but today it is important that there is no confusion in your minds on this point. The two bills are not related and each should be judged on its own merit.

Another question which is often raised is why does the program include only producers with 3,000 or more layers. USDA figures show that producers with 3,200 layers or more account for about 87 percent of the U.S. egg supply. The Nation's egg producers range in size from those owning a few laying hens to those owning a million or more. However, even though small producers with fewer than 3,000 layers will not be eligible to vote in the referendum, they will not contribute to the fund either. At the same time, these smaller producers are likely to benefit from the program nevertheless. Benefits from the research programs and the promotion programs will accrue to all egg producers, regardless of the size of their operations. So, the small producers will be benefiting from programs financed by contributions from the larger commercial producers.

Why is such legislation necessary is a question which has been raised by some Members. In response, let me say that the Federal Government has cooperated with numerous other commodities in programs of this type. Currently, there are national programs for potatoes, wheat, cotton, and milk along with regional programs for numerous fruits and vegetables. Many of these self-help commodity programs are conducted under the authorization of the Agricultural Marketing Agreements Act of 1937. Some had to have specific enabling legislation such as H.R. 12000. However, eggs are specifically exempted from the 1937 act, so we have decided that specific enabling legislation would be in order.

Almost every industry and segment of our economy conducts research and promotion programs in order to compete in the marketplace. However, such programs on a national basis are generally beyond the capability and resources of individual egg producers. The great amount of time required in producing and selling eggs has prevented producers from developing and carrying out adequate and coordinated programs of research and promotion necessary for the maintenance of markets, and has prevented them from developing new products to meet consumer demands of variety, convenience, and quality.

Some members have expressed concern about producers who may not desire to participate in the program. First, let me say that at public hearings held in my subcommittee on this bill we found almost 100 percent producer support. However, the program is voluntary nevertheless. In the first place, the producers have to adopt the plan in a referendum. It must pass by either a favorable vote of two-thirds of those producers voting or by a majority of the producers if that majority is responsible for at least two-thirds of the eggs produced. Finally, if an individual producer does not desire to participate in the program, his assessment will be reimbursed upon application. This program is so voluntary that it would have been foolish to design it that way without being confident of pro-

ducer support. We are confident of that support and believe there will be a high level of participation in it.

The effect of such a program on the retail price of eggs is a question which concerns all of us. This bill will not raise the retail price of eggs. Anyone who has ever sold a farm commodity can tell you that his price was dictated to him. Farmers market their goods in a competitive marketplace. This assessment would be deducted from the amount paid the producer at the point of the first sale. His take-home check will be the market price minus the assessment. This small assessment is not one which will be attached at the bottom and ultimately paid by the consumer. Egg producers will bear the entire cost.

In case you have not had a chance to read the committee report, let me remind you of this fact. The per capita consumption of eggs has decreased drastically since 1950. At that time, the average American was consuming 389 eggs per year. The figure in 1973 was 292 eggs per person. Along with this declining demand the egg industry has been characterized by widely varying prices and levels of production. One of the areas for research likely will be an effort to discover the reasons for fluctuating consumer demand for eggs.

Mr. Chairman, I have tried to clear up some of the points that have previously been raised concerning this bill. Let me say that I like people who try to help themselves. The industry has been working on this proposal for years. When it came to the subcommittee, we accepted the vast majority of the amendments offered by the administration. I believe the administration is satisfied with it. When the bill came to the full committee, it was discussed thoroughly and approved unanimously. I see every reason to support this bill and at this time want to welcome the comments or questions of my colleagues.

Mr. DENHOLM. Mr. Chairman, will the gentleman yield?

Mr. JONES of Tennessee. I yield to the gentleman from South Dakota.

Mr. DENHOLM. Mr. Chairman, I am a member of the House Agriculture Committee, and wish to say that I have been impressed with the unity and support H.R. 12000, the Egg Research and Consumer Information Act, apparently has generated throughout the United States. Egg producers appear to be united in the belief that they can help themselves through a coordinated program, such as H.R. 12000 will permit.

When the Subcommittee on Dairy and Poultry, chaired by my colleague from Tennessee (Ed JONES) scheduled 2 days of public hearings on this legislation, the egg industry came with a single statement endorsed by 41 organizations. Because of their unity, only 1 day of hearings was needed. Among the organizations supporting the egg industry's statement were the South Dakota Poultry Improvement Association, the Midwest Poultry Federation, and the Midwest Egg Producers Cooperative Association. All of these organizations ably represent poultry and egg producers in my State of South Dakota. The spokesman for the industry at the hearings made a state-

ment I think deserves repeating because I think it represents the consensus among egg producers across the country concerning this legislation:

It is the desire of all of us to have the opportunity to work toward the establishment of this assessment plan and to have the opportunity to vote "yes" or "no" on any plan proposed under this legislation.

It is not our desire to force any egg producer to be a part of the program if he sincerely desires not to support the plan drafted and approved by the majority of his fellow egg producers.

The statement continued:

We are competitors, and as such, each of us want to be sure that the other man is playing the game by the same rules we are. The proposed legislation sets up the mechanics whereby every commercial egg producer, whether he be in Maine or Florida, Washington or Texas will be on the same assessment basis.

The spokesman characterized this legislation as "an opportunity to cooperate."

I support this legislation because I believe that agricultural producers should be encouraged to work together to accomplish their common goals. In the past we have seen many people come to Congress asking us to solve their problems for them. The Egg Research and Consumer Information Act is a request of the egg producers across America for Congress to give them an opportunity to work collectively toward solving some of their problems themselves. The egg industry is asking for no Federal appropriations, no taxpayers' money to finance projects and programs they believe will aid their industry. They are willing to finance their own programs through an organized assessment system based proportionately equal to each egg producer's production of commercial eggs.

I must point out that this legislation does require an appropriation for the U.S. Department of Agriculture to carry out its responsibilities under this act. But such an appropriation is not unusual and all such funds will be for the expenses of USDA and not egg industry programs. USDA has reported that there are over 20 similar commodity programs under its jurisdiction at the present time.

I commend the egg industry for supporting such a self-help, self-financed program, and I call on my colleagues in the Congress to give them the necessary enabling legislation represented in H.R. 12000 that they need to create this national endeavor.

Mr. JONES of Tennessee. I thank my colleague, the gentleman from South Dakota, and a distinguished member of the Agriculture Committee, for his comments.

Mr. ZWACH. Mr. Chairman, I yield myself such times as I may consume.

Mr. Chairman, first may I pay my compliments to the chairman of the subcommittee who conducted the hearings that brought out this bill. It was a very thorough job. Everybody interested was heard.

This is legislation that is requested by the industry, so far as we know unanimously requested by the industry. They have some problems in that they are scattered all over the United States.

About the only way that they could proceed would be in this manner.

Mr. Chairman, other producers in the United States, the cotton producer, the peanut producer, and many of the vegetable producers, under the marketing agreement have proceeded in similar legislation to carry out coordinated efforts in advertising for the production and consumption of their products. The majority of the producers must approve this legislation and must also represent two-thirds of the egg producers of the country.

Over a 20-year period, the egg consumption in our country has gone from 387 per capita to 306 per capita. There is a real need for improved efficiency in production, in transportation, and in the marketing, and this is what these producers desire.

Mr. Chairman, I have no further requests for time.

Mr. JONES of Tennessee. Mr. Chairman, I yield 2 minutes to my distinguished colleague, the gentleman from Georgia (Mr. MATHIS).

Mr. MATHIS of Georgia. Mr. Chairman, on March 26 of this year, Mr. Robert Lathem, an egg producer in the State of Georgia, and president of the Georgia Egg Association, presented testimony before the House Agriculture Subcommittee on Dairy and Poultry in support of H.R. 12000, the Egg Research and Consumer Information Act. Mr. Lathem presented his statement in behalf of three leading poultry and egg associations in the State of Georgia—the Georgia Egg Association, the Georgia Egg Commission, and the Georgia Poultry Federation.

These three organizations represent the majority of egg producers in my home State, and Mr. Lathem was speaking for all of those producers through a single, unified statement in behalf of this legislation. Georgia is the second largest egg producing State in the United States, and is recognized as the No. 1 poultry producing State of the Nation. Georgia ranks second in egg production behind the great State of California, and is second in broiler production to the fine State of Arkansas, but combined Georgia leads both in total farm income from poultry production.

I think it is noteworthy, Mr. Chairman, that 41 State, regional and national poultry and egg organizations endorsed a single, joint statement in testimony before the Dairy and Poultry Subcommittee. Such unity typifies the broad support H.R. 12000 has received from egg producers across the United States. This legislation represents a request from the Nation's egg producers for this Congress to give them an opportunity to work out their own problems with their own money with the cooperation of the U.S. Department of Agriculture.

The State of Georgia was one of the first States to approve a statewide marketing order setting up a State self-help program for egg producers. The producers have established the Georgia Egg Commission and assess themselves 2 cents per case of eggs. In a recent referendum among Georgia egg producers, the vote to continue the work of the commission passed by an 83-percent majority. This was the fourth such referendum and

it has always passed by an overwhelming margin.

In his statement of March 26, Mr. Lathem stated:

The egg producers of Georgia support their Commission enthusiastically. They pride themselves on the fact that this is a producer-financed organization providing a needed service to the consumers of their state. We believe that a national program would equally benefit the entire nation, and for this reason we urge passage of H.R. 12000.

Mr. Lathem's statement went on to tell how the producer-financed program in the State of Georgia had benefited low-income families through educational programs, how recipe development had brought about greater awareness of nutrition, and how thousands of consumers annually request information from the commission. The commission has financed research into egg quality to constantly try to produce the highest quality egg possible. Mr. Lathem concluded his statement with the observation that—

While serving as a promotion arm for our state's egg industry, the Commission has, in truth, served in a more vivid way as a consumer-oriented organization.

Georgia egg producers produce approximately 1 million dozen eggs every day, so obviously not all of those eggs are consumed in the State of Georgia. More than half of the eggs produced in my State move out to markets North and West where our producers must depend upon informed consumers to continue using eggs on a steady basis. From the experience gained through their own State promotion and research programs, the egg producers in Georgia definitely feel that the consumer information provided by organizations such as the Georgia Egg Commission should not be bound by State lines and that a national consumer information and education program is needed.

The Egg Research and Consumer Information Act will provide egg producers in the United States with an opportunity to establish a coordinated program of research, promotion, consumer education, and advertising similar to what the egg producers in the State of Georgia established many years ago. I commend the excellent work of the egg producers in my home State, and I commend the Nation's egg producers for seeking this legislation through which they can establish a meaningful program on a national basis.

I encourage my colleagues to join with me in expressing support for the egg industry's desire to develop and finance its own self-improvement programs by voting in favor of H.R. 12000 here today.

Mr. GILMAN. Mr. Chairman, I welcome the opportunity to lend my support to the passage of the Egg Research and Consumer Information Act, a measure that goes a long way toward restoring the egg industry to its rightful competitive place in the marketplace. I commend my good colleague, Chairman Ed Jones, of the Dairy and Poultry Subcommittee, for his arduous work on this bill and for his success in rallying full support of the bill from our Nation's egg producers. Poultrymen from my own area of southeastern New York, representing the "Egg Farmers in Real Trouble Association" and the New York State Poultry

Industry Coordinated Effort, Inc., have urged the adoption of this type of legislation in our meetings with Department of Agriculture officials.

In recent years, attacks upon the nutritional value of eggs have seriously depressed the egg industry in the United States. A generally depressed egg market, further hampered by incredible feed prices last year, resulted in the wholesale slaughter of chicks and the closing of many large farms. In a period of uncertain domestic food supplies, we cannot stand by and watch the further deterioration of an industry that provides the American consumer with one of its most reasonable, nutritious foods.

This legislation affords egg producers with a framework within which they can choose to assess themselves minimal sums that collectively will be used for purposes of consumer education, information, advertising, and promotion. This self-assessment and cooperation among producers of a commodity has functioned successfully on a national basis in the cotton, potato, lamb's wool, wheat, milk and milk products industries. Similar programs on behalf of 19 additional commodity groups have functioned successfully on State and regional levels.

It is hoped that the lessons learned in these past and ongoing efforts will benefit the American egg industry. Likewise, the advice and counsel of the Department of Agriculture has been and will continue to be of great value. If we are to reverse a trend that has resulted in a decline of consumption of 100 eggs per person per year since 1950, a coordinated effort such as this measure proposes is of the utmost importance.

Accordingly, I urge my colleagues to support this measure.

Mr. BAUMAN. Mr. Chairman, few Americans probably realize how large our egg industry is. It is a fact that those of us in the United States consume more than 60 billion eggs every year, and it is obvious that an industry so large has a major impact on the nutritional value of the diets of each and every one of us.

The bill before us today will provide valuable support for this important industry, contributing significantly to the research and marketing efforts of those in the business of producing eggs. Significantly, this is not another "let the government do it" piece of legislation. Rather, it establishes a cooperative effort between private industry and the Department of Agriculture, an effort to be financed almost entirely by the industry itself. Similar projects involving other commodities, such as peanuts and cotton, provide a precedent for such cooperation.

Similar efforts have already been tried at the State level, and at present 16 States have egg research and promotion programs operating at various levels of success. But it has become clear that a national effort is needed to deal with the problems of fluctuating productivity and price levels, in order to assure a continued supply of fresh eggs to America's consumers.

This will be important to my State of Maryland, as well as the many other States with major segments of the Nation's egg production within their borders. Egg production in Maryland will

approach 350 million eggs this year, with a total value of more than \$13 million. Much of this production comes from my district, and I am pleased to lend my support to this bill today. It will help insure a productive future for the egg industry in Maryland and throughout the Nation, and a continued supply of fresh eggs for all of us who enjoy them daily.

Mr. STEELE. Mr. Chairman, I would like to take this opportunity to express my support for H.R. 12000, the Egg Research and Consumer Information Act.

The State of Connecticut is not large in egg production, as compared to such major producing States as Georgia, California, Pennsylvania, North Carolina, and others, but in 1972, producers in my State sold 2,556,000 cases of commercial eggs and had a gross income from eggs of \$38.7 million. Agriculture is very important in the State of Connecticut, and it is obvious that the egg industry is a major contributor to our State's agricultural economy.

I wish to point out that egg producers in small egg producing States also support H.R. 12000 because it will offer them an opportunity to work with other producers in solving mutual marketing problems. Producers in my State will exercise the same voting power in any referendum as producers in other States, and their voice will be heard in programs of the proposed Egg Board since the Secretary of Agriculture is required to appoint members of the Egg Board both geographically and proportionately equal to the egg producing areas of the country.

Through the past several years, we have witnessed the rapid decline in the numbers of small farms across the United States. In many cases, these small farmers have ceased farming because they could not compete with the larger, more technically informed farming operations. The egg industry in my area of the country is still family-type operations, with many cooperating in centralized, cooperative purchasing and marketing programs. As producers are able to work collectively on common marketing problems, I believe they will be insuring a greater future for all members of the egg industry in the entire United States.

Under the proposed legislation, small producers of 3,000 laying hens or less, will be exempted from paying assessments to the national program, but the benefits of national advertising, promotion, consumer education, and research will accrue to all producers, both small and large. Additionally, any egg producer who does not want to financially support the national program may seek and receive a total refund of any assessments made against his production.

Probably more important than the benefits which will accrue to egg producers are the benefits consumers are likely to receive under this legislation. We are told that market research will give producers answers to the varying consumer preferences and, therefore, aid producers in adopting marketing programs to meet these varying demands. Producers are interested in providing a variety of new ways consumers may use eggs and other products of the egg indus-

try, but individually, they have been unable to develop new recipes, new products, or disseminate information available from outside sources.

I applaud the work of the egg industry in seeking this self-help, self-sustaining legislation. As enabling legislation, it can only be activated by the affected egg producers themselves, working through the U.S. Department of Agriculture, and no program can be voted into existence without the substantial approval of egg producers voting in referendum. I wish also to point out that two leading poultry and egg organizations in the Northeast—the Northeastern Poultry Producers Council and the Northeast Egg Marketing Association—are on record supporting this legislation.

Mr. Chairman, I encourage my colleagues to support this legislation.

Mr. CLEVELAND. Mr. Chairman, as an original cosponsor of H.R. 12000, the Egg Research and Consumer Information Act, I am pleased to vote for its passage and urge my colleagues to join in supporting this measure.

The voluntary program to enable producers to join in cooperative research, consumer education and information activities is widely supported by the industry, including producers in New Hampshire who have requested my support.

Restriction of its provisions to larger producers, the modest 5-cents-per-case levy, the requirement for approval in a referendum and management of the program by industry representatives in cooperation with the Department of Agriculture all strike me as eminently reasonable provisions. It is only fair that we extend to egg producers the same mechanism already available to producers of several other commodities.

I see particular merit in the phase of the program directed toward development of expanded markets for domestic sales and exports abroad. And research efforts leading to product improvement and reduction of losses throughout the distribution chain should benefit consumers as well as producers.

Finally, I consider legislation of this type wholly in keeping with a proper role of Government whereby the Federal agency's supervisory activities are limited under a genuinely self-help program by and for producers. Again, I urge colleagues to join in supporting this program and commend the gentleman from Tennessee (Mr. JONES) for his contribution in authoring this legislation.

Mr. VANIK. Mr. Chairman, I am strongly opposed to the legislation before the House today to create and subsidize egg advertising. As reported by the committee, the administrative costs for this program will cost the American taxpayers \$150,000 per year.

It is argued that this Board should be created, since similar boards have been created for other product areas. Where will this process end? Soon we may have boards for every item of produce and manufacture in the Nation. Rather than create new boards, the old ones should be eliminated.

An effort will be made to eliminate the cost to the Treasury of administering this promotion program. Even if this step were taken, I would oppose this

legislation. I fear that the creation of a product advertising board will result in the development of a cartel in the industry. It will be conducive to increased "cooperation," marketing coordination, and pricing coordination—in short, the development of a monopoly industry.

It is likely that such an Advertising Board will encourage minimum standards for their products. The result will be that a large amount of produce—such as smaller eggs, for example—will be prevented from entering the marketplace, even though many individuals would need and could use the lower-priced products banned by the cartel.

I urge the defeat of this anticonsumer legislation.

Mr. WAMPLER. Mr. Speaker, I rise in support of H.R. 12000, which deserves the support of the House as well.

The egg producers of this Nation need this bill to help reverse the very sharp drop in per capita egg consumption. In the last 20 years, consumption of eggs has dropped from 387 to 306 eggs per person annually.

H.R. 12000 would authorize the Secretary of Agriculture to issue orders providing for the establishment of an Egg Board. This board would develop, subject to the Secretary's approval, appropriate plans or projects for research, advertising, promotion, and consumer education with respect to eggs, egg products, spent fowl and products of spent fowl, and the disbursement of necessary funds for such purposes. The Secretary would appoint an 18-member Egg Board from qualified nominees representing producers from regions of the United States designated by the Secretary.

The bill requires approval by referendum of egg producers before an order can become effective or to be ended.

The rate of assessment paid by producers and collected by the handlers to support the program authorized by this bill could not exceed 5 cents per case of commercial eggs or the equivalent. Certain small egg producers of hatching eggs would be exempt. Producers who do not favor the program would have the right to demand and receive a refund of the assessment.

The egg industry strongly supports this bill and agrees with both the Department and the committee that market promotion, including advertising, will strengthen their position in the marketplace and increase the demand for their commodity.

In brief, Mr. Speaker, the committee has produced a bill that has both bipartisan and administration support.

It will be nearly totally self-financing and should benefit both producers and consumers of eggs.

Mr. LITTON. Mr. Chairman, on behalf of the egg producers in the State of Missouri, it is a pleasure for me to speak in support of H.R. 12000, the Egg Research and Consumer Information Act. It is likewise a pleasure for me to personally endorse the efforts of the egg industry to get the story of their products told to consumers nationwide.

The Missouri Egg Merchandising Council, the Midwest Poultry Federation, Inc., and the Midwest Egg Producers Co-

operative Association, all of which represent egg producers' interests in my State, were among the 41 State, regional, and national poultry and egg organizations endorsing a unified industry statement before the House Agriculture Subcommittee on Dairy and Poultry on March 26.

Egg producers in the State of Missouri established a few years ago the Missouri Egg Merchandising Council, and finance it with an assessment of 6 cents per case of eggs produced. This is a tremendous program, I understand, but producers recognize that selling eggs and telling consumers about their products is a job not confined to the borders of the State of Missouri. Therefore, these progressive farmers of Missouri endorsed H.R. 12000 and enthusiastically recommend that this Congress pass this legislation as soon as possible so they can get on with the job before them.

Many Members of Congress are familiar with the campaign I undertook more than a year ago, attempting to organize the Nation's farm organizations into a unified program to tell America's agricultural story to consumers. We have been somewhat successful with this endeavor, and I believe it has stirred several individual commodity groups, such as the egg industry, to seek means through which their own story might be told.

Consumers need to become better informed about their mutual problems with agriculture, but, more importantly, consumers need better nutritional information. The Agricultural Council of America is designed to do part of this job, but individual commodity groups must work toward promoting the nutritional qualities of their products. Telling a positive story is tough and will require cooperation.

Egg producers in Missouri, and other States, have demonstrated what can be done when commodity producers band together to finance promotion, research, consumer education, and advertising. Egg producers in most of the States having State self-help programs, like Missouri, Georgia, North Carolina, and others are in support of H.R. 12000, which would permit them to organize a national program with similar goals.

I think H.R. 12000 embraces the attributes of good, self-help legislation. It proposes to permit the egg industry, in cooperation with the Secretary of Agriculture, to draft and vote upon an order to establish a national program for promotion, research, consumer education, and advertising. Such a proposal must be approved by either two-thirds of the producers voting, or by a majority of the producers voting who represent at least two-thirds of the egg production. Even after such an overwhelming vote, producers who do not wish to financially support the national program may request and receive, a full refund of any assessments made against his production. The proposed 18-man Egg Board, appointed by the Secretary, must represent egg producers in all sections of the country and, with the approval of the Secretary, will direct programs and allocate expenditure of collected funds.

In the May issue of Agriculture, U.S.A., published by the Agricultural Council of

America, J. Patrick Kaine, president of the Agricultural/Industrial Equipment Division of International Harvester, observed:

Our behind-the-scenes efforts in producing reliable, economical products make news only in trade magazines we read. But ours is also the responsibility to "spread the good news" in terms, and by means that will catch the consumer's attention—to tell the positive story of agricultural achievement.

I believe the egg industry realizes the need to tell consumers the "positive story" of eggs, egg products, and the industry's many other products. I support this industry self-help proposal, and I encourage the Members of this House to likewise endorse the efforts of the egg industry by voting in favor of this legislation.

Mr. JONES of Tennessee. Mr. Chairman, I have no further requests for time.

Mr. ZWACH. Mr. Chairman, I have no further request for time.

The CHAIRMAN (Mr. BRADEMAS). The Clerk will read.

The Clerk read as follows:

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

SECTION 1. That this Act shall be known as the "Egg Research and Consumer Information Act."

LEGISLATIVE FINDINGS AND DECLARATION OF POLICY

SEC. 2. Eggs constitute one of the basic, natural foods in the diet. They are produced by many individual egg producers throughout the United States. Egg products, spent fowl, and products of spent fowl are derivatives of egg production. These products move in interstate and foreign commerce and those which do not move in such channels of commerce directly burden or affect interstate commerce of these products. The maintenance and expansion of existing markets and the development of new or improved markets and uses are vital to the welfare of egg producers and those concerned with marketing, using, and processing eggs as well as the general economy of the Nation. The production and marketing of these products by numerous individual egg producers have prevented the development and carrying out of adequate and coordinated programs of research and promotion necessary for the maintenance of markets and the development of new products of, and markets for, eggs, egg products, spent fowl, and products of spent fowl. Without an effective and coordinated method for assuring cooperative and collective action in providing for and financing such programs, individual egg producers are unable to provide, obtain, or carry out the research, consumer and producer information, and promotion necessary to maintain and improve markets for any or all of these products.

It has long been recognized that it is in the public interest to provide an adequate, steady supply of fresh eggs readily available to the consumers of the Nation. Maintenance of markets and the development of new markets, both domestic and foreign, are essential to the egg industry if the consumers of eggs, egg products, spent fowl, or products of spent fowl are to be assured of an adequate, steady supply of such products.

It is therefore declared to be the policy of the Congress and the purpose of this Act that it is essential and in the public interest, through the exercise of the powers provided herein, to authorize and enable the establishment of an orderly procedure for the development and the financing through an adequate assessment, an effective and continuous coordinated program of research, consumer and producer education, and pro-

motion designed to strengthen the egg industry's position in the marketplace, and maintain and expand domestic and foreign markets and uses for eggs, egg products, spent fowl, and products of spent fowl of the United States. Nothing in this Act shall be construed to mean, or provide for, control of production or otherwise limit the right of individual egg producers to produce commercial eggs.

DEFINITIONS

SEC. 3. As used in this Act—

(a) The term "Secretary" means the Secretary of Agriculture or any other officer or employee of the Department of Agriculture to whom there has heretofore been delegated, or to whom there may hereafter be delegated, the authority to act in his stead.

(b) The term "person" means any individual, group of individuals, partnership, corporation, association, cooperative, or any other entity.

(c) The term "commercial eggs" means eggs from domesticated chickens which are sold for human consumption either in shell egg form or for further processing.

(d) The term "hen" or "laying hen" means a domesticated female chicken twenty weeks of age or over, raised primarily for the production of commercial eggs.

(e) The term "egg producer" means the person owning laying hens engaged in the production of commercial eggs.

(f) The term "case" means a standard shipping package containing thirty dozen eggs.

(g) The term "hatching eggs" means eggs intended for use by hatcheries for the production of baby chicks.

(h) The term "United States" means States of the United States of America.

(i) The term "promotion" means any action, including paid advertising, to advance the image or desirability of eggs, egg products, spent fowl, or products of spent fowl, in an organized campaign or program.

(j) The term "research" means any type of research to advance the image, desirability, marketability, production, or quality of eggs, egg products, spent fowl, or products of spent fowl, and the accumulation and dissemination of statistical and research data with respect thereto.

(k) The term "consumer education" means any action to advance the image or desirability of eggs, egg products, spent fowl, or products of spent fowl, through organized consumer oriented campaigns or programs.

(l) The term "marketing" includes the sale of commercial eggs, egg products, spent fowl, or products of spent fowl, in any channel of commerce.

(m) The term "commerce" means interstate, foreign, or intrastate commerce.

(n) The term "egg products" means commercial products produced, in whole or in part, from shell eggs.

(o) The term "spent fowl" means hens which have been in production of commercial eggs and have been removed from such production through slaughter.

(p) The term "products of spent fowl" means commercial products produced from spent fowl.

(q) The term "hatchery operator" means any person engaged in the production of egg-type baby chicks.

(r) The term "started pullet" means a hen less than twenty weeks of age.

(s) The term "started pullet dealer" means any person engaged in the raising and sale of started pullets.

(t) The term "processor" means any person engaged in the operation of assembling, receiving, grading, packing, or breaking of commercial eggs.

(u) The term "breaker" means a person engaged in the further processing of commercial eggs.

(v) The term "distributor" means a person engaged in the sale and/or distribution of commercial eggs.

## EGG RESEARCH AND PROMOTION ORDERS

SEC. 4. To effectuate the declared policy of this Act, the Secretary shall, subject to the provisions of this Act, issue and from time to time amend, orders applicable to persons engaged in the hatching and/or sale of egg-type baby chicks and started pullets, persons engaged in the production and marketing of commercial eggs, processors, breakers, and distributors of commercial eggs, and persons engaged in the purchase, sale or processing of spent fowl. Such orders shall be applicable to all production or marketing areas, or both, in the United States.

## NOTICE AND HEARING

SEC. 5. Whenever the Secretary has reason to believe that the issuance of an order will tend to effectuate the declared policy of this Act, he shall give due notice and opportunity for hearing upon a proposed order. Such hearing may be requested and proposal for an order submitted by an organization certified pursuant to section 16 of this Act, or by any interested person affected by the provisions of this Act, including the Secretary.

## FINDING AND ISSUANCE OF AN ORDER

SEC. 6. After notice and opportunity for hearing as provided in section 5, the Secretary shall issue an order if he finds, and sets forth in such order, upon the evidence introduced at such hearing, that the issuance of such order and all the terms and conditions thereof will tend to effectuate the declared policy of this Act.

## PERMISSIVE TERMS IN ORDERS

SEC. 7. Orders issued pursuant to this Act shall contain one or more of the following terms and conditions, and except as provided in section 8, no others.

(a) Providing for the establishment, issuance, effectuation, and administration of appropriate plans or projects for the advertising of, sales promotion of, and consumer education with respect to the use of eggs, egg products, spent fowl, and products of spent fowl, and for the disbursement of necessary funds for such purposes; *Provided, however,* That any such plan or project shall be directed toward increasing the general demand for eggs, egg products, spent fowl, or products of spent fowl. No reference to a private brand or trade name shall be made if the Secretary determines that such reference will result in undue discrimination against eggs, egg products, spent fowl, or products of spent fowl of other persons; *And provided further,* That no such advertising, consumer education, or sales promotion programs shall knowingly make use of false or unwarranted claims in behalf of eggs, egg products, spent fowl, or products of spent fowl or false or unwarranted statements with respect to quality, value, or use of any competing product.

(b) Providing for, establishing, and carrying on research, marketing, and development projects, and studies with respect to sale, distribution, marketing, utilization, or production of eggs, egg products, spent fowl, and products of spent fowl, and the creation of new products thereof, to the end that the marketing and utilization of eggs, egg products, spent fowl, and products of spent fowl may be encouraged, expanded, improved or made more acceptable, and that producers of said products shall be informed of data collected by such activities and for the disbursement of necessary funds for such purposes.

(c) Providing that hatchery operators, persons engaged in the sale of egg-type baby chicks and started pullet dealers, egg producers, breakers, processors, persons marketing commercial eggs and persons engaged in the purchase, sale, or processing of spent fowl, maintain and make available for the inspection such books and records as may be required by any order issued pursuant to this Act and for the filing of reports by such persons at the time, in the

manner, and having content prescribed by the order, to the end that information and data shall be made available to the Egg Board and to the Secretary which is appropriate or necessary to the effectuation, administration or enforcement of the Act, or of any order or regulation issued pursuant to this Act: *Provided, however,* That all information so obtained shall be kept confidential by all officers and employees of the Department of Agriculture, the Egg Board, and by all officers and employees of contracting agencies having access to such information, and only such information so furnished or acquired as the Secretary deems relevant shall be disclosed by them, and then only in a suit or administrative hearing brought at the direction, or upon the request, of the Secretary, or to which he or any officer of the United States is a party, and involving the order with reference to which the information so to be disclosed was furnished or acquired. Nothing in this section shall be deemed to prohibit (1) the issuance of general statements based upon the reports of the number of persons subject to an order or statistical data collected therefrom, which statements do not identify the information furnished by any person, (2) the publication, by direction of the Secretary, of the name of any person or persons requesting and receiving refunds, together with a statement concerning amount of refund and general statements relating to total refunds made by the Egg Board during any specific period, or (3) the publication by direction of the Secretary of the name of any person violating any order, together with a statement of the particular provisions of the order violated by such person, or company. Any such officer or employee violating the provision of this subsection shall, upon conviction, be subjected to a fine of not more than \$1,000 or to imprisonment for not more than one year, or to both, and shall be removed from office.

(d) Terms and conditions incidental to and not inconsistent with the terms and conditions specified in this Act and necessary to effectuate the other provisions of such order.

## REQUIRED TERMS IN ORDERS

SEC. 8. Orders issued pursuant to this Act shall contain the following conditions: (a) Providing for the establishment and appointment, by the Secretary, of an Egg Board which shall consist of not more than eighteen members, and alternates therefor, and defining its powers and duties which shall include only the powers (1) to administer such order in accordance with its terms and provisions, (2) to make rules and regulations to effectuate the terms and provisions of such order, (3) to receive, investigate and report to the Secretary complaints of violations of such order, and (4) to recommend to the Secretary amendments to such order. The term of an appointment to the Egg Board shall be for two years with no member serving more than six consecutive years, except that initial appointment shall be proportionately for two, four, and six years.

(b) Providing that the Egg Board, and alternates therefor, shall be composed of egg producers or representatives of egg producers appointed by the Secretary from nominations submitted by eligible organizations, associations, or cooperatives, and certified pursuant to section 16, or, if the Secretary determines that a substantial number of producers are not members of or their interests are not represented by any such eligible organizations, associations or cooperatives, then from nominations made by such egg producers in the manner authorized by the Secretary, so that the representation of egg producers on the Board shall reflect, to the extent practicable, the proportion of eggs produced in each geographic area of the United States as defined by the Secretary: *Provided, however,* That each such egg producing geographic area shall be entitled to at least one representative on the Egg Board.

(c) Providing that the Egg Board shall, subject to the provisions of subsection (g) of this section, develop and submit to the Secretary for his approval any advertising, or sales promotion, research, and development plans or projects, and that any such plan or project must be approved by the Secretary before becoming effective.

(d) Providing that the Egg Board shall, subject to the provisions of subsection (g) of this section, submit to the Secretary for his approval budgets on a fiscal period basis of its anticipated expenses and disbursements in the administration of the order, including probable costs of advertising, and promotion, research, and development projects.

(e) Providing that each egg producer shall pay to the first processor of such producer's eggs, an assessment based upon the number of cases of commercial eggs processed for the account of such producer, in the manner as prescribed by the order, for such expenses and expenditures—including provision for a reasonable reserve—as the Secretary finds are reasonable and likely to be incurred by the Egg Board under the order during any period specified by him. Such processor shall collect such assessment from the producer and shall pay the same to the Egg Board in the manner as prescribed by the order. The rate of assessment prescribed by the order shall not exceed 5 cents per case of commercial eggs or the equivalent thereof. Such assessment may also be levied against foreign commercial eggs, entering the United States domestic markets, by the Secretary as he may deem advisable pursuant to provisions of the order.

(f) Providing that the Egg Board shall maintain such books and records and prepare and submit such reports from time to time, to the Secretary as he may prescribe, and for appropriate accounting by the Egg Board with respect to the receipt and disbursement of all funds entrusted to it.

(g) Providing that the Egg Board, with the approval of the Secretary, shall provide by contract or otherwise for the administration, development and carrying out of the activities authorized under the order pursuant to section 7 (a) and (b) and for the payment of the cost thereof with funds collected pursuant to the order. Any such contract shall become effective upon approval by the Secretary and shall provide that the contracting party shall keep accurate records of all of its transactions and make an annual report to the Egg Board of activities carried out and an accounting for funds received and expended, and such other reports as the Secretary may require.

(h) Providing that no funds collected by the Egg Board under the order shall in any manner be used for the purpose of influencing governmental policy or action, except as provided by subsection (a) (4) of this section.

## REQUIREMENT OF REFERENDUM AND EGG PRODUCER APPROVAL

SEC. 9. The Secretary shall conduct a referendum among egg producers not exempt hereunder who, during a representative period determined by the Secretary, have been engaged in the production of commercial eggs, for the purpose of ascertaining whether the issuance of an order is approved or favored by such producers. No order issued pursuant to this Act shall be effective unless the Secretary determines that the issuance of such order is approved or favored by not less than two-thirds of the producers voting in such referendum, or by the producers of not less than two-thirds of the commercial eggs produced during the representative period by producers voting in such referendum.

## SUSPENSION AND TERMINATION OF ORDERS

SEC. 10. (a) The Secretary shall, whenever he finds that any order issued under this Act, or any provisions thereof, obstructs or does not tend to effectuate the declared policy of this Act, terminate or suspend the

operation of such order or such provisions thereof.

(b) The Secretary may conduct a referendum at any time, and shall hold a referendum on request of 10 per centum or more of the number of egg producers voting in the referendum approving the order, to determine whether such producers favor the termination or suspension of the order, and he shall suspend or terminate such order six months after he determines that suspension or termination of the order is approved or favored by a majority of the egg producers voting in such referendum who, during a representative period determined by the Secretary, have been engaged in the production of commercial eggs, and who produced more than 50 per centum of the volume of eggs produced by the egg producers voting in the referendum.

(c) The termination or suspension of any order, or any provision thereof, shall not be considered an order within the meaning of this Act.

#### PROVISIONS APPLICABLE TO AMENDMENTS

SEC. 11. The provisions of this Act applicable to orders shall be applicable to amendments to orders.

#### EXEMPTIONS

SEC. 12. The following shall be exempt from this Act:

(a) Any egg producer whose aggregate number of laying hens at any time prior to assessment has not exceeded three thousand laying hens.

(b) Any flock of breeding hens whose production of eggs is primarily utilized for the hatching of baby chicks.

(c) Commercial eggs of foreign origin not exceeding one hundred cases in any one entry into the United States.

#### PRODUCER REFUND

SEC. 13. Notwithstanding any other provisions of this Act, any egg producer against whose commercial eggs any assessment is made and collected from him under authority of this Act and who is not in favor of supporting the research and promotion program as provided for herein shall have the right to demand and receive from the Egg Board a refund of such assessment: *Provided*, That such demand shall be made personally by such producer in accordance with regulations and on a form and within a time period prescribed by the Board and approved by the Secretary but in no event more than thirty days and upon submission of proof satisfactory to the Board that the producer paid the assessment for which refund is sought, and any such refund shall be made within sixty days after demand is received therefor.

#### PETITION AND REVIEW

SEC. 14. (a) Any person subject to any order may file a written petition with the Secretary, stating that any such order or any provisions of such order or any obligations imposed in connection therewith is not in accordance with law and praying for a modification thereof or to be exempted therefrom. He shall thereupon be given an opportunity for a hearing upon such petition, in accordance with regulations made by the Secretary. After such hearing, the Secretary shall make a ruling upon the prayer of such petition which shall be final, if in accordance with law.

(b) The district courts of the United States in any district in which such person is an inhabitant, or has his principal place of business, are hereby vested with jurisdiction to review such ruling, providing a complaint for that purpose is filed within twenty days from the date of the entry of such ruling. Service of process in such proceedings may be had upon the Secretary by delivering to him a copy of the complaint. If the court determines that such ruling is not in accordance with law, it shall remand such proceedings to the Secretary with directions either

(1) to make such ruling as the court shall determine to be in accordance with law, or (2) to take such further proceedings as, in its opinion, the law requires. The pendency of proceedings instituted pursuant to subsection (a) of this section shall not impede, hinder, or delay the United States or the Secretary from obtaining relief pursuant to section 15(a) of this Act.

#### ENFORCEMENT

SEC. 15. (a) The several district courts of the United States are vested within jurisdiction specifically to enforce, and to prevent and restrain any person from violating any order or regulation made or issued pursuant to this Act. Any civil action authorized to be brought under this Act shall be referred to the Attorney General for appropriate action.

(b) Any egg producer or other person who willfully violates any provision of any order issued by the Secretary under this Act, or who willfully fails or refuses to collect or remit any assessment or fee duly required of him thereunder, shall be liable to a penalty of not more than \$1,000 for each such offense which shall accrue to the United States and may be recovered in a civil suit brought by the United States: *Provided*, That (a) and (b) of this section shall be in addition to, and not exclusive of, the remedies provided now or hereafter existing at law or in equity.

#### CERTIFICATION OF ORGANIZATIONS

SEC. 16. The eligibility of any organization to represent commercial egg producers of any egg producing area of the United States to request the issuance of an order under section 5, and to participate in the making of nominations under section 8(b) shall be certified by the Secretary. Certification shall be based, in addition to other available information, upon a factual report submitted by the organization which shall contain information deemed relevant and specified by the Secretary for the making of such determination, including, but not limited to, the following:

(a) Geographic territory covered by the organization's active membership,

(b) Nature and size of the organization's active membership, proportion of total of such active membership accounted for by producers of commercial eggs, a chart showing the egg production by State in which the organization has members, and the volume of commercial eggs produced by the organization's active membership in each such State,

(c) The extent to which the commercial egg producer membership of such organization is represented in setting the organization's policies,

(d) Evidence of stability and permanency of the organization,

(e) Sources from which the organization's operating funds are derived,

(f) Functions of the organization, and

(g) The organization's ability and willingness to further the aims and objectives of this Act: *Provided, however*, That the primary consideration in determining the eligibility of an organization shall be whether its commercial egg producer membership consists of a substantial number of egg producers who produce a substantial volume of commercial eggs. The Secretary shall certify any organization which he finds to be eligible under this section and his determination as to eligibility shall be final. Where more than one organization is certified in any geographic area, such organizations may caucus to determine the area's nominations under section 8(b).

#### REGULATIONS

SEC. 17. The Secretary is authorized to make regulations with force and effect of law, as may be necessary to carry out the provisions of this Act and the powers vested in him by this Act.

INVESTIGATIONS; POWER TO SUBPENA AND TAKE OATHS AND AFFIRMATIONS; AID OF COURTS

SEC. 18. The Secretary may make such investigations as he deems necessary for the effective carrying out of his responsibilities under this Act or to determine whether an egg producer, processor, or other seller of commercial eggs of any other person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provisions of this Act, or of any order, or rule or regulation issued under this Act. For the purpose of such investigation, the Secretary is empowered to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, and document which are relevant to the inquiry. Such attendance of witnesses and the production of any such records may be required from any place in the United States. In case of contumacy by, or refusal to obey a subpoena to, any person, including an egg producer, the Secretary may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, and documents; and such court may issue an order requiring such person to appear before the Secretary, there to produce records, if so ordered, or to give testimony touching the matter under investigation. Any failure to obey such order of the court may be punished by such court as a contempt thereof. All process in any such case may be served in the judicial district whereof such person is an inhabitant or wherever he may be found.

#### SEPARABILITY

SEC. 19. If any provision of this Act or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the Act and of the application of such provision to other persons and circumstances shall not be affected thereby.

#### AUTHORIZATION

SEC. 20. There is hereby authorized to be appropriated out of any money in the Treasury not otherwise appropriated such funds as are necessary to carry out the provisions of this Act. The funds so appropriated shall not be available for payment of the expenses or expenditures of the Egg Board in administering any provisions of any order issued pursuant to the terms of this Act.

#### EFFECTIVE DATE

SEC. 21. This Act shall take effect upon enactment.

Mr. JONES of Tennessee [during the reading]. Mr. Chairman, I ask unanimous consent that the bill be considered as read, printed in the Record, and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from Tennessee?

There was no objection.

#### COMMITTEE AMENDMENTS

The CHAIRMAN. The Clerk will report the first committee amendment.

Mr. JONES of Tennessee. Mr. Chairman, I ask unanimous consent that the committee amendments be considered en bloc.

The CHAIRMAN. Is there objection to the request of the gentleman from Tennessee?

There was no objection.

The Clerk read the committee amendments as follows:

Committee amendments:

Page 4, line 6, following the words "commercial eggs", insert the words "or eggs".

Page 4, line 8, following the word "process-

ing", strike the period and add the phrase "into egg products."

Page 4, line 19, delete the word "fifty" and insert the words "the forty-eight contiguous"; and following the word "America" on line 20, delete the period, and insert the words, "and the District of Columbia."

Page 4, line 24, following the word "spent fowl", the second time it appears, insert a period and delete the remainder of the sentence.

Page 5, line 4, following the word "fowl", insert a period and delete the remainder of the sentence.

Page 5, line 8, following the words "spent fowl", the second time it appears, insert a period and delete the remainder of the sentence.

Page 5, line 10, delete the words "includes the sale" and insert in lieu thereof the words "means the sale or other disposition".

Page 5, line 15, delete the word "commercial".

Page 5, line 16, delete the word "shell".  
Page 5, line 19, delete the word "through" and insert in lieu thereof the word "for".

Page 6, line 2, delete the words "raising and".

Page 6, lines 3 through 13, following the word "term" delete the remainder of the subsection, and subsections (u) and (v) in their entirety, and insert the words "handler" means any person, specified in the order or the rules and regulations issued thereunder, who receives or otherwise acquires eggs from an egg producer, and processes, prepares for marketing, or markets such eggs, including eggs of his own production."

Page 6, lines 19 and 20, delete the words "and marketing", and following the word "eggs" on line 20, delete the phrase "processors, breakers, and distributors of commercial eggs" and insert in lieu thereof the words "and persons who receive or otherwise acquire eggs from such persons and who process, prepare for market, or market such eggs, including eggs of their own production."

Page 7, line 23, delete the words "for the advertising of, sales promotion of," and insert in lieu thereof the words "for advertising, sales promotion,".

Page 8, line 12, delete the word "knowingly".

Page 8, line 17, following the word "marketing", insert a comma.

Page 8, line 23, following the word "and" delete the words "that producers of said products shall be informed of data collected by such activities," and insert in lieu thereof, "the data collected by such activities may be disseminated".

Page 9, line 5, delete the words "egg producers, breakers, processors, persons marketing commercial eggs" and insert in lieu thereof the words "persons engaged in the production of commercial eggs and persons who receive or otherwise acquire eggs from such persons and who process, prepare for market such eggs, including eggs of their own production,".

Page 10, lines 11 through 13, delete the words "the name of any person or persons requesting and receiving funds, together with a statement concerning amount of refund and".

Page 10, line 14, delete the word "total".  
Page 10, line 18, following the word "person" insert a period and delete the remainder of the sentence.

Page 10, line 22, following the word "and" insert the words "if an officer or employee of the Egg Board or Department of Agriculture".

Page 11, line 24, following the word "of" insert the word "egg".

Page 12, line 2, following the word "by" insert the words "such egg".

Page 12, line 12, after the word "advertising" delete the word "or" and insert a comma in lieu thereof.

Page 12, line 13, following the word "promotion" insert a comma, delete the word

"or", the first time it appears in such line, and insert in lieu thereof the words "consumer education," and insert a comma following the word "research".

Page 12, line 20, insert a comma following the word "advertising".

Page 12, line 21, delete the words "and promotion and research" and insert in lieu thereof the words "promotion, consumer education, research,".

Page 12, line 24, delete the words "first processor of such producer's eggs," and insert in lieu thereof the words "handler of eggs designated by the order or the Egg Board pursuant to regulations issued under the order,".

Page 13, line 2, delete the word "processed" and insert in lieu thereof the word "handled".

Page 13, line 7, delete the word "processor" and insert in lieu thereof the word "handler".

Page 13, lines 12 through 15, delete the sentence beginning with the words "Such assessment" and insert in lieu thereof the following sentences:

"To facilitate the collection of such assessments, the order or the Egg Board may designate different handlers or classes of handlers to recognize differences in marketing practices or procedures utilized in the industry. The Secretary may maintain a suit against any person subject to the order for the collection of such assessment, and the several District Courts of the United States are hereby vested with jurisdiction to entertain such suits regardless of the amount in controversy."

Page 14, line 5, delete the words "shall provide by contract or otherwise for the administration, development," and insert in lieu thereof the words "may enter into contracts or agreements for development".

Page 14, line 10, following the period, delete the balance of line 10 and line 11 in its entirety, and insert in lieu thereof the following:

"Any such contract or agreement shall provide that such contractors shall develop and submit to the Egg Board a plan or project together with a budget or budgets which shall show estimated costs to be incurred for such plan or project, and that any such plan or project shall become effective upon the approval of the Secretary, and further,".

Page 14, line 19, delete the words "an annual report" and insert in lieu thereof the words "periodic reports".

Page 15, following line 3, insert the following new subsection:

"(1) Providing the board members, and alternates therefor, shall serve without compensation, but shall be reimbursed for their reasonable expenses incurred in performing their duties as members of the Board."

Page 15, line 18, delete, following the word "or" the balance of Section 9 and insert in lieu thereof the following: "by a majority of the producers voting in such referendum if such majority produced not less than two-thirds of the commercial eggs produced during a representative period defined by the Secretary."

Page 15, line 10, delete line 10 in its entirety, and insert in lieu thereof:

"Sec. 12. The following may be exempt from specific provisions of this Act under such conditions and procedures as may be prescribed in the order or rules and regulations issued thereunder."

Page 17, line 7, delete following the word "during" the balance of the subsection and insert in lieu thereof the following words: "a three consecutive month period immediately prior to the date assessments are due and payable has not exceeded 3,000 laying hens."

Page 17, lines 13 and 14, delete subsection (c) in its entirety.

Page 17, lines 19 and 20, delete the words "research and promotion program" and insert in lieu thereof the word "programs".

Page 18, line 1, following the word "days" insert the phrase:

after the end of the month in which the assessments are due and collectable,

Page 19, line 15, following the word "action" delete the period and insert in lieu thereof the following: "": *Provided*, That nothing in this Act shall be construed as requiring the Secretary to refer to the Attorney General minor violations of this Act whenever he believes that the administration and enforcement of the program would be adequately served by suitable written notice or warning to any person committing such violation."

Mr. JONES of Tennessee (during the reading). Mr. Chairman, I ask unanimous consent that the committee amendments be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Tennessee?

There was no objection.

The CHAIRMAN. The question is on the committee amendments.

The committee amendments were agreed to.

AMENDMENT OFFERED BY MR. GOODLING

Mr. GOODLING. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. GOODLING: Page 13, line 5, after the words "reasonable reserve" insert the words "and those administrative costs incurred by the Department after an order has been promulgated under this Act".

Mr. GOODLING. Mr. Chairman, in a very short while this House in all probability will again be asked to raise the debt ceiling and I think we are talking in terms of \$505 billion. This is necessary because the Congress of the United States, as I have said here on a great many occasions, has been completely irresponsible fiscally in the last few years. What I am proposing to do here is to save \$100,000 a year to the taxpayers of the United States. I realize that is a very small amount but it is time we started saving both small amounts and large amounts.

Someone may say, and I can steal his thunder from him right now. We do have precedent for what we are doing here, asking the taxpayers to pick up the tab for a particular commodity group to advertise its product. I agree completely that there is a precedent for this, but for heaven's sake, let us quit multiplying bad precedents and let us start establishing some good precedents. Why should we not start a good precedent? Probably we could go back and correct some of the things which have been done in the past that were bad. I would like to see the House establish a good precedent today.

When this bill was reported out of the committee I had many calls from the people in my State of Pennsylvania complimenting me and thanking me for helping to get this bill out of the Agriculture Committee. I told everyone what I proposed to do with this amendment and every last one in Pennsylvania to whom I spoke over the telephone told me I was absolutely right and they all thought they should pay their own freight.

Mr. PEYSER. Mr. Chairman, will the gentleman yield?

Mr. GOODLING. I yield to the gentleman from New York.

Mr. PEYSER. Mr. Chairman, I would

like to ask the gentleman if he has any idea how much money will be collected overall by the egg producers in this country?

Mr. GOODLING. It has been estimated that under this bill the egg producers will collect about \$7.5 million annually.

Mr. PEYSER. Would it be reasonable to assume that the \$100,000 cost will not really hurt their program at all if they were to pay for it out of their funds as we suggest? Would it be unreasonable to expect them to pay the \$100,000?

Mr. GOODLING. As the gentleman knows, this \$100,000 will not adversely affect the fund. My amendment proposes that it will come out of this \$7.5 million fund that will be raised under this fund.

Mr. PEYSER. I would suggest that the gentleman has a very good answer to the problem and a very good method of saving \$100,000.

Mr. GOODLING. I see absolutely no sound or logical reason why the taxpayers of the United States should pick up the tab for advertising and doing research on one particular farm commodity.

I trust the membership of this House will vote for this amendment.

Mr. JONES of Tennessee. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, I shall not take 5 minutes. Let me say to the Members of this House and to my good friend, the gentleman from Pennsylvania (Mr. GOODLING) that the committee did consider this proposal. It was believed, however, that the precedent should begin somewhere else, rather than the small amount of money that is involved in this particular piece of legislation we have here today.

My good friend, the gentleman from Pennsylvania, offered the amendment in the committee. It was discussed and was defeated. For that reason, Mr. Chairman, I feel we should stay with the bill and vote down this amendment.

Mr. GOODLING. Mr. Chairman, will the gentleman yield?

Mr. JONES of Tennessee. I will be glad to yield to the gentleman from Pennsylvania.

Mr. GOODLING. Will the gentleman admit we did establish a bad precedent when we set up these programs years ago?

Mr. JONES of Tennessee. I will not admit we did. I do not think we did, because when all our marketing programs began, we had surpluses of all kinds in this country. Some help had to be given to the agricultural sector of this country if we were to survive. If we want to do something about saving the U.S. Department of Agriculture, which is you and me and the rest of us, to save some money, we should begin somewhere else, rather than just a mere \$100,000 when we offer a bill to help the egg producers today who are in dire straits.

Mr. GOODLING. When the gentleman says a mere \$100,000, I insist if we are collecting \$7.5 million, the egg producers in this country should be willing to pick up the tab for that "mere" \$100,000.

I might further suggest that in our apple-growing profession we have programs in the various States and in each case growers are picking up the tab for them. We are not asking the taxpayers

of the United States to help us advertise our apples. In my opinion, that is what the egg producers should do and the egg producers in my State are willing to do.

Mr. JONES of Tennessee. If the egg producers in the State of Pennsylvania particularly want to do that, we can work that out, too; but I think overall in this country of ours we need to go ahead with what we have.

I ask for the defeat of the amendment.

Mr. BAKER. Mr. Chairman, I rise in support of the amendment.

Mr. Chairman, I am reluctant to disagree with my colleague, the gentleman from Tennessee, who has done an excellent job as chairman of the subcommittee and does an excellent job of representing the people of his district. I know him to be a fair man and an understanding man; however, this seems to be an excellent place to start in setting a precedent. I believe the farmers would be more willing than any group I know of to commence efforts of this sort. We are talking about \$100,000 out of \$7.5 million. That leaves \$7,400,000 to commence this program and it certainly seems to me to be a proper means of funding the whole program to relieve the Department of Agriculture of any expense.

I would hope that down the road we could eliminate Department expenditures for other similar programs, because I believe elements of the industry involved want to bear their own expenses. They are getting basically good value out of it, as well as the consuming public.

I support the amendment of the gentleman from Pennsylvania.

Mr. GUNTER. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, it is a pleasure for me to speak in behalf of H.R. 12000, the Egg Research and Consumer Information Act. The commercial egg producers in the State of Florida have indicated solid support for this self-help legislation. The Florida Poultry Federation, Inc., the producer-oriented poultry organization representing all phases of the poultry and egg industry in the State of Florida, was among the 41 State, regional, and national organizations endorsing the unified statement of the egg industry supporting H.R. 12000 when hearings were held before the House Agriculture Subcommittee on Dairy and Poultry on March 26, 1974.

Even though the State of Florida is known for its sunshine and citrus fruit, I am happy to use this opportunity to point out that Florida is also one of America's leading egg producing States. According to statistics of the U.S. Department of Agriculture, in 1972 producers in my State realized a gross income of \$58,930,000 from the production of eggs. More than 2.8 billion eggs were produced in Florida in 1972, and I am told that 1972 was a bad year.

As I understand the proposed legislation, the egg industry is asking for enabling legislation which will permit them to help themselves. They are saying to this Congress: "We want to continue marketing our product as individuals; we want to collectively tell consumers about our product and create new products from eggs to meet consumer demand; and we want to pay the tab ourselves."

What the commercial egg producers

need is the Federal Government to set up the machinery through which this collective action can be legally conducted. As H.R. 12000 is written, the egg industry is inviting the Government to monitor all the programs they intend to carry out, they want the Secretary of Agriculture to oversee the recommendations of their Egg Board to be sure every egg producer's interest is served, and they want to assure the consumers of their products that the egg industry is interested in developing new products and services to meet the consumer's desires and wishes.

In the State of Florida, citrus fruit growers have witnessed what can be done when a commodity group bands together, with the cooperation of the United States and State Departments of Agriculture, to advertise, promote, and do research in the interest of itself and the consumers of their products. Other success stories can be related by other Members of Congress in whose districts agricultural producers have assessed themselves a portion of their sales in order to conduct coordinated programs to enhance the image of their product.

Many self-help commodity programs are carried out under the authorization of the Agricultural Marketing Agreements Act of 1937. The egg industry is specifically exempted from that act. I understand the egg industry decided to seek the specific legislation represented by H.R. 12000 rather than attempt to amend the Agricultural Marketing Agreements Act of 1937 because the egg industry did not desire any form of marketing controls as are authorized by that legislation. The egg industry, with the help of our colleague, Representative Ed JONES of Tennessee, drafted specific legislation to fit the needs of the commercial egg industry without risking marketing controls. Mr. JONES is to be commended for the excellent job he has done.

I think the provisions of this legislation clearly spells out the fact that the egg industry desires only to help itself with its own marketing problems. These problems must first be recognized and an order drafted through the cooperation of the Secretary of Agriculture. Such order must be approved in a referendum of affected producers where approval requires two-thirds of those voting, or a majority vote of producers who collectively own at least two-thirds of the commercial eggs produced. Even after such an overwhelming vote of approval there are provisions in this legislation giving any egg producer who does not wish to participate the right to apply for, and receive, a full refund. Certainly, these are safeguard provisions which can assure this Congress that the egg industry wishes only an opportunity to cooperate among its members to carry out, collectively, work the individual members themselves cannot handle alone.

There has been some comments made about the appropriation requested by the U.S. Department of Agriculture. The Department has indicated it will cost \$150,000 the first year to set up the program, conduct hearings, and conduct a national referendum. Then, it is estimated by USDA that it will cost \$100,000 each year thereafter for it to carry out its duties under this act. Such a request is not un-

usual and it has traditionally been accepted that it was the duty of the Department of Agriculture to administer such commodity legislation. There are at least 5 national and 19 regional or local commodity programs currently under the jurisdiction of the U.S. Department of Agriculture for which there are appropriations to the Department sufficient to meet its administrative needs. The egg industry is not seeking any special treatment and certainly it does not wish to become the first and only commodity group which must finance the administrative costs of the Department of Agriculture.

There will be benefits accruing to the Department as it administers this program. Monthly, the Department will have access to reliable statistics on the number of farms producing commercial eggs, the number of commercial egg laying chickens on farms of America, the number of eggs produced, the trends in egg production, and numerous other bits of statistical information which are now unavailable to the Department. Such statistical benefits must certainly be valued higher than the appropriation request for this program.

Mr. Chairman, I could continue at length expounding on the need for, and benefits of, this legislation, but I don't think it is necessary. I am proud to have been a sponsor of this legislation, and I am proud of any group that comes to this Congress saying: "Let us help ourselves." I encourage all the Members of Congress to answer this request with an affirmative reply.

Thank you, Mr. Chairman.

Mr. GROSS. Mr. Chairman, I move to strike the necessary number of words.

Mr. Chairman, I want to join in supporting the gentleman from Pennsylvania (Mr. GOODLING) and commend him for the amendment which he has offered.

I know of no reason, no logical argument why the administrative costs should not be paid from the check-off imposed on egg producers. As a matter of fact, I wonder about the purpose of this bill. An egg is an egg. There is nothing else like it among all foods. It is unique. What is the competition, the substitute for an egg? What is the purpose by way of advertising to promote the use of eggs?

I eat eggs when I am hungry for them, I know they are nutritious and I know there is no substitute. So, I seriously question Federal legislation that would pave the way for taking \$7,500,000 out of the pockets of egg producers and at the same time soak the taxpayers for \$100,000 a year to pay the administrative expenses. If egg producers feel they need a promotion campaign let them get together in a voluntary check-off campaign and pay the bills in connection with it.

Mr. MATHIS of Georgia. Mr. Chairman, will the gentleman yield?

Mr. GROSS. Mr. Chairman, I yield to the gentleman from Georgia.

Mr. MATHIS of Georgia. Mr. Chairman, I would say to my good friend from Iowa that the origination of the idea of this legislation does not come from the members of this committee, but from the egg producers themselves. They are the people who want to increase the advertising and promotion for eggs and

egg research. This is a bill offered by the egg producers and for the egg producers of America.

Mr. GROSS. But the Agriculture Committee does not mind telling other producers if it thinks they are wrong in their promotional efforts. Simply because certain egg producers want something does not necessarily mean that Congress must pass legislation to accommodate them.

Mr. MATHIS of Georgia. The gentleman is eminently correct; we do not have to do that. I think this committee decided that the egg producers were right. This is a self-help bill to increase the income from the commodity, as I am sure the gentleman knows, including wheat.

Mr. GROSS. Mr. Chairman, I can see television, radio, and the newspapers picking up a nice piece of change out of this for alleged promotional purposes, and I say again, for what reason I do not know.

Mr. MATHIS of Georgia. The gentleman says an egg is an egg is an egg. The same might be said about a Member of Congress. A Congressman is a Congressman is a Congressman, but that ain't necessarily so either.

Mr. GROSS. But there is a little difference. There is always a substitute for a Member of Congress.

Mr. MATHIS of Georgia. I think the gentleman might be safe in saying that some of them might be egg-headed.

Mr. GROSS. That could be true.

Mr. Chairman, I reiterate by support for the amendment and hope it will be approved but I have every expectation of voting against the bill on final passage for I can find no justification for it.

Mr. FINDLEY. Mr. Chairman, I rise in support of the amendment.

Mr. Chairman, this amendment, I think, will improve the bill, but I would hate to have anyone be under the impression that it would make a good bill out of the legislation. This bill, like several others that have been approved by the House, raises the fundamental question of whether we should use the sanction of the law to require unwilling producers to contribute to the cost of promoting their products.

The gentleman from Iowa alluded to the possibility that the egg producers want this legislation. Do they all want it? If they all want it, there is certainly no need for the legislation. They could voluntarily arrange for the checkoff and not have the force of law behind it. The fact is, they do not all want it.

There are some who choose not to chip into this commodity promotion scheme. It seems to me it is far wiser for us to leave this type of promotion to voluntary action. I recognize there is a precedent for this legislation, but I think it is a bad precedent and never too late to correct a previous mistake.

Mr. MATHIS of Georgia. Mr. Chairman, will the gentleman yield?

Mr. FINDLEY. I yield to the gentleman.

Mr. MATHIS of Georgia. Mr. Speaker, as the gentleman from Illinois well knows, there is a provision for a referendum in section nine of this bill.

Mr. FINDLEY. Yes, I am aware of that, but the referendum does not require 100 percent approval, and those

who vote "no" but are nevertheless in the minority are compelled by the language to participate in the checkoff.

Mr. MATHIS of Georgia. If the gentleman will yield further, I would suggest that there is a section on page 17, and I will read it to the gentleman:

Notwithstanding any other provisions of this act, any egg producer against whose commercial eggs any assessment is made and collected from him under authority of this act and who is not in favor of supporting the programs as provided for herein shall have the right to demand and receive from the Egg Board a refund of such assessment.

Mr. FINDLEY. Mr. Chairman, I know that such a procedure is provided in the law, and is provided in several other similar programs. The fact is that it is a rather cumbersome procedure that discourages producers from seeking the refund. I think it is far better to skip the assessment.

Mr. RANDALL. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I take this time to inquire of the floor manager, if I may have the gentleman's attention, whether or not the amendment of the gentleman from Pennsylvania provides that all the expenses of administration would have to be borne entirely by the egg industry.

If I understand it correctly, this type of proposal would be unprecedented. I know for a fact, we have programs for potatoes, for milk, wool, and cotton.

As I understand it, in none of these similar programs has the industry borne all of the expenses of administration.

Mr. MATHIS of Georgia. Mr. Chairman, will the gentleman yield?

Mr. RANDALL. I will yield to the gentleman from Georgia, and ask if the gentleman can answer my question.

Mr. MATHIS of Georgia. Mr. Chairman, of course, this would be a precedent. The gentleman from Pennsylvania recognizes this. When he offered his amendment, he tried to explain it very eloquently. I think the gentleman from Pennsylvania did, in fact, offer legislation that would require all these commodities to pay their own cost.

Mr. RANDALL. If I have the attention now of the floor manager of this bill, I would like to ask him this question: Why do we seek out this one particular industry—the egg industry—when none of the others are treated this way?

Mr. JONES of Tennessee. Mr. Chairman, will the gentleman yield?

Mr. RANDALL. I yield to the gentleman from Tennessee.

Mr. JONES of Tennessee. I thank the gentleman from Missouri for yielding.

I would like to know the answer to that myself because it is not the intent of anybody on the subcommittee to have this done. We think it is a mistake.

Mr. Chairman, let me point out to you some of the commodities that have similar programs today, yet are administered by the USDA. Take cotton. Cotton is one of the biggest programs that we have. It is all part of USDA programs. The potato program is. The lamb and wool program, as well as wheat, milk, and milk products.

Of course, there are many local and regional programs that are also in the same category.

Mr. Chairman, why would any of us

want to pick out a small program such as this one, as far as the egg program is concerned, and have it administered by people other than the people in the U.S. Department of Agriculture.

Mr. RANDALL. Mr. Chairman, I think this would conclusively be one of the very best arguments for the defeat of this amendment. I have not had the benefit of studying the report thoroughly, but it seems to me this amendment is trying to undo, in effect, what the bill itself seeks to do.

Mr. GOODLING. Mr. Chairman, will the gentleman yield?

Mr. RANDALL. I yield to the gentleman from Pennsylvania.

Mr. GOODLING. Mr. Chairman, I wish to point out to the gentleman that he was not on the floor of the House when I made my opening remarks.

Mr. RANDALL. Mr. Chairman, I am sorry that I was not here. I know I have suffered a considerable loss by not being present to hear the eloquent gentleman from Pennsylvania. I will say to the gentleman I will be glad to have the benefit of his views now.

Mr. GOODLING. Mr. Chairman, I will repeat for the benefit of the gentleman that I asked in my opening remarks if there is any justification to continue a bad precedent.

We establish these precedents. The gentleman is absolutely right when he says we have few precedents for doing what this bill calls for. But can the gentleman say that we should continue to set bad precedents year after year?

Mr. RANDALL. Mr. Chairman, I understand the gentleman's point. It comes down to a question of the fact as to whether these other precedents have been good precedents or bad precedents. Many think these other programs have worked very well. They have been successful over the long pull. I think the gentleman would have great difficulty getting any of the Members to agree that these other programs such as wool, cotton, or milk have not worked as intended. It is not what the gentleman thinks or believes but rather it becomes a question of fact as to whether these other programs have in fact, set good or bad precedents, and the facts prove the programs have worked and therefore it must be a good precedent to let USD bear the administrative costs.

What we have done in the past has been beneficial; it has been good for each of the industries mentioned. This is no time to change because there is no reason to change.

Mr. Chairman, I urge that this amendment be defeated.

Mr. SYMMS. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I think that the purpose of the amendment offered by the gentleman from Pennsylvania is good, and the reason it is good is that we are talking about a \$7.5 million checkoff, and we are talking about a \$100,000 figure for administrative costs that would come from the \$7.5 million. I think this would be setting a good precedent, and would certainly be beneficial to the taxpayers.

Two wrongs do not make a right. Maybe we have been wrong in the past, so why should we not start in with a

clean slate today and start letting these programs pay their own way?

Mr. MATHIS of Georgia. Mr. Chairman, will the gentleman yield?

Mr. SYMMS. I yield to the gentleman from Georgia.

Mr. MATHIS of Georgia. Mr. Chairman, I know that the distinguished gentleman from Idaho would not seek to single out one single program to be treated in this way and then allow these same kinds of administrative costs to be paid for in other programs. I would suggest that the gentleman should simply seek equality and seek equity.

I know the gentleman from Idaho to be a fair man, and I know he wants to do the right thing.

Why pick on the egg producers? Let us start on the Idaho potato producers, if we want to start somewhere. Why pick out this one program?

Mr. SYMMS. Mr. Chairman, I wish to point out to the gentleman that we must start somewhere.

I will say to the gentleman that the Idaho potato producers do pay their own administrative costs within our State as part of the administrative program, which is a program that is very similar to this, except it is run on the State level and not on the Federal level.

This is a chance for us to start with a new precedent. I think today is a good day to start.

Mr. Chairman, I hope that the Members will support the amendment offered by the gentleman from Pennsylvania.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Pennsylvania (Mr. GOODLING).

The question was taken; and on a division—demanded by Mr. MATHIS of Georgia—there were—ayes 44; noes 24.

## RECORDED VOTE

Mr. MATHIS of Georgia. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 238, noes 151, not voting 44, as follows:

[Roll No. 222]

## AYES—238

Abzug	Cederberg	Downing
Addabbo	Chamberlain	Drinan
Anderson,	Chisholm	Duncan
Calif.	Clancy	du Pont
Anderson, III.	Clausen,	Edwards, Ala.
Archer	Don H.	Eilberg
Arends	Clawson, Del	Erlenborn
Armstrong	Clay	Esch
Ashbrook	Cleveland	Eshleman
Ashley	Cohen	Evans, Colo.
Badillo	Collier	Findley
Bafalis	Collins, Tex.	Fish
Baker	Conable	Forsythe
Barrett	Conlan	Frelinghuysen
Bauman	Conte	Frenzel
Bell	Conyers	Frey
Bennett	Cotter	Froehlich
Biaggi	Coughlin	Gaydos
Bieber	Crane	Giaino
Bingham	Cronin	Gilman
Brasco	Culver	Goldwater
Bray	Daniel, Dan	Goodling
Broomfield	Daniel, Robert	Grasso
Brotzman	W., Jr.	Green, Pa.
Brown, Mich.	Daniels,	Griffiths
Brown, Ohio	Dominick V.	Gross
Broyhill, N.C.	Davis, Wis.	Grover
Broyhill, Va.	Deaney	Gubser
Buchanan	Dellenback	Gude
Burgener	Denholm	Guyer
Burke, Calif.	Dennis	Haley
Burke, Fla.	Derwinski	Hanna
Butler	Devine	Hanrahan
Byron	Dickinson	Hansen, Idaho
Camp	Donohue	Harrington

Harsha	Miller	Seiberling
Hastings	Minish	ShIPLEY
Hébert	Minshall, Ohio	Shoup
Hechler, W. Va.	Mitchell, Md.	Shriver
Heckler, Mass.	Mitchell, N.Y.	Shuster
Heinz	Moakley	Skubitz
Hillis	Moorhead,	Smith, Iowa
Holtzman	Calif.	Smith, N.Y.
Horton	Moorhead, Pa.	Snyder
Hosmer	Mosher	Spence
Hinshaw	Murphy, Ill.	Staggers
Hogan	Myers	Stanton,
Holt	Nelsen	J. William
Howard	O'Brien	Stanton,
Hunt	Owens	James V.
Hutchinson	Parris	Steele
Jarman	Patten	Steelman
Johnson, Colo.	Perkins	Steiger, Ariz.
Jones, Okla.	Peyster	Steiger, Wis.
Kemp	Pike	Stratton
Ketchum	Podell	Studds
King	Powell, Ohio	Symms
Kiuczynski	Price, Tex.	Taylor, Mo.
Koch	Pritchard	Thomson, Wis.
Kuykendall	Rallsback	Towell, Nev.
Lagomarsino	Rangel	Treen
Landgrebe	Regula	Vanik
Latta	Reuss	Veysey
Leggett	Rhodes	Walsh
Lent	Riegle	Wampler
Long, Md.	Rinaldo	Ware
Lujan	Robinson, Va.	Whalen
McClary	Robison, N.Y.	White
McCollister	Rodino	Whitehurst
McDade	Roe	Widnall
McEwen	Rooney, Pa.	Wiggins
McKay	Rosenthal	Wilson, Bob
McKinney	Rostenkowski	Winn
Macdonald	Rousselot	Wyder
Mallary	Roy	Wylie
Mann	Ryan	Wyman
Maraziti	Sandman	Yatron
Martin, Nebr.	Sarasin	Young, Alaska
Martin, N.C.	Satterfield	Young, Fla.
Mayne	Scherle	Young, Ill.
Michel	Schneebell	Zion
Milford	Sebelius	

## NOES—151

Abdnor	Ginn	Fatman
Adams	Gonzalez	Pepper
Alexander	Gunter	Pickle
Andrews, N.C.	Hamilton	Poage
Andrews,	Hammer-	Preyer
N. Dak.	schmidt	Price, Ill.
Annunzio	Hanley	Quie
Aspin	Hays	Quillen
Beard	Henderson	Randall
Bergland	Hicks	Rarick
Bevill	Hollifield	Rees
Blackburn	Hungate	Roberts
Boggs	Ichord	Roncalio, Wyo.
Bolling	Johnson, Calif.	Rose
Bowen	Jones, Ala.	Roush
Brademas	Jones, N.C.	Roybal
Breaux	Jones, Tenn.	Runnels
Breckinridge	Jordan	Ruppe
Brinkley	Karth	Ruth
Brooks	Kastenmeier	St Germain
Brown, Calif.	Kazen	Sarbanes
Burke, Mass.	Kyros	Schroeder
Burleson, Tex.	Landrum	Sikes
Burlison, Mo.	Lehman	Sisk
Burton	Long, La.	Stark
Carney, Ohio	Lott	Steed
Casey, Tex.	Luken	Stephens
Chappell	McCormack	Stokes
Cochran	McFall	Symington
Collins, Ill.	McSpadden	Taylor, N.C.
Corman	Madden	Thompson, N.J.
Danielson	Mahon	Thone
Davis, S.C.	Mathias, Calif.	Thornton
Dellums	Mathis, Ga.	Traxler
Dent	Matsunaga	Ullman
Dingell	Mazzoli	Van Deerlin
Eckhardt	Meeds	Vander Jagt
Edwards, Calif.	Melcher	Vander Veen
Evins, Tenn.	Metcalfe	Vigorito
Fascell	Mink	Waggoner
Fisher	Mizell	Waldie
Flood	Montgomery	Whitten
Flowers	Moss	Wilson,
Flynt	Murphy, N.Y.	Charles, Tex.
Foley	Murtha	Wolf
Ford	Natcher	Yates
Fountain	Nedzi	Young, Ga.
Fraser	Nichols	Young, Tex.
Fulton	Obey	Zablocki
Fuqua	O'Hara	Zwach
Gettys	O'Neill	
Gibbons	Passman	

## NOT VOTING—44

Blatnik	Clark	Dorn
Boland	Davis, Ga.	Dulski
Carey, N.Y.	de la Garza	Gray
Carter	Diggs	Green, Oreg.

Hansen, Wash.	Morgan	Teague
Hawkins	Nix	Tiernan
Helstoski	Pettis	Udall
Huber	Reid	Williams
Hudnut	Rogers	Wilson,
Johnson, Pa.	Roncallo, N.Y.	Charles H.,
Litton	Rooney, N.Y.	Calif.
McCloskey	Slack	Wright
Madigan	Stubblefield	Wyatt
Mezvinsky	Stuckey	Young, S.C.
Mills	Sullivan	
Mollohan	Talcott	

So the amendment was agreed to.  
The result of the vote was announced as above recorded.

AMENDMENT OFFERED BY MR. MOSS

Mr. MOSS. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Moss: Page 8, lines 12 and 14, after or strike out "unwarranted" and insert misleading.

Mr. MOSS. Mr. Chairman, I have discussed this amendment with the gentleman from Tennessee, and my understanding is that he is prepared to accept this amendment.

Mr. ZWACH. Mr. Chairman, will the gentleman yield?

Mr. MOSS. I yield to the gentleman from Minnesota.

Mr. ZWACH. Mr. Chairman, I accept the amendment.

Mr. MONTGOMERY. Mr. Chairman, will the gentleman yield?

Mr. MOSS. I yield to the gentleman from Mississippi.

Mr. MONTGOMERY. Will the gentleman explain his amendment, please?

Mr. MOSS. I should be very happy to explain the amendment. The bill before the Members, on page 8, lines 12 and 14 uses a standard of "false or unwarranted." The standard historically used by the Federal Trade Commission is "false or misleading." "False or misleading" has been construed by a considerable body of case law. Regarding "false or unwarranted," the word "unwarranted" certainly has not been given any meaning or interpretation by the courts, and I think we would be hard put to know precisely what is intended. By bringing it into conformity with a more traditional concept, I believe that it clarifies and removes an otherwise ambiguous word from the legislation.

Mr. Chairman, I yield back the remainder of my time.

The CHAIRMAN. The question is on the amendment offered by the gentleman from California (Mr. Moss).

The amendment was agreed to.

The CHAIRMAN. If there are no further amendments, under the rule, the Committee rises.

Accordingly the Committee rose; and the Speaker pro tempore (Mr. McFALL) having assumed the chair, Mr. BRADEMAs, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee having had under consideration the bill (H.R. 12000) to enable egg producers to establish, finance, and carry out a coordinated program of research, producer and consumer education, and promotion to improve, maintain, and develop markets for eggs, egg products, spent fowl, and products of spent fowl, pursuant to House Resolution 1100, he reported the bill back

to the House with sundry amendments adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment? If not, the Chair will put them en gros.

The amendments were agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on the passage of the bill.

Mr. RANDALL. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 302, nays 90, not voting 41, as follows:

[Roll No. 223]  
YEAS—302

Abdnor	Dent	Jones, Okla.
Adams	Derwinski	Jones, Tenn.
Alexander	Devine	Jordan
Anderson,	Dickinson	Karth
Calif.	Dingell	Kastenmeier
Andrews, N.C.	Downing	Kazen
Andrews,	Duncan	Kemp
N. Dak.	du Pont	Ketchum
Archer	Edwards, Ala.	Kiuczynski
Arends	Eilberg	Kuykendall
Ashbrook	Esch	Kyros
Aspin	Eshleman	Lagomarsino
Bafalis	Evans, Colo.	Landrum
Baker	Evins, Tenn.	Latta
Barrett	Fascell	Leggett
Bauman	Fish	Lehman
Beard	Fisher	Long, La.
Bell	Flood	Long, Md.
Bergland	Flowers	Lott
Bevill	Flynt	Luken
Blackburn	Foley	McClary
Blatnik	Ford	McCollister
Boggs	Forsythe	McCormack
Bolling	Fountain	McDade
Bowen	Fraser	McEwen
Brademas	Frelinghuysen	McFall
Bray	Frenzel	McKay
Breaux	Frey	McSpadden
Breckinridge	Fröhlich	Madden
Brinkley	Fulton	Mahon
Broomfield	Fuqua	Mallory
Brotzman	Gettys	Mann
Brown, Calif.	Gibbons	Maraziti
Brown, Mich.	Gilman	Martin, Nebr.
Brown, Ohio	Ginn	Martin, N.C.
Broyhill, N.C.	Goldwater	Mathias, Calif.
Broyhill, Va.	Gonzalez	Mathis, Ga.
Buchanan	Goodling	Matsunaga
Burgener	Green, Pa.	Mayne
Burke, Calif.	Griffiths	Mazzoli
Burke, Fla.	Gubser	Meeds
Burke, Mass.	Gunter	Melcher
Burleson, Tex.	Guyar	Michel
Burlison, Mo.	Haley	Miller
Burton	Hamilton	Mink
Butler	Hammer-	Minshall, Ohio
Byron	schmidt	Mitchell, N.Y.
Carney, Ohio	Hanley	Mizell
Casey, Tex.	Hanna	Montgomery
Cederberg	Hansen, Idaho	Moorhead,
Chamberlain	Hansen, Wash.	Calif.
Chappell	Harsha	Moorhead, Pa.
Chisholm	Hastings	Moss
Ciency	Hays	Murphy, N.Y.
Clauser,	Hébert	Murtha
Don H.	Heinz	Myers
Clawson, Del	Henderson	Natcher
Clay	Hicks	Nedzi
Cleveland	Hillis	Nelsen
Cochran	Hinsaw	Nichols
Cohen	Hogan	Obey
Collins, Tex.	Holifield	O'Brien
Conable	Holt	O'Hara
Corman	Horton	O'Neill
Crane	Hungate	Owens
Daniel, Dan	Hunt	Parris
Daniel, Robert	Hutchinson	Passman
W., Jr.	Ichord	Fatman
Danielson	Jarman	Pepper
Davis, S.C.	Johnson, Calif.	Perkins
Davis, Wis.	Johnson, Colo.	Peyser
Dellenback	Jones, Ala.	Pickle
Denholm	Jones, N.C.	Poage

Powell, Ohio	Sebelius	Ullman
Preyer	Shipley	Van Deerin
Price, Ill.	Shoup	Vander Jagt
Price, Tex.	Shriver	Vander Vein
Pritchard	Shuster	Veyssey
Quie	Sikes	Vigorito
Quillen	Sisk	Waggonner
Randall	Skubitz	Walsh
Rarick	Spence	Wampler
Rees	Staggers	Ware
Regula	Stanton,	White
Rhodes	J. William	Whitehurst
Roberts	Stanton,	Whitten
Robinson, Va.	James V.	Widnall
Robison, N.Y.	Stark	Wiggins
Roe	Steelman	Wilson, Bob
Roncallo, Wyo.	Steiger, Wis.	Wilson,
Rooney, Pa.	Stephens	Charles, Tex.
Rose	Stokes	Winn
Roush	Stratton	Wyle
Rousselot	Symington	Wyman
Roy	Symms	Yatron
Ruppe	Taylor, Mo.	Young, Alaska
Ruth	Taylor, N.C.	Young, Fla.
St Germain	Thompson, N.J.	Young, Ga.
Sandman	Thomson, Wis.	Young, Ill.
Sarbanes	Thone	Young, Tex.
Satterfield	Thornton	Zablocki
Scherle	Traxler	Zion
Schneebell	Treen	Zwach
Schroeder	Udall	

NAYS—90

Abzug	Findley	Rangel
Addabbo	Gaydos	Pike
Anderson, Ill.	Gialmo	Podell
Annunzio	Grasso	Railsback
Armstrong	Gross	Reuss
Ashley	Grover	Riegle
Badillo	Gude	Rinaldo
Bennett	Hanrahan	Rodino
Blester	Harrington	Rostenhal
Bingham	Hechler, W. Va.	Rostenkowski
Brasco	Heckler, Mass.	Roybal
Camp	Holtzman	Runnels
Collier	Hosmer	Ryan
Collins, Ill.	Howard	Sarasin
Conlan	King	Seiberling
Conte	Koch	Smith, Iowa
Conyers	Landgrebe	Smith, N.Y.
Cotter	Lent	Snyder
Coughlin	Lujan	Steed
Cronin	McKinney	Steele
Culver	Macdonald	Steiger, Ariz.
Daniels,	Madigan	Studds
Dominick V.	Metcalfe	Towell, Nev.
Delaney	Mezvinsky	Vanik
Dellums	Milford	Waldie
Dennis	Minish	Whalen
Donohue	Mitchell, Md.	Wolf
Drinan	Moakley	Wydler
Edwards, Calif.	Mosher	Yates
Erlenborn	Murphy, Ill.	
Biaggi	Patten	

NOT VOTING—41

Boland	Huber	Stubblefield
Brooks	Hudnut	Stuckey
Carey, N.Y.	Johnson, Pa.	Sullivan
Carter	Litton	Talcott
Clark	McCloskey	Teague
Davis, Ga.	Mills	Tiernan
de la Garza	Mollohan	Williams
Diggs	Morgan	Wilson,
Dorn	Nix	Charles H.,
Dulski	Pettis	Calif.
Eckhardt	Reid	Wright
Gray	Rogers	Wyatt
Green, Oreg.	Roncallo, N.Y.	Young, S.C.
Hawkins	Rooney, N.Y.	
Helstoski	Slack	

So the bill was passed.

The Clerk announced the following pairs:

On this vote:

Mr. Rogers for, with Mr. Rooney of New York against.  
Mr. Carter for, with Mr. Diggs against.  
Mr. Stubblefield for, with Mr. Helstoski against.  
Mr. Teague for, with Mr. Roncallo of New York against.  
Mr. Hawkins for, with Mr. Dulski against.  
Mrs. Sullivan for, with Mr. Boland against.  
Mr. Charles H. Wilson of California for, with Mr. Gray against.

Until further notice:

Mr. Morgan with Mr. Young of South Carolina.  
Mr. Brooks with Mr. Mills.

Mr. Carey of New York with Mrs. Green of Oregon.

Mr. Litton with Mr. Pettis.  
Mr. Mollohan with Mr. Hudnut.  
Mr. Slack with Mr. McCloskey.  
Mr. Stuckey with Mr. Huber.  
Mr. Wright with Mr. Johnson of Pennsylvania.

Mr. Reid with Mr. Williams.  
Mr. Davis of Georgia with Mr. Talcott.  
Mr. de la Garza with Mr. Wyatt.  
Mr. Dorn with Mr. Clark.  
Mr. Nix with Mr. Tiernan.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

#### GENERAL LEAVE

Mr. JONES of Tennessee. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill just passed.

The SPEAKER. Is there objection to the request of the gentleman from Tennessee?

There was no objection.

#### CONFERENCE REPORT ON S. 3062, DISASTER RELIEF ACT AMENDMENTS OF 1974

Mr. JONES of Alabama. Mr. Speaker, I ask unanimous consent for the immediate consideration of the conference report on the Senate bill (S. 3062), Disaster Relief Act Amendments of 1974.

The Clerk read the title of the Senate bill.

The SPEAKER. Is there objection to the request of the gentleman from Alabama?

Mr. GROSS. Mr. Speaker, reserving the right to object, I would like to ask the gentleman this question: When was the conference report made available?

Mr. JONES of Alabama. On Monday of this week.

Mr. GROSS. Mr. Speaker, did I understand the gentleman to say, Monday of this week?

Mr. JONES of Alabama. The gentleman is correct.

Mr. GROSS. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Alabama?

There was no objection.

Mr. JONES of Alabama. Mr. Speaker, I ask unanimous consent that the statement of the managers be read in lieu of the report.

The SPEAKER. Is here objection to the request of the gentleman from Alabama?

There was no objection.

The Clerk read the statement.

(For conference report and statement, see proceedings of the House of May 13, 1974.)

Mr. JONES of Alabama (during the reading). Mr. Speaker, I ask unanimous consent that the further reading of the statement of the managers be dispensed with.

The SPEAKER. Is there objection to the request of the gentleman from Alabama?

There was no objection.

The SPEAKER. The Chair recognizes

the gentleman from Alabama (Mr. JONES).

Mr. JONES of Alabama. Mr. Speaker, I am pleased to submit to the House the report of the committee of conference on S. 3062, the Disaster Relief Act of 1974.

On April 10 of this year, the Senate passed S. 3062. The following day the Senate-passed bill was before the House for consideration. Ordinarily, we would have considered the Senate-passed bill in committee and reported it to the House with those amendments we considered necessary. However, with the tornado disasters which had recently occurred in many parts of the country, we considered it important that we move as quickly as possible to pass legislation to provide adequate relief for the victims of those disasters. For that reason, your Committee on Public Works recommended that a modified version of one section of the Senate bill which we had had a chance to consider be passed as an amendment to the Senate bill. This enabled us to go to conference with the Senate and give proper and needed consideration to the provisions of the Senate bill in the least possible amount of time.

Mr. Speaker, on April 25, after very careful consideration of the provisions of the Senate-passed bill and the House amendment, the conference committee agreed to the report which is now being submitted.

During the conference the House conferees had the time and the opportunity to study the Senate-passed bill in depth and to work the will of the House in securing what we believe to be an effective piece of legislation. During the floor debate on the House amendment to the Senate bill, much concern was expressed over the fact that the individual and family grant program contained in the Senate bill and the House amendment was not made retroactive to April 20, 1973, which was the date on which the forgiveness provisions under the Small Business Administration and Farmers Home Administration disaster loan programs expired. Without this retroactivity, there would have been a gap of nearly a year during which disaster victims would have received inequitable treatment. At that time, the distinguished chairman of our Public Works Committee, the gentleman from Minnesota, and the distinguished ranking minority member, the gentleman from Ohio, expressed their intentions to make every effort to obtain agreement with the Senate conferees to make this individual and family grant program retroactive. I am pleased to report that the provision was made effective as of April 20, 1973. While this grant program is not a substitute for the earlier forgiveness provisions, it does meet similar needs. We feel that it would be most inequitable to have a forgiveness provision until April 20, 1973, and a grant provision as of April 1, 1974, with all those suffering damage as a result of a major disaster between those two dates receiving no comparable assistance.

The legislation agreed to by the committee of conference is quite similar to the Senate-passed bill, but with many important changes which we feel make

it a much better bill. Among the provisions which were modified by the committee of conference are the following.

A provision, section 302(c), has been added authorizing payment under the emergency conservation program for the repair, restoration, reconstruction, or replacement of farm fencing damaged or destroyed by a major disaster. The Department of Agriculture has possessed authority to make 80 percent Federal cost-sharing payments to farmers for rehabilitation of farmlands damaged by natural disasters. This assistance, however, has been eliminated administratively by the Department of Agriculture. The provision in the conference substitute reinstates the assistance program.

The Senate-passed bill required that insurance adequate to protect against future loss must be obtained for any disaster-damaged property which has been replaced, restored, repaired, or constructed with Federal disaster funds if insurance is reasonably available. Unless such insurance is secured and thereafter maintained, no applicant for Federal assistance could receive aid for any damage to such property in a future major disaster. State governments could elect to provide self-insurance on their public facilities. They could not be eligible for disaster assistance for damage to property on which they previously received aid if they could have obtained insurance. The conference substitute limits the insurance requirement to facilities belonging to State and local governments, and to private nonprofit educational, utility, emergency, medical, and custodial care facilities. The insurance requirement is deleted insofar as it applies to property owned by private individuals.

Mr. Speaker, the House conferees accepted even this limited insurance requirement reluctantly. We have no reliable data on the relative total economic costs of protecting property through the acquisition of insurance from insurance companies and protecting property through self-insurance with Federal assistance in the case of a major disaster. We intend to watch this provision of the legislation very carefully to insure that it is a workable provision and does not constitute a windfall to the insurance industry.

The Senate bill provided that any local government suffering a substantial loss of tax and other revenues because of a major disaster and demonstrating need for financial assistance to perform its governmental functions would be eligible for a loan not exceeding 25 percent of its annual operating budget for the fiscal year in which the disaster occurred. Part or all of the loan could be canceled to the extent that local revenues during the following 3 full fiscal years are not sufficient to meet the operating budget of that government. The conference substitute is the same as the Senate bill, except that the cancellation provision is made mandatory. This will insure that local governments receive the aid contemplated by the bill.

Title V of the Senate bill provides assistance for redevelopment in both the private and public sectors in an area damaged by major disasters. This title

contained a provision for a revolving fund. The revolving fund has been deleted from the legislation and, instead, the economic recovery provisions will be financed through a \$250 million authorization for appropriation.

Those are the more significant changes which were agreed to by the committee of conference. Mr. Speaker, I have a more detailed description of the provisions in the Senate bill and the changes agreed to by the conferees, and I ask unanimous consent that this description be included at this point in the RECORD. I wish, Mr. Speaker, to express my appreciation to the distinguished House conferees, the gentleman from California (Mr. JOHNSON), the gentleman from Texas (Mr. ROBERTS), the gentleman from Ohio (Mr. HARSHA), and the gentleman from Kentucky (Mr. SNYDER) for the fine job they did. I also wish to express my appreciation for the cooperation on the part of the distinguished Senate conferees.

I also wish to commend the chairman of our Public Works Committee, the gentleman from Minnesota (Mr. BLATNIK), for the outstanding leadership he has shown with regard to this legislation, and the ranking minority member of the committee, the gentleman from Ohio (Mr. HARSHA), our fine Water Resources Subcommittee chairman, the gentleman from Texas (Mr. ROBERTS), the ranking minority member of that subcommittee, the gentleman from California (Mr. CLAUSEN) and all the members of the full committee and the subcommittee for their valuable efforts in formulating and bringing to a successful conclusion the legislation which we bring to the floor today. I would commend all the staff who worked so hard on this bill and in particular Errol Lee Tyler, and Gordon Wood.

Mr. Speaker, I believe that we have come up with a good piece of legislation and I urge the approval of this conference report.

I include the following:

S. 3062: COMPARISON OF SENATE-PASSED BILL AND CONFERENCE SUBSTITUTE

EMERGENCIES

The Senate bill distinguishes between major disasters and those of lesser magnitude, which are termed emergencies. Federal assistance available in the case of an emergency includes technical assistance, advisory personnel, equipment, food, other supplies, medical care, and the like. The conference substitute is the same as the Senate bill.

DISASTER PREPAREDNESS

Present law authorizes 50 percent matching grants not to exceed \$250,000 per state to assist in developing disaster preparedness plans. S. 3062 authorizes a grant of up to \$250,000 with no matching requirement. The purpose is to encourage states to prepare disaster preparedness plans. The conference substitute is the same as the Senate bill.

INSURANCE

The Senate bill requires that insurance adequate to protect against future loss must be obtained for any disaster-damaged property which has been replaced, restored, repaired, or constructed with Federal disaster funds if insurance is reasonably available. Unless such insurance is secured, no applicant for Federal assistance can receive aid for any damage to his property in future major disasters. State governments may elect to provide self-insurance on their public facilities.

States which choose to act as self-insurers will not be eligible for disaster assistance because of damage to property on which they previously received aid.

The conference substitute limits the insurance requirement to facilities belonging to State and local governments, private non-profit educational, utility, emergency, medical, and custodial care facilities.

The conference substitute also provides that the President shall have the authority to make determinations with respect to the availability, adequacy, and necessity of insurance. The President, in making such determinations, may not require greater types and extent of insurance than are certified to him as reasonable by the appropriate State insurance commissioner. It should be noted that it is the intention of the conferees that this legislation shall give the President authority to require lesser types and extent of insurance than are certified to him by such State insurance commissioners.

PENALTIES

The Senate-passed bill provides criminal penalties for those who knowingly misstate facts in connection with an application for disaster assistance and those who knowingly misapply the proceeds of a loan or other cash benefit. The conference substitute is essentially the same as the Senate bill.

AVAILABILITY AND DISTRIBUTION OF MATERIALS

The Senate bill authorizes the President to provide for a survey of the construction materials needed in the major disaster area for housing, farming operations and business enterprises and to take appropriate action to insure the availability and fair distribution of such materials for a period not to exceed 180 days.

The conference substitute is the same as the Senate bill, except that public facilities, repairs, and replacement are included.

REPAIR AND RESTORATION OF DAMAGED FACILITIES

The Senate bill provides that assistance for damaged or destroyed public facilities can be provided under one of two plans at the option of eligible state or local governments. Grants may be made not to exceed 100 percent of cost for repair or reconstruction on a project-by-project basis, as authorized by current law or a Federal contribution based on 90 percent of the total estimated cost of restoring all damaged public facilities within its jurisdiction could be used to repair or restore selected facilities or to construct new ones. In those jurisdictions incurring damages totaling no more than \$25,000, a block grant based on 100 percent of the total cost for repairing or reconstructing those facilities would be made.

The conference substitute is the same as the Senate bill except that (1) with respect to the 90 percent contribution provision the cost estimate is made by the Federal Government, and (2) the \$25,000 block grant provision is made a new subsection (g) and the \$25,000 limit includes emergency assistance and debris removal in addition to public facilities.

HOUSING

The Senate bill specifically authorizes the so-called "mini-repair" program. Where a private dwelling is rendered inhabitable, it can be restored to a habitable condition in lieu of temporary housing being provided.

The Senate bill also authorizes the President to sell, or otherwise make available for disaster relief purposes, temporary housing units directly to states, other governmental entities and private industry organizations. At present such units may be disposed of only through the General Services Administration when declared to be in excess supply.

The President is also authorized to provide alternate housing sites and utility connections.

The conference substitute is the same as the Senate bill.

EXTRAORDINARY DISASTER EXPENSE GRANTS

The Senate bill authorizes the President to make grants to states of 75 percent of the actual cost of providing direct financial assistance to persons adversely affected by a major disaster. These grants are available to meet extraordinary disaster-related expenses or needs which are not provided for under this Act, under other programs, or by private means. Aid is limited to a maximum of \$5,000 for each family.

The conference substitute is essentially the same (based on the House amendment) with the exception that the provision is made retroactive to April 20, 1974.

UNEMPLOYMENT ASSISTANCE

The bill authorizes the President to provide disaster unemployment compensation through agreements with states which, in his judgment, have adequate systems for administering the program, and provides authority to extend the assistance for up to a year after the disaster.

The conference substitute is essentially the same as the Senate bill, but is clarified to eliminate possible inequities which could have resulted from the original language.

FOOD COMMODITIES

The Senate bill retains provisions of the 1970 Disaster Relief Act authorizing the President to make both food commodities and coupons available to disaster victims. In addition, it directs the Secretary to assure that adequate stocks of food will be readily and conveniently available for emergency mass feeding in any area of the United States in the event of a major disaster.

The reason for this section is that the current lack of surplus commodities, and the decision to replace the USDA family food distribution program by July 1 with food stamps, has raised questions about our ability to provide sufficient supplies for mass feeding and for home use after major disasters.

The conference substitute is the same as the Senate bill.

CRISIS COUNSELING ASSISTANCE

The Senate bill authorizes the President to provide professional counseling services and training for disaster workers, either directly or by financial assistance to State or local agencies to help relieve mental health problems caused or aggravated by a disaster or its aftermath.

The conference substitute is the same as the Senate bill.

COMMUNITY DISASTER LOANS

The Senate bill provides that any local government suffering a substantial loss of tax and other revenues because of a major disaster, and demonstrating need for financial assistance to perform its governmental functions, would be eligible for a loan not exceeding 25 percent of its annual operating budget for the fiscal year in which the disaster occurred.

Part or all of the loan could be cancelled to the extent that local revenues during the following three full fiscal years are not sufficient to meet the operating budget of that government, including municipal disaster-related expenses.

The conference substitute is the same as the Senate bill, except that the cancellation provision is made mandatory.

LEGAL SERVICES

The Senate bill authorizes the Administrator to assure the availability in a disaster area, with the advice and assistance of Federal agencies and state and local bar associations, of legal services to low-income individuals not able to secure such services because of a major disaster.

The conference substitute replaces the provision in the Senate bill with the original provision in the 1970 Disaster Relief Act.

ECONOMIC RECOVERY FOR DISASTER AREAS

Title V of the Senate bill provides assistance for redevelopment in both the private

and public sectors. The assistance is provided through Recovery Planning Councils.

Determination of the need for special economic assistance and appointment of a Recovery Planning Council rests with the Governor. A majority of the Council members must be elected local officials. The national and state governments would each have one representative.

The Recovery Planning Council may revise existing land use, development or other plans, develop new ones, and prepare a five-year Recovery Investment Plan for submission to the Governor and to responsible local governments. The Council also may recommend changes in the programming of available or anticipated federal funds.

Funds authorized for federal-aid projects or programs in a major disaster area may be placed in reserve according to such recommendations. If the Governor requests, and affected local governments concur, these funds may be transferred to the Recovery Planning Council to implement the Recovery Investment Plan.

Loans may be made by the Recovery Planning Council to any state or local government, and private or public non-profit organization in a major disaster area to carry out the Recovery Investment Plan. Loans can be made for the acquisition or development of land and improvements for public works, public service or public development facilities (including parks and open spaces), and for acquiring, constructing, rehabilitating, expanding or improving those facilities (including machinery and equipment).

The conference substitute is the same as the Senate bill except that (1) necessary clarifying amendments have been made, (2) existing EDA and Appalachian Regional Development organizations in disaster areas are to be used as Recovery Councils, and (3) the provision for a revolving fund is deleted.

Mr. GROSS. Will the gentleman yield?

Mr. JONES of Alabama. I yield to the gentleman.

Mr. GROSS. Are all of the amendments germane to this bill?

Mr. JONES of Alabama. I would say to the gentleman from Iowa that certain provisions have been added in the conference that were not in either the Senate or House bill. For example, the individual and grant program which was contained in both the Senate and House bills effective as of April 1, 1974, were made retroactive to April 20, 1973. A second item dealing with farm fencing was added although not originally in either bill.

Mr. FLOWERS. Will the gentleman yield?

Mr. JONES of Alabama. I yield to the gentleman.

Mr. FLOWERS. I thank my dean of the Alabama delegation for yielding to me.

I want to express my appreciation to the chairman of the committee, the distinguished gentleman from Minnesota (Mr. BLATNIK) and the ranking minority member, the gentleman from Ohio (Mr. HARSHA) and the dean of my delegation for making this legislation retroactive to 1973 through the conference. I think it shows a great deal of feeling and forebearance on the part of the committee for those who were damaged by the catastrophes of last year.

Mr. JONES of Alabama. I will say to the gentleman from Alabama that he was one of the great advocates of making the individual grant program retroactive when the disaster legislation was before the House before the Easter recess. It was in large part due to his efforts that

the effective date of this grant program was made April 20, 1973, when the loan forgiveness provisions in prior law expired. By doing this, we avoid the inequities which would result in having a forgiveness provision until April 20, 1973, and a grant provision as of April 1, 1974, with people hit by a major disaster between those dates receiving no comparable assistance.

Mr. HARSHA. Mr. Speaker, I yield myself such time as I may use.

Mr. Speaker, I support adoption of the conference report on S. 3062, the Disaster Relief Act of 1974.

As you remember on April 11, we came before the House with a disaster relief bill, S. 3062, as amended by the Committee on Public Works. At that time, we had an extensive colloquy on the provisions of our amendment addressing individual and family grants.

We made a commitment that we would thoroughly review all the provisions of S. 3062 as passed by the other body. We did not at that time wish to accept this bill in toto without the type of review and scrutiny that a bill of this importance requires and deserves. We promised to expedite our review and come before you with a conference report which would meet our disaster relief needs. This we did; we reached agreement on a comprehensive disaster relief bill. I commend it to you.

We also indicated on April 11 that we would try to incorporate a retroactive provision in the individual and family grants section. I am also pleased to report to you that we were successful in our conference with the other body. The provisions of section 408 take effect as of April 20, 1973, the time the "forgiveness" provisions of prior law were eliminated.

Mr. Speaker, the history of Federal disaster legislation is one of supplementing State and local government efforts and available resources. This concept is continued, and emphasized, in the Disaster Relief Act of 1974. It is fundamental to the system of Federal assistance which the bill establishes. Determination that an emergency or a major disaster exists rests, in substantial part, on a demonstration by the Governor that the situation is serious enough to warrant positive action by State forces.

There are, obviously, disasters of such magnitude and impact that the need for Federal assistance is immediately apparent. In these cases the Federal response should not be delayed by time-consuming exchanges of formal correspondence. It has been demonstrated time and again the speed with which Federal response can be brought to bear in these critical situations. But speed of Federal response should not stand as a substitute for the even speedier response required from local and State government, nor should the introduction of Federal aid be the signal for States and local governments to reduce their own commitments. It is through the combined efforts of local and State governments, and the Federal Government, that the ravages of disaster can be lessened and the impact of disaster eased.

The more effective response to disasters which this bill makes possible will require planning and preparedness ac-

tions at all levels of government. Title II of the bill recognizes this as well as the continuing need for improving disaster preparedness generally. We must also recognize that plans and programs for preparation against disaster and for assistance after a disaster cost money to develop. Accordingly, title II provides for grants to the States for these preparedness purposes.

A great deal of money has been spent in the name of disaster planning—some of it wisely and productively, and some perhaps without meaningful tangible result. The planning grant authorized in this bill is not intended to perpetuate any nonproductive planning that may have preceded it. It is intended to be used wisely and carefully and constructively with the primary view of developing State and local response mechanisms and capabilities which can mesh quickly and easily with the Federal effort when such effort is brought to bear.

In future emergencies and major disasters, we expect improved coordination of local, State, and Federal efforts to reduce hardship and suffering promptly by effective actions and ready commitment of resources.

Chief among the critical and urgent planning needs is preparation by the States to carry out those responsibilities upon which the entire assistance efforts will depend. In this regard, I call attention particularly to the individual and family grant program which is the responsibility of the State to administer.

One of the features of section 408, individual and family grant programs, is the authority for the Federal Government to make an advance to the State to help the State meet its 25-percent share of the grants. It is an important provision, particularly in the first months of the program before States have the opportunity to amend their laws or take other actions necessary to permit immediate participation in this vital grant assistance program. The authority to make such advances recognizes the possibility that some States may be unable to participate until new State legislation has been passed, or other action has been taken to remove legal or fiscal barriers to State participation. The advance will permit such States to implement the individual and family grant program in the event that disaster strikes before the necessary internal actions are completed. Advances made under these conditions are to be repaid when the State is able to do so.

The individual and family grant program permits the Federal Government and the State to join together in meeting necessary expenses and various needs which cannot be met otherwise under the law or through other means. Grants under this program will fill that void which may still exist when other assistance programs have been applied. That is the test for eligibility; not level of income, nor ability to obtain a loan which can be partially forgiven, nor loss or damage to real property. The test is simple and direct; that a disaster-related, necessary expense or serious need exists which the individual or family is unable to meet with other assistance authorized in the bill or through other means.

One example of the type of section 408

assistance the committee had in mind is assistance for students who were forced to leave damaged campuses before the end of their regular academic term and thereby incurred what to them are major expenses such as gathering and replacing lost belongings, transportation to home, and substitute living expenses.

Many students who believe the colleges are damaged beyond repair are seeking other locations to continue their education or are dropping out of the educational process temporarily. This consideration is of special importance because in the example of Wilberforce University, 80 percent of the students are from families with \$7,500 annual income or less and the average student's home is 500 miles from the university.

In referring to Wilberforce University, I wish to bring to the attention of the House a significant provision of this bill. I refer to subsection 402(b) which authorizes the President to make grants to help repair, restore, reconstruct, or replace private nonprofit educational facilities which were damaged or destroyed by a major disaster. This subsection will provide the necessary assistance to reconstruct Wilberforce University where so much havoc was wrecked by a tornado last month. My good friend and colleague from Ohio (CLARENCE BROWN) was most effective in communicating with the committee the necessity for the language of subsection 402(b).

Under the bill, Federal assistance can be provided at a Governor's request to cope with emergencies not of major disaster proportions but which are beyond State and local government's ability to deal with effectively. This is a progressive step forward which recognizes that some critical situations can be met without full implementation of all the authorities contained in the bill.

The Congress in this legislation has provided expanded Federal funding for the important tasks of repairing, rebuilding, restoring, or reconstructing the facilities for essential public services. A local or State government may now exercise discretion in selecting the projects to be undertaken and in committing available Federal funds.

Recent legislation has already provided a requirement for flood insurance for buildings in flood-prone communities. This new law has taken another step forward by requiring other types of insurance in numerous situations where Federal funding of recovery work is desired.

Mr. Speaker, we are justifiably pleased to bring to the House the conference report with its initiatives broadening the scope of Federal disaster assistance while placing increasing reliance on individuals, local and State governments to cope with future disasters.

Mr. BAKER. Mr. Speaker, will the gentleman yield?

Mr. HARSHA. Mr. Speaker, I yield such time as he may consume to the gentleman from Tennessee (Mr. BAKER).

Mr. BAKER. Mr. Speaker, there are few times when it is as important for the Congress to act promptly to provide immediate help and assistance as it is now. There are many people especially in need of this assistance because of the recent

series of tornadoes around the country. One has only to travel around districts which bore the brunt of those tornadoes to know how many people are in such need of assistance.

The good people of my district in Tennessee, for instance, know first-hand the desolate feeling of being literally wiped out in the short time it takes a tornado to cut its destructive swath. I will not take the time of this House to describe in great detail the extent of the damage I saw when I visited several of my counties in April—but it was absolutely enormous in its impact. It seemed to me then and it seems to me today that if any help is appropriate to any individuals from their Government, certainly natural disasters are the circumstances under which that aid is called for.

The Federal Government must help—not out of charity—but because we help ourselves when we help someone get back on his feet and return to a normal productive life for himself, his family, and his area of the country.

The first reaction of people I talked with in our tornado-stricken area was one of relief they were alive. They had great empathy and sympathy for others who had been affected, especially for those affected worse than they. There was camaraderie and great courage and a getting together in the face of crisis. After a few days, though, as happens with any of us who have gone through such a time, the spirits sink. When you need help in a time of disaster, you need it quickly. This is why it was so gratifying to me, as a member of the Committee on Public Works, to participate in the development of S. 3062 which will do much to provide that assistance not now available under the 1970 act.

I am particularly pleased with section 408 which will authorize grants of up to \$5,000 to families and individuals adversely affected by a major disaster who are unable to meet disaster-related necessary expenses or serious needs with assistance under this act or by other means. This provision is a Federal-State partnership. The Federal share will be 75 percent and the State share 25 percent of the cost of providing such needs and services by the Governors as expeditiously as possible.

Further, it is good to know that Federal technical assistance and expertise will now be made available to plan and implement the disaster relief program. This will help foster Federal-State cooperation and coordination in providing prompt and effective disaster assistance. We should be able to provide this assistance in the future with minimum delay and difficulty.

Mr. Speaker, there are many other provisions in this conference report which will revise and broaden existing programs and greatly assist the rendering of help to all those affected by natural disasters. Others have or will describe different sections of this conference report. I will, therefore, simply say that I strongly support this conference report and commend it to you. Further, I wish to recognize and thank the chairman, the gentleman from Minnesota (Mr. BLATNIK), the gentleman from Alabama (Mr. JONES), the gentleman from Ohio (Mr. HARSHA) and the gentleman

from California (Mr. DON CLAUSEN) for their able assistance and leadership in bringing this legislation through Congress.

Mr. HARSHA. Mr. Speaker, I yield such time as he may consume to the gentleman from Kentucky (Mr. SNYDER).

Mr. SNYDER. Mr. Speaker, I had the privilege of being one of the conferees on the Disaster Relief Act of 1974. I wish to express my support for the conference report before the House today.

I believe that the Congress has come to realize that there is no such thing as a perfect disaster relief law for all time. Each disaster as it occurs presents in some way new problems that require legislation. Nevertheless, we have in effect developed over the years an effective basic law for disaster relief which requires from time to time changes to conform with unforeseen situations that arise.

The conference report before us retains the good features of past legislation and adds some new concepts that heretofore have not been included.

Among the newer ideas is that of emphasis on disaster preparedness. The conference report recognizes that there are certain emergency situations that do not qualify as major disasters, but which nevertheless require limited aid. This aid, such as technical assistance, equipment, food supplies, personal medical care, and other essentials, would now be available when a major disaster threatens. For example, the law refers to this situation as an "emergency." In addition, it is a catastrophe that is naturally caused by the resulting damage, some of which is not of sufficient severity to warrant major disaster assistance.

Disaster assistance preparedness grants to the States are made available and the disaster warning provisions of existing law are retained and updated. Emphasis is placed upon the need for a disaster preparedness program.

Title IV of the Federal Disaster Assistance Act authorizes repair, reconstruction, restoration or replacement of public facilities. The definition of "public facilities" is broadened and clarified. Of particular interest to me, for example, is language which makes it clear that if a park suffers damage and is eligible for disaster assistance that the trees, vegetation and other natural features shall be restored to the extent practicable. In some cases, this restoration could be fairly complete—in other cases the restoration might include reforestation and planting of young trees to replace the old in time.

Public facilities that receive disaster aid require insurance against future disaster losses. This is a somewhat controversial provision which the conferees agonized over and finally accepted in its present form for the purpose of protecting against repeated payments of the taxpayers' dollar for the repair of the same facility. If insurance is not reasonably available, adequate and necessary, the applicant would not be required to obtain it. Other features of this bill include debris removal; temporary housing assistance, with a provision by which the occupant may buy the temporary housing from the Government; establishment of minimum standards for structures; unemployment assistance

that would allow payments of unemployment insurance to those who otherwise might not be eligible; those whose eligibility have expired as well as those who are eligible under unemployment compensation laws. In all cases, the period for eligibility payments is extended.

Section 408 is the portion of the bill dealing with individual and family grant programs that was originated and passed by this House. It authorizes the making of grants to a State for the purpose of the State making grants to meet disaster related necessary expenses or serious needs of individuals or families adversely affected by a major disaster when they are unable to meet such expenses or needs. This is a matching grant program of which the Federal share is equal to 75 percent and the State share is 25 percent. Recognizing that the State might require legislative action for a period of time to come for the portion of its share, the President is authorized to advance to such State an amount equivalent to its share. The grant is limited to \$5,000 to an individual or family with respect to any one disaster.

A provision is made for food coupons and distribution, food commodities, relocation assistance, legal services and crisis counseling, and training to victims of major disasters in order to relieve mental health problems caused or aggravated by the major disaster or its aftermath.

Community disaster loans are included to provide for revenues that are lost because of the failure of utility systems to deem this a major disaster. Emergency communications, emergency public transportation, and fire suppression grants remain in the law.

A choice is given to an applicant for the repairing, reconstructing, restoring, or replacing of public facilities to permit a contribution by the Federal Government based on 100 percent of the total estimated cost wherever the total estimate is over \$25,000 to either repair, reconstruct, restore, or replace all the facilities, some of the damaged facilities, or construct new public facilities. When the amount involved exceeds \$25,000, there is another choice available to the community. It may receive a grant for 100 percent of the net cost for repair, reconstruction, restoration, or replacement of the facility on the basis of the design price to the disaster updated if necessary to meet current codes, specifications, and standards. In the alternative, it may choose to construct new facilities replacing the old, but would receive a contribution of 90 percent of the Federal estimate for repair, reconstruction, restoration, or replacement of all the damaged facilities.

Title V of the conference report amends the Economic Development Act of 1975 to add a new title VIII which establishes some new methods by which areas that have suffered disasters and that are eligible for economic development assistance to rearrange priorities and do recovery planning in such areas. Authorization provided for funding a Recovery Planning Council for the implementation of recovery of investment plans by public position, loan guarantees, and technical assistance are provided for as well.

In conclusion, Mr. Speaker, I feel that the legislation before us is very worthwhile and goes to the needs of those affected by the recent disasters. As such, it will be welcome law, and I urge acceptance by this body.

Mr. HARSHA. Mr. Speaker, I yield such time as he may consume to the gentleman from California (Mr. DON H. CLAUSEN).

Mr. DON H. CLAUSEN. Mr. Speaker, I commend the conference report on S. 3062, the Disaster Relief Act of 1974 to my colleagues in the House.

This conference report continues the efforts of Congress which in the past has been magnanimous in recognizing that the Nation as a whole must share the risk of disasters and that the Congress, therefore, should and would provide disaster relief assistance. This help in the form of the various disaster relief acts and amendments has helped thousands of our citizens and has been most effective. The conference report we have before us today will continue and build upon the basic program and mechanism established in the Disaster Relief Act of 1970, Public Law 91-606 brought to the House in 1970 by our committee.

I urge you to support the conference report and provide immediate help to the thousands of persons who lost loved ones, were injured or lost homes and property. Schools and colleges, public and private; businesses; and individuals will be helped by the Disaster Relief Act of 1974.

Mr. Speaker, I would also like to call your attention to significant amendments which were incorporated in the bill by the conferees on the part of the House. I refer to the incorporation of the word "property" in sections 305(a) and 306(a) (4).

The inclusion of the word "property" in sections 305 and 306 is quite important. It recognizes that emergency and disaster assistance may be provided to protect property as well as lives, health, and welfare. Further, as noted so clearly in the discussion of section 305 in the statement of managers, the term property includes livestock.

Mr. Speaker, the clear reference to livestock in the statement of managers is very important to dairy farmers in my district and particularly to those farmers in the Eel River Delta Area. These farmers experienced ravaging floods of increasing severity in 1937, 1955, 1964, and yet twice again this year in 1974. In addition, there are varying degrees of flooding every year. There is a compelling need for a place to which their dairy herds might be removed at times of flood peril. We, for example, are advocating that buildings at the Humboldt County Fairgrounds be modified to receive the herds for the duration of flood emergencies.

My Eel Delta Task Force and the Corps of Engineers recommended this disaster planning and preparation alternative. It is for the above reason that I requested the House conferees add this necessary language with the intent of providing some needed emergency disaster assistance flexibility.

The statement of managers addressed this as follows:

It is also the intention of the conferees that the President, in providing assistance under this section and other applicable sections of this legislation to save lives and protect property and public health and safety, may provide assistance to owners of livestock or the State or local governments for the provision of facilities to protect such livestock from disasters.

An example of this type of assistance would include facilities to which livestock may be removed and kept protected from the ravages of a disaster in a safe and sanitary manner and provide for the well being of such livestock.

Mr. Speaker, we expect that sections 201, 305, and 306 will be implemented with this intent of Congress in mind. For example, section 201(c) authorizes grants to States of \$250,000 for the development of plans, programs, and capabilities for disaster preparedness and prevention. It is intended that portions of these funds could be used to provide facilities for holding livestock or providing other capabilities.

The amount of protection which could be provided at low cost is surprising. For example, a total expenditure of \$250,000 to \$350,000 would be sufficient to modify existing barns at the Humboldt County Fair Grounds to provide a holding area for 3,000 to 5,000 dairy cattle. At times of emergencies it would be possible to set up a warning system and transport the dairy herds to the barns which would be equipped to protect the herds and which would have temporary milking and feeding capabilities. Thus, the herds would be protected and a reliable supply of our most important food, milk, would be assured, and the basic agricultural economy will be stabilized and more secure.

Mr. Speaker, I believe we can significantly reduce the potential for damage from emergencies and disasters. We can protect property, including livestock, as well as human lives and health. The way has been made clear. I urge adoption of the conference report.

Major flood control structures of the Eel River which would eliminate the threat of flood damages cannot be constructed in the immediate future because of environmental, economic, and State legislative limitations. Thus, the objective of this legislation is to do something now.

Mr. HARSHA. Mr. Speaker, I yield such time as he may consume to the gentleman from Ohio (Mr. CLANCY).

Mr. CLANCY. Mr. Speaker, I rise in support of the conference report which would provide more and faster assistance to victims of disasters.

I support the conference report because it is another example of Congress recognition of the help which must be provided to individuals and families if they are to restore the homes, businesses, and communities which are ravaged by unpreventable disasters.

To some extent, the Disaster Relief Act of 1974 was rushed to the floor because of the recent tornadoes which devastated many parts of our country, including Sayler Park and Green Township in the Second Congressional District of Ohio which I represent and other nearby areas in and around Cincinnati. However, this act is not just a remedy for our recent tragic occurrences. It recognizes that dis-

asters, by their very nature, can strike any of our communities at any time.

Disaster relief legislation is most important, so that we take care of our own in their hour of greatest need and as rapidly as possible. This legislation can provide assistance in the future to your district as well as to mine.

I am particularly pleased by the provisions of section 408 which provide for grants to individuals and families. This section will allow grants to be made to meet those expenses and needs which cannot be met by other provisions of law. Grants of up to \$5,000 will be available to individuals and families for their needs. This provision of section 408 is retroactive to April 20, 1973, while the rest of the act is retroactive to April 1, 1974, before the tornadoes which struck the Cincinnati area and surrounding States on April 3.

Mr. Speaker, it is most gratifying to see Congress meet the needs of disaster victims. I especially commend my good friends on the Committee on Public Works for their diligence and concern in this very important matter. They have again brought legislation to the House which meets a pressing national need.

Mr. BLATNIK. Mr. Speaker, will the gentleman yield?

Mr. HARSHA. Mr. Speaker, I am happy to yield to the distinguished chairman of the Committee on Public Works, the gentleman from Minnesota (Mr. BLATNIK).

Mr. BLATNIK. Mr. Speaker, I rise in support of the conference report on S. 3062, the Disaster Relief Act of 1974. I want to commend the leadership on both sides of the Committee on Public Works, and the staff, for the work that they have done in considering the disaster relief program ever since the beginning of that program.

I want to cite particularly the ranking member, the gentleman from Alabama (Mr. BOB JONES) the ranking minority member, the gentleman from Ohio (Mr. HARSHA) and all of the members of the committee. They have made many trips into disaster areas in various parts of the country to observe firsthand the tremendous damage caused by disasters and to determine the needs of the people in these areas.

Prior to the 1950 enactment of Public Law 875, there was no permanent program for Federal disaster assistance to State and local governments. Private agencies bore the primary responsibility for disaster relief. However, many special disaster relief acts were passed by the Congress for specific disasters; between 1803 and 1950, over 100 separate special assistance acts were passed by the Congress. Also, some Federal agencies had authority to render assistance in particular cases of disasters. The Corps of Engineers has had an emergency flood fighting authority since 1941, and since 1934, the Bureau of Public Roads has assisted the financing, repair, and reconstruction of disaster-damaged highways. The Reconstruction Finance Corporation also had authority to make disaster loans in the 1930's.

In 1947 Congress enacted the first general disaster relief act—Public Law 233 of the 80th Congress—directly authorizing the War Assets Administrator

to transfer surplus Federal property to the Federal Works Administrator who, in turn, was to lend or transfer this property to State and local governments to alleviate disaster impact.

In 1950, Congress passed the first comprehensive Federal Disaster Act (P.L. 81-875) giving the President broad and continuing disaster assistance powers in those cases in which he declared the situation a major disaster. This law was directed principally at aiding the recovery and repair of public facilities of local governments.

In 1952, this law was amended to provide for the easing of credit restrictions under the National Housing Act, and to authorize the furnishing of emergency housing for victims of disasters. The law was further amended in 1953 to permit the loan and donation of Federal surplus property to State and local governments for repair of disaster damaged public facilities.

In 1962, Guam, American Samoa, and the Trust Territories were made eligible for Federal disaster assistance (P.L. 87-502). This 1962 law also authorized emergency repair and temporary replacement of disaster damaged facilities of State governments—The 1950 act had only applied to local government facilities.

In 1966, rural communities, unincorporated towns and villages were made eligible for Federal disaster aid. The 1966 act also added to the basic disaster law authority to plan and coordinate all Federal disaster assistance, disaster preparedness, and a study of ways to prevent or minimize loss of property, personal injury and death from forest and grass fires.

In the 1960's, the Congress enacted a limited number of laws that provided increased Federal aid in several major disasters: in Alaska, the Pacific Northwest, and the Southeast.

In 1969, the Congress passed the Disaster Relief Act of 1969 (Public Law 91-79). This act permitted disaster loans by SBA and FHA, with authority to cancel part of the loans; permitted the President to distribute food coupon allotments and surplus food commodities; authorized unemployment assistance to individuals unemployed as a result of a major disaster; authorized debris removal and provided financial assistance to States to develop disaster assistance programs.

The Disaster Relief Act of 1970 was a consolidation and modernization of all of the previous disaster relief laws. It provides the following assistance:

- Temporary housing.
- Home, business, personal property loans.
- Food commodities or food stamps.
- Disaster-related unemployment compensation and/or employment assistance.
- Legal aid for disaster-related problems.
- Debris removal from private property.
- Repair and restoration of public facilities.

The Disaster Relief Act of 1974 is essentially the same as the 1970 act with a number of improvements which experience has demonstrated would be useful. The major changes made by the 1974 act would be as follows:

First, major disasters are distinguished from those of lesser magnitude, which are termed emergencies—and Federal assistance of differing degrees is made available in both cases.

Second, a grant of up to \$250,000 with no matching requirement is authorized to assist States in developing disaster preparedness plans.

Third, where facilities of local and State governments and private nonprofit organizations are repaired or restored, with assistance made available under the act, the owners of these facilities must thereafter obtain insurance to the extent it is reasonably available. In the absence of insurance, no future disaster assistance would be made available for these facilities.

Fourth, penalties are imposed for misstatement of fact in an application for disaster assistance and for misapplication of cash benefits.

Fifth, in connection with the repair or restoration of damaged public facilities, a State or local government has the option of receiving grants on a project-by-project basis, or receiving a block grant based on the estimated cost of restoring all damaged facilities which could be used to repair or restore selected facilities or to construct new ones.

Sixth, the so-called minirepair program is specifically authorized.

Seventh, grants of up to \$5,000 for each household are authorized to meet disaster-related expenses for which there is no other adequate relief.

Eighth, unemployment assistance is extended.

Ninth, community disaster loans are authorized to communities suffering substantial loss of tax and other revenues because of a major disaster. Part or all of the loan is canceled to the extent that local revenues during the 3 years after the disaster do not meet the operating budget.

Tenth, assistance is provided for redevelopment of areas damaged by a major disaster.

In conclusion, provisions of this legislation will fill needs which exist in the present disaster relief program and enable it to perform more effectively in assisting areas which are damaged by a major disaster. Mr. Speaker, I urge support of the conference report.

Mr. TREEN. Mr. Speaker, will the gentleman yield?

Mr. HARSHA. I yield to the gentleman from Louisiana.

Mr. TREEN. Mr. Speaker, I have a question. I refer to page 12 of the report, section 402(f). I think that the bill went through rather quickly, and I do not know whether the Members have had the opportunity to study all of the provisions in the bill. I would appreciate clarification of the provision which permits the Federal Government to pay 90 percent of the cost of a structure when the State or local government decides that it does not want to replace that structure.

In subsection (e) it provides that the Federal Government may pay 100 percent of the cost of repairing, restoring, reconstructing or replacing any publicly owned structure, which I have no quarrel with, but in the next section, in section (f), it provides that if the local govern-

ment or the State government does not wish to replace the structure, that the Federal Government will pay 90 percent of the estimate of repairing or restoring that structure, based on the design of the facility as it existed immediately prior to the disaster.

It seems to me that if you have a structure—and I can think of some beautiful Greek revival structures such as court-houses, and so forth—that could be destroyed in a disaster, and the local government decides that it is not going to replace that particular structure, then the bill requires that the Federal Government pay 90 percent of the cost of reconstruction according to its previous design. An estimate for reconstruction based on existing design, even at 90 percent could run substantially higher than the cost of a substitute structure of comparable functional capacity.

It would seem to me that we may be providing excessive payments in this legislation.

Mr. JONES of Alabama, Mr. Speaker, will the gentleman yield?

Mr. HARSHA, I am happy to yield to the gentleman from Alabama.

Mr. JONES of Alabama, Mr. Speaker, perhaps I can answer the inquiry of the gentleman from Louisiana (Mr. TREEN). When the bill talks about the design of the structure, it does not mean an exact physical reproduction, but means a new structure which would have the same capacity as the old structure. This is explained on page 38 of the conference report.

Mr. HARSHA, Mr. Speaker, I might point out to the gentleman from Louisiana (Mr. TREEN) that this section is operational when the State or local government decides that it is not to their advantage to restore the building. The added flexibility available to communities justify the 90-percent provision. We did not provide for 100-percent payments if communities are not going to rebuild the existing structure. This might be unjustifiably liberal. However, if the community puts up the same type building, then they get 100 percent.

If the community decides that the best interests of the community would be served by not rebuilding that particular school but rather by building some other school that would necessarily serve the public better, then we have provided the flexibility to permit them to do just that.

Mr. TREEN, If the gentleman will yield further, I am not opposed to the concept of letting the local government decide that it does not want to replace that structure. I think 90 percent is fine, but the question I raise is this: the legislation requires that the estimate of restoring that building be based upon the "design" of that structure immediately prior to the disaster, and we could not possibly rebuild some of these structures as previously designed for anything near the cost of a new structure. I am trying to establish a little legislative history.

I am all in favor of this, I might say to the gentleman. It will help my area. But I am concerned about this opening the way, to costs far in excess of that which would be required to build a comparable structure because of the pro-

vision that the estimate be based upon the prior design of the structure.

Mr. HARSHA, We could not possibly let them design some particular new structure on the basis of some new architectural design and replacement codes on old archaic designs. New codes could have expanded capacity requirements. We have to have some kind of guidelines in which to base this estimate. I refer the gentleman to the statement of managers which discusses this problem.

Mr. BROWN of Ohio, Mr. Speaker, will the gentleman yield?

Mr. HARSHA, I yield to the gentleman from Ohio.

Mr. BROWN of Ohio, I might suggest to the gentleman that there exists in the city of Xenia a particular situation to which this has application. As the Members know, Xenia was approximately half destroyed in the recent tornado. In that community the school administration has begun to make a study of its location of school facilities and the nature of those school facilities with reference to their replacement, because about half of the elementary facilities were destroyed, as were most of the junior high school facilities, and the only high school.

The point is that in rebuilding those facilities, it is now believed that they would be better off relocating these various schools from where they originally existed. They are designing schools that are of uniform size, rather than having some appropriate for 200 students and some that are appropriate for 1,000 students. The point is that there is a need for replacement funds by the Federal Government for those public facilities to be constructed on the basis of what existed before the disaster but that they not be unduly enriched by the provision for flexibility if the local system decided to build their schools in different sizes and segments and at different locations. I think that is the reference in this legislation.

Mr. HARSHA, I should further like to point out to my friend the language on page 38 of the Statement of the Managers:

The intent of the conferees in this section is to provide for Federal payment for a new facility that would provide the same capacity as the old facility if it were to be built today according to up-to-date standards.

We require that the current applicable code specifications and standards be met, but we do not want communities designing some extravaganzas that will not meet the capacity that the original building was constructed to serve.

Does that answer the gentleman's question?

Mr. TREEN, I appreciate the comments of the gentleman and having that legislative history. I am for the flexibility. There is no quarrel with what was said awhile ago. It is just that we do not want to be paying the excess cost for some archaic design.

Mr. BROWN of Ohio, Mr. Speaker, will the gentleman yield?

Mr. HARSHA, I yield to the gentleman from Ohio.

Mr. BROWN of Ohio, I thank the gentleman for yielding.

Mr. Speaker, I rise to express my ap-

preciation as the Member of Congress who represents Xenia, Ohio, which was recently so terribly ravaged for the prompt consideration of this legislation by the Committee on Public Works. I thank the gentleman from Alabama, the floor manager of the conference report, the gentleman from Minnesota, the chairman of the full committee, and the gentleman from Ohio, (Mr. HARSHA) who is the ranking member of the full committee.

I would like to recite very briefly, if I may, the extent of the devastation which one community, Xenia, Ohio, has experienced in this recent tornado and the basis of the need for this legislation. Let me point out, if I may, that a total of 1,226 residential structures, over 14 percent of this community, was destroyed in these tornadoes. Approximately 40 percent of the houses in this community were damaged. Mr. Speaker, 118 of the business operations in this community, 47 percent were totally demolished. Another 159 were damaged to the point where they were required either to be relocated or to obtain temporary assistance and repair. More significantly, perhaps, the sources of employment of approximately 33 percent of the 4,100 jobs in this community were destroyed in a few minutes. More than that, \$877,000 of the city's \$1,668,000 budget was lost in terms of property taxes lost because of this tornado.

Mr. Speaker, I hope the conference report will be passed promptly.

Again I want to express my appreciation to the committee. I hope the funds will be provided promptly to cover the needs of this community.

Mr. HARSHA, Mr. Speaker, the gentleman from Ohio (Mr. BROWN) has spent considerable time with me and with the other members of the committee during our consideration, bringing to our attention the great need in his community and the destruction, and he was quite helpful throughout our deliberations in giving us the benefit of his judgment and observations as he saw them in the State of Ohio. We appreciate not only his interest in the legislation but also his help in enabling us to arrive at a conference report which we all support.

Mr. Speaker, I urge support of the conference report and reserve the balance of my time.

Mr. PICKLE, Mr. Speaker, will the gentleman yield?

Mr. JONES of Alabama, I yield to the gentleman from Texas.

Mr. PICKLE, Mr. Speaker, I am very much concerned that this legislation does not cover some situations that I believe it was the intent of the original legislation to cover, and I know it was intended to cover it. I know on the conference report no amendments can be offered, but I want to recite a factual case that happened recently in my district.

In one of the counties—Fayette County—several farmers experienced a severe flooding problem last summer which occurred after the 1973 deadline. Under the terms of the legislation the disaster would have had to be designated as between December 1972 and April of 1973. This heavy flooding occurred immediately after this period. Our farmers made application under the Farmers

Federal Home Administration for relief because they had suffered a "disaster." After a long period of delay, even though it had been recommended by the State that this be declared a disaster, still the FHA ruled both at the State and Washington level that it did not occur during the period of time and they therefore would not declare this as a disaster.

As I look at the conference report and the definition and the purpose, what it clearly states is there could be an emergency or major disaster and it outlines the terms under which that could occur and it also states specifically it could be a community disaster or type of disaster which would affect a particular locale, namely farmers.

The intent was to try to give help, and yet the Farmers Home Administration would not approve that designation simply because they felt it might set some kind of national indication that this could cover every county in the United States. I grant they might have a problem about funds, but I simply say it ought to be understood that a farmer can have a disaster by heavy flooding, which wipes out his whole crop, just as much as if a tornado swooped down and wiped out every bale of his cotton or corn crop. If the farmers are not given some kind of relief, even though it is recommended by the Governor's office, then what relief do they have and where can they look for possible relief?

FHA takes a closed attitude about it down the street and will not do any more than say, "You do not qualify under the existing law."

I think we must have some form of relief as we go forward, because that is not equity for the farmer. Does the gentleman agree?

Mr. JONES of Alabama. The gentleman's observations are well taken as they relate to the program administered by the Farmers Home Administration. The bill before us today concerns emergencies and disasters under a program to be administered by the President. If there is a need to address the gentleman's problem, it should be done in other legislation. That legislation is under the jurisdiction of another committee.

I would make one point to the gentleman, that under the terms of this bill rural areas can be included in "major disaster areas" and those areas in which an emergency is determined to exist by the President. However, as I have previously pointed out, the farmers home loan program is not a part of this legislation.

Mr. PICKLE. Mr. Speaker, in order to have a chronology of the events in Fayette County, I want to put into the RECORD some excerpts of letters and correspondence showing the problems the farmers of Fayette County faced in trying to get help. This story could happen in every county in America.

The fact is that either under legislation like the bill before us today from Public Works, or under legislation from another committee, Congress needs to address itself to the questions, "What is a disaster, and who can qualify?"

First, I want to include a letter from Mr. Joe Peschal of La Grange, Tex.:

LA GRANGE, TEX., January 14, 1974.

DEAR REPRESENTATIVE PICKLE: The reason for this letter to you is to ask for your help and concern in a rightful way. We truly declare our county a disaster area in 1973 due to the extensive rains and flooding of our land and crops. They inflicted losses of more than eighty percent of all our crops, small as the crops were. These crops were completely submerged for 24 hours by water from Buckners Creek on June 15, 1973. This flood also leveled all our freshly plowed land which was prepared for hay. As yet not one bale of hay has been harvested on this land since the flood.

With these losses and the increase in fuel, fertilizer, and seed costs, the picture for this coming spring poses a grim picture indeed for the farmer.

Yours truly,

JOE A. PEEHAL.

Now I want to show the letter that the farmers of Fayette County wrote to Mr. Earl Butz, Secretary of the Agriculture Department:

LA GRANGE, TEX., March 23, 1974.

MR. EARL L. BUTZ,  
Secretary of Agriculture,  
Washington, D.C.

DEAR SECRETARY BUTZ: On October 19, 1973, the following news release appeared in the National Farmers Union Washington Newsletter:

"A restriction on FmHA Disaster Loans would be lifted under a bill passed by the Senate. The bill (S. 2482) would eliminate the requirement that farmers must first show that a loan is not available from other sources before they are eligible for FmHA loans. The bill would also reinstate FmHA loans at 1% with the \$5,000.00 forgiveness feature for farmers who suffered losses due to disasters between Dec. 27, 1972, and April 20, 1973."

At that time, the local farmers inquired at the local FmHA office, Mr. Clarence Matula, Supervisor, as to the availability of the program for Fayette County. They were advised that in order for Fayette County to become eligible for this disaster program, Fayette County Judge David M. Murray, La Grange, Texas, would need to request designation from Governor Dolph Briscoe of Texas. County Judge Murray, without any news media, received 100 and plus signed applications, exhibits 1 through 102. He then forwarded a letter of designation to Gov. Briscoe. Gov. Briscoe approved this designation for Fayette County and forwarded the information to the Texas State FmHA office in Temple, Texas.

After not hearing for several weeks, 27 local farmers visited the Temple FmHA office and they were advised that they were informed of this program, however Gov. Briscoe would have to submit this designation to you, Secretary Butz. We were advised that Gov. Briscoe had furnished this information to you.

On January 24, 1974, another news article on the subject again appeared in the National Farmers Union Washington Newsletter:

"A temporary reinstatement of the 1% FmHA Disaster Loan Program went into effect Jan. 2. The program, which provides emergency loans to farmers at 1% interest with a \$5,000.00 forgiveness feature, will re-open for 90 days. Only those farmers who suffered losses between Dec. 27, 1972, and April 20, 1973, will be eligible for loans under the temporary program."

As the 90-day reinstatement period was near ending, the local FmHA office said that they had no information of this program or if Fayette County was eligible. Several farmers contacted Gov. Briscoe's office and Congressman J. J. "Jake" Pickle's office in Austin and Washington, D.C. They all seemed to indicate that this was a re-instatement of the program of 1972 of which Fayette County was designated. Applications for this pro-

gram are being submitted to the local FmHA office here in La Grange. Exhibit 103 and 104 are examples of the answers we are getting to our applications.

The question is: Does Fayette County qualify for this designation from 1972, or the present designation pending in your office?

Secretary Butz, the farmers of Fayette County would greatly appreciate it if you would notify us as soon as possible if this program is available, either through the local newspapers or contacting Judge David M. Murray, County Judge, Fayette County, La Grange, Texas 78945. If this program is not available to us, we would also like an explanation of, since the Senate Bill 2482 was passed, why it is not being carried out.

We, the farmers of Fayette County, want to thank you for your assistance in this matter and also for the help you have been to us in the past. We appreciate the time you are taking in helping the farmers, not only here in Fayette County but all over the nation, to receive the benefits they rightly deserve.

Again, thanks for all your time and help.

Sincerely,

THE FARMERS OF FAYETTE COUNTY, TEX.

And here is the response from the Assistant Secretary of Agriculture, Mr. William Erwin, to the county judge of Fayette County, Judge David Murray:

DEPARTMENT OF AGRICULTURE,  
Washington, D.C., April 11, 1974.

Hon. DAVID M. MURRAY,  
Judge of Fayette County,  
La Grange, Tex.

DEAR JUDGE MURRAY: This is in response to your letter of March 20, 1974, concerning a request made by Governor Dolph Briscoe for a designation of Fayette County, Texas, as a disaster area for the period December 26, 1972, to April 20, 1973, to offer retroactive benefits to farmers and ranchers who suffered losses during this period.

Public Law 93-237, enacted January 2, 1974, provides that Emergency loans can be made at 1 percent interest with up to \$5,000 principal cancellation to applicants who sustained qualifying losses after December 26, 1972, and prior to April 20, 1973. This Public Law also removed the requirement that applicants show they are unable to obtain their needed credit elsewhere.

We asked the Farmers Home Administration to complete a survey of the need for such designation of Fayette County. After careful consideration of the information submitted, it does not appear that this county qualifies for a Secretarial designation.

We appreciate your interest.

Sincerely,

WILLIAM ERWIN,  
Assistant Secretary.

This was the response even though the Governor of Texas, the Honorable Dolph Briscoe, recommended this area of disaster relief. The letter gives no explanation as to why the county was turned down. The people need a better answer from their Government. The people need to know how to qualify so that such disappointment will not occur again.

The local FmHA did not recommend disaster relief, at least this is my understanding. Maybe this is the basic problem. The fact is that the local FmHA is limited by the law and the time frame that the law sets out, not on the needs of the people suffering from disaster.

Mr. Speaker, recently I met with 150 farmers in Fayette County. I learned first hand their deep feelings over their loss, and the disappointment they felt over not getting any relief.

While they were overlooked, their attitude was still strong, and affirmative,

and wholesome. They were not trying to rip the Government, nor have they ever tried to rip the Government. They did sense that their needs had not been met.

They made a good case to me for relief. We must give further consideration in the future to providing the kind of legislation to help people faced with similar problems.

Mr. KLUCZYNSKI. Mr. Speaker, I rise in support of S. 3062, the Disaster Relief Act of 1974. I wish to commend the chairman of the House conferees, the distinguished gentleman from Alabama (Mr. JONES) and the other House conferees for the outstanding job they did in working out the conference report on this bill. As has been pointed out here today, this conference substitute makes some very worthwhile and desirable improvements to the basic Federal disaster program authorized by the Disaster Relief Act of 1970. Disaster preparedness programs of the States are encouraged, and greater flexibility is added to the assistance which can be provided by the Federal Government.

The provisions regarding repair and restoration of public facilities are made more flexible and workable, and assistance is made available to local governments who suffer substantial loss of tax and other revenues because of major disasters.

In addition to this, an individual and family grant program is authorized to meet disaster-related expenses or needs which are not covered under the disaster program or other sources.

Mr. Speaker, I urge support of the conference report.

Mr. JOHNSON of California. Mr. Speaker, I rise in support of the report of the committee of conference on S. 3062, the Disaster Relief Act of 1974. I wish to commend the distinguished gentleman from Alabama (Mr. JONES) for the outstanding leadership he has shown as the chairman of the House conferees on this bill. The bill which he has brought back from conference is an improvement over the original Senate bill and represents the wishes of the House as expressed during the original House action on the Senate bill.

The conference substitute modifies and improves the comprehensive 1970 disaster relief legislation. These are changes which our experience has shown since 1970 to be desirable. I wish to particularly note that the conference substitute makes the individual and family grant program retroactive to April 20 of 1973, the date on which the forgiveness provisions of the Small Business Administration and Farmers Home Administration loan programs expired. This action, which was strongly urged by many Members of this body during the debate on the House amendment to the Senate bill, will prevent the existence of serious inequities which would have resulted if the 1-year gap in this sort of assistance had not been filled.

Mr. Speaker, I strongly urge support of the conference report.

Mr. ROBERTS. Mr. Speaker, I rise in support of the conference report on S. 3062, the Disaster Relief Act of 1974. The existing Federal disaster assistance program authorized by the Disaster Relief Act of 1970 is a good program and has

worked well. However, our experience with it has demonstrated that certain modifications and improvements are desirable to make it even more effective.

The Disaster Relief Act of 1974 as agreed to by the committee of conference makes these improvements. Major disasters are distinguished from those of lesser magnitude which are termed emergencies. Federal assistance will now be available in differing amounts in both situations. Federal encouragement to the States to come up with disaster preparedness plans is strengthened. Penalties are imposed for those who knowingly misstate facts in connection with an application for disaster assistance, and those who knowingly misapply the proceeds of a loan or other cash benefit. The provisions regarding repair and restoration of damaged public facilities are expanded to give the States or local governments the option of receiving a bloc grant to repair or replace damaged facilities or rebuild new ones, as they choose, in lieu of receiving project-by-project grants for each facility.

The so-called minirepair program whereby a dwelling is restored to a habitable condition is specifically authorized. Individual and family disaster assistance grants are authorized and this provision is made retroactive to April 20, 1973. Unemployment assistance is extended. Community disaster loans are provided for with forgiveness of that part of the loan which represents the amount by which local revenues are not sufficient to meet the local operating budget for the 3 years after the major disaster, and economic development assistance is provided for areas hit by a major disaster.

Mr. Speaker, these are all desirable improvements in the 1970 disaster program. They represent the very careful consideration of the committee of conference of the provisions of the Senate bill and the House amendment. As a conferee I congratulate the gentleman from Alabama (Mr. JONES) for his leadership as chairman of the House conferees. The conference substitute is good legislation and deserving of the support of the Members of the House. I strongly urge its approval.

Mr. BEVILL. Mr. Speaker, I rise to express my strongest support for the conference report to S. 3062, Disaster Relief Act Amendments of 1974.

In my judgment, these amendments greatly improve the Federal disaster relief program and will be of tremendous benefit to the people of this Nation. It will also benefit thousands of people in the Fourth Congressional District of Alabama, which I represent.

Some of the counties in my district were the hardest hit by the tornado which struck Alabama on April 3. The devastating tornado left 81 persons dead and over 800 injured and also destroyed almost 900 homes. An estimated 70 percent of the downtown business district of Jasper, my hometown, was damaged or destroyed.

The city of Guin, Ala., was severely damaged and 22 people were killed.

Eleven of the 16 counties in Alabama which were declared a disaster are in my district.

As soon as I learned of the extensive

damage done by the tornado, I contacted the White House and urged the President to declare the area a disaster. I then flew to Alabama to get a first-hand view of the areas hit and to do what I could to see that the victims received all the help they needed.

What I saw was suffering and destruction. I can report to you, first hand, the great need for these amendments.

I feel we have made much progress in delivering the services of various Federal agencies to those who suffered losses. But these amendments will definitely improve the program. They have been drafted after careful study and many hours of consideration.

As you know, this bill provides immediate relief for the five States struck by tornadoes in April. It will be money well spent. I know, for I have already seen some of the disaster programs in action.

I want to congratulate the members of the conference committee for their work on the legislation and for recommending these much needed amendments. And I urge my colleagues to give their strongest support to this legislation.

Mr. MALLARY. Mr. Speaker, I rise in support of the conference report on the Disaster Relief Act Amendments of 1974.

I would first of all like to extend my appreciation to the chairman of the Public Works Committee (Mr. BLATNIK) and the ranking minority member (Mr. HARSHA) for following up their commitment during the consideration of the bill on the floor of the House. At that time, I was told that efforts would be made in the conference committee to favorably consider the need for retroactive payments in justifiable cases. This bill meets the needs I outlined on the floor at that time.

Over the past 20 years or so, Congress has enacted a number of laws providing for disaster relief, culminating in the Disaster Relief Act of 1970. That act provides for a comprehensive approach to assist States and local governments in rendering emergency services. The bill provides substantial assistance to individuals and communities in their efforts to recover from damages caused by a major disaster. One major area of relief, however, is no longer available under the disaster relief program, and its restoration is extremely important in light of certain recent disasters. This is the provision for assistance in the case of disaster-caused expenses or needs which are not adequately covered under other forms of assistance such as Small Business Administration or Farmers Home Administration disaster loans.

The 1970 Disaster Relief Act provided assistance in the form of partial forgiveness of Small Business Administration and Farmers Home loans. Forgiveness provisions have since been deleted by Public Law 93-24. In many cases, following a major disaster, people suffer losses not covered by the SBA or FHA disaster programs or suffer losses only partially covered by these programs. These cases must be covered if there is to be a meaningful disaster relief program. This legislation meets this need.

The bill authorizes the President to make a grant to a State for the purpose of that State making grants to individuals or families to meet extraordinary disaster related expenses or needs of

such individuals or families adversely affected by a major disaster in those cases where assistance under the Disaster Relief Act of 1970, or from other means, is not sufficient to allow them to meet these extraordinary expenses.

I am particularly pleased that the conferees have made this provision retroactive to April 20, 1973. As you know, Mr. Speaker, Vermont suffered devastating floods in June and July of last year. Under statutes in effect at the time, many Vermont people were not accorded the relief needed following the terrible damaging floods.

The bill we are considering today will help victims of last summer's floods when Vermont was declared a disaster area. It also provides a meaningful mechanism of relief for past disasters in other parts of the country and for victims of future natural disasters.

Mr. HAMMERSCHMIDT. Mr. Speaker, I rise in support of the conference report on S. 3062, the Disaster Relief Act Amendments of 1974; these amendments are urgent and necessary in light of the recent tornadoes which plagued parts of the country earlier this spring. Specifically, I support title V of these amendments, which amends the Public Works and Economic Development Act of 1965, as amended, by adding to it a new title VIII, Economic Recovery for Disaster Areas. This title provides assistance for the economic recovery of any major disaster area which has suffered dislocation of its economy. The title stresses planning and development to replace that lost in disaster, continued coordination of assistance available under Federal-aid programs, and continued assistance toward the restoration of the employment base. The Governor of an affected State, following authorization by the President, designates a Recovery Planning Council, comprised of local officials and citizens, and a State and Federal representative, for the area affected. The Recovery Planning Council shall review existing plans for development, make recommendations for revisions, and recommend reprogramming of Federal-aid projects, consistent with congressional appropriations. Additionally, Federal funds for Public Works and development facilities, grants and loans, loan guarantees, and technical assistance will be available through Planning Councils for areas affected by a major disaster. The Recovery Planning Council is a necessary and desirable organization for economic recovery in distressed areas. With proper coordination and planning the right decisions can be made to speed the recovery efforts.

I am particularly pleased that existing economic development districts established under title IV of the current EDA legislation will be used when a disaster recovery effort falls within, or partly within, a district's jurisdiction. Economic development districts are the mainstay of the current EDA program. This delivery tool has assisted in planning and implementation of development efforts. This title, in my estimation, will complement the existing efforts of EDA and will provide valuable assistance to those affected by a major disaster. I urge the House adopt this conference report.

The SPEAKER. Without objection, the

previous question is ordered on the conference report.

There was no objection.

The SPEAKER. The question is on the conference report.

The question was taken; and the Speaker announced that the ayes appeared to have it.

Mr. SCHERLE. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 392, nays 0, not voting 41, as follows:

[Roll No. 224]

YEAS—392

Abdnor	Conte	Hamilton
Abzug	Conyers	Hammer-
Adams	Corman	schmidt
Addabbo	Cotter	Hanley
Alexander	Coughlin	Hanrahan
Anderson,	Crane	Hansen, Idaho
Calif.	Cronin	Hansen, Wash.
Anderson, Ill.	Culver	Harrington
Andrews, N.C.	Daniel, Dan	Harsba
Andrews,	Daniel, Robert	Hastings
N. Dak.	W., Jr.	Hays
Annunzio	Daniels,	Hechler, W. Va.
Archer	Dominick V.	Heckler, Mass.
Arends	Danielson	Heluz
Armstrong	Davis, S.C.	Henderson
Ashbrook	Davis, Wis.	Hicks
Ashley	Delaney	Hills
Aspin	Dellenback	Hinshaw
Badillo	Dellums	Hogan
Bafalis	Denholm	Holt
Baker	Dennis	Holtzman
Barrett	Dent	Horton
Bauman	Derwinski	Hosmer
Beard	Devine	Howard
Bell	Dickinson	Hungate
Bennett	Dingell	Hunt
Bergland	Donohue	Hutchinson
Bevill	Dorn	Ichord
Biaggi	Downing	Jarman
Biester	Drinan	Johnson, Calif.
Bingham	Duncan	Johnson, Colo.
Biatnik	du Pont	Jones, Ala.
Boggs	Eckhardt	Jones, N.C.
Bolling	Edwards, Ala.	Jones, Okla.
Bowen	Edwards, Calif.	Jones, Tenn.
Brademas	Eilberg	Jordan
Brasco	Erlenborn	Karth
Bray	Esch	Kastenmeier
Breaux	Eshleman	Kazen
Breckinridge	Evans, Colo.	Kemp
Brinkley	Evins, Tenn.	Ketchum
Brooks	Fascell	King
Broomfield	Findley	Kluczynski
Brotzman	Fish	Koch
Brown, Calif.	Fisher	Kuykendall
Brown, Mich.	Flood	Kyros
Brown, Ohio	Flowers	Lagomarsino
Broyhill, N.C.	Flynt	Landgrebe
Broyhill, Va.	Foley	Landrum
Burgener	Ford	Latta
Burke, Calif.	Forsythe	Leggett
Burke, Fla.	Fraser	Lehman
Burke, Mass.	Frenzel	Lent
Burleson, Tex.	Frelinghuysen	Long, La.
Burlison, Mo.	Frey	Long, Md.
Burton	Froehlich	Lott
Butler	Fulton	Lujan
Byron	Fuqua	Luken
Camp	Gaydos	McClory
Carney, Ohio	Gettys	McCollister
Casey, Tex.	Glaimo	McCormack
Cederberg	Gibbons	McCade
Chamberlain	Gilman	McEwen
Chappell	Ginn	McFall
Chisholm	Goldwater	McKay
Claency	Gonzalez	McKinney
Clausen,	Goodling	McSpadden
Don H.	Grasso	Macdonald
Clawson, Del.	Gray	Madden
Clay	Green, Pa.	Madigan
Cleveland	Griffiths	Mahon
Cochran	Gross	Mallary
Cohen	Grover	Mann
Collier	Gubser	Maraziti
Collins, Ill.	Gude	Martin, Nebr.
Collins, Tex.	Gunter	Martin, N.C.
Conable	Guyer	Mathias, Calif.
Conlan	Haley	Mathias, Ga.

Matsunaga	Rarick	Stevens
Mayne	Rees	Stokes
Mazzoli	Regula	Stratton
Meeds	Reuss	Studds
Melcher	Rhodes	Symington
Metcalfe	Riegle	Symms
Mezvisky	Rinaldo	Taylor, Mo.
Michel	Roberts	Taylor, N.C.
Milford	Robinson, Va.	Thompson, N.J.
Miller	Robison, N.Y.	Thomson, Wis.
Minish	Rodino	Thone
Mink	Roe	Thornton
Minshall, Ohio	Roncallo, Wyo.	Tieman
Mitchell, Md.	Rooney, Pa.	Towell, Nev.
Mitchell, N.Y.	Rose	Traxler
Mizell	Rosenthal	Treen
Moakley	Rostenkowski	Udall
Montgomery	Roush	Ullman
Moorhead,	Rousselot	Van Derlin
Calif.	Roy	Vander Jagt
Moorhead, Pa.	Roybal	Vander Veen
Mosher	Runnels	Vanik
Moss	Ruppe	Veysey
Murphy, Ill.	Ruth	Vigorito
Murphy, N.Y.	Ryan	Waggoner
Murtha	St Germain	Waldie
Myers	Sandman	Walsh
Natcher	Sarasin	Wampler
Nedzi	Sarbanes	Ware
Nelsen	Satterfield	Whalen
Nichols	Scherle	White
Obeys	Schneebell	Whitehurst
O'Brien	Schroeder	Whitten
O'Hara	Sebellus	Widnall
O'Neill	Seiberling	Wiggins
Parris	Shiple	Wilson, Bob
Passman	Shoup	Wilson,
Patman	Shriver	Charles H.,
Patten	Shuster	Calif.
Pepper	Sikes	Wilson,
Perkins	Sisk	Charles, Tex.
Peysers	Skubitz	Winn
Pickle	Smith, Iowa	Wolf
Pike	Smith, N.Y.	Wyder
Poage	Snyder	Wyllie
Podell	Spence	Wyman
Powell, Ohio	Staggers	Yates
Preyer	Stanton,	Yatron
Price, Ill.	J. William	Young, Alaska
Price, Tex.	Stanton,	Young, Fla.
Pritchard	James V.	Young, Ga.
Quie	Stark	Young, Ill.
Quillen	Steed	Young, Tex.
Rallsback	Steele	Zablocki
Randall	Steelman	Zion
Rangel	Steiger, Ariz.	Zwach
	Steiger, Wis.	

NAYS—0

NOT VOTING—41

Blackburn	Hébert	Rogers
Boland	Helstoski	Roncallo, N.Y.
Buchanan	Hollifield	Rooney, N.Y.
Carey, N.Y.	Huber	Slack
Carter	Hudnut	Stubblefield
Clark	Johnson, Pa.	Stuckey
Davis, Ga.	Litton	Sullivan
de la Garza	McCloskey	Talcott
Diggs	Mills	Teague
Dulski	Mollohan	Williams
Fountain	Morgan	Wright
Green, Oreg.	Nix	Wyatt
Hanna	Pettis	Young, S.C.
Hawkins	Reid	

So the conference report was agreed to.

The Clerk announced the following pairs:

Mr. Rooney of New York with Mr. Hollifield.  
 Mr. Teague with Mrs. Green of Oregon.  
 Mr. Stubblefield with Mr. Hanna.  
 Mr. Hawkins with Mr. Reid.  
 Mrs. Sullivan with Mr. Williams.  
 Mr. Diggs with Mr. Clark.  
 Mr. Helstoski with Mr. Mills.  
 Mr. Dulski with Mr. Johnson of Pennsylvania.  
 Mr. Morgan with Mr. Hudnut.  
 Mr. Mollohan with Mr. Blackburn.  
 Mr. Nix with Mr. Litton.  
 Mr. Fountain with Mr. Huber.  
 Mr. Wright with Mr. Buchanan.  
 Mr. Boland with Mr. McCloskey.  
 Mr. Carey of New York with Mr. Carter.  
 Mr. Hébert with Mr. Pettis.  
 Mr. Rogers with Mr. Roncallo of New York.  
 Mr. Slack with Mr. Young of South Carolina.

Mr. Davis of Georgia with Mr. Talcott.  
Mr. de la Garza with Mr. Stuckey.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

#### GENERAL LEAVE

Mr. JONES of Alabama. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the conference report just agreed to.

The SPEAKER. Is there objection to the request of the gentleman from Alabama?

There was no objection.

#### ESTABLISHING THAT COMMITTEE ON POST OFFICE AND CIVIL SERVICE SHALL BE COMPOSED OF 27 MEMBERS

Mr. O'NEILL. Mr. Speaker, I offer a privileged resolution (H. Res. 1102) and ask unanimous consent for its immediate consideration.

The Clerk read the resolution as follows:

H. RES. 1102

*Resolved*, That during the remainder of the Ninety-third Congress the Committee on Post Office and Civil Service shall be composed of twenty-seven members.

The SPEAKER. Is there objection to the request of the gentleman from Massachusetts?

Mr. GROSS. Mr. Speaker, reserving the right to object, I am sure this is a beefing up of the committee, in other words, the addition of another member to the committee?

Mr. O'NEILL. The answer is "Yes." It has been cleared with the minority leader. I have a similar resolution for another committee which will do the same thing. All of these resolutions have been cleared by JOHN RHODES.

Mr. GROSS. These resolutions are not exactly in conformity with the reform movement, are they?

Mr. O'NEILL. I will have to say that the gentleman knows the answer to that before he even asks it.

Mr. GROSS. I thought perhaps the gentleman would like to reassure me they are not in conformity with the famous reorganization of the committees.

Mr. O'NEILL. If you have reference to the Bolling reorganization bill, no, they are not.

Mr. GROSS. I understand.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

The resolution was agreed to.

A motion to reconsider was laid on the table.

#### ESTABLISHING THAT COMMITTEE ON PUBLIC WORKS SHALL BE COMPOSED OF 40 MEMBERS

Mr. O'NEILL. Mr. Speaker, I offer a privileged resolution (H. Res. 1103) and

ask unanimous consent for its immediate consideration.

The Clerk read the resolution as follows:

H. RES. 1103

*Resolved*, That during the remainder of the Ninety-third Congress the Committee on Public Works shall be composed of forty members.

The SPEAKER. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

The resolution was agreed to.

A motion to reconsider was laid on the table.

#### PERMISSION FOR COMMITTEE ON EDUCATION AND LABOR TO FILE REPORT

Mr. PERKINS. Mr. Speaker, I ask unanimous consent that the Committee on Education and Labor may have until midnight tonight to file its report on H.R. 14449, the Community Services Act of 1974.

The SPEAKER. Is there objection to the request of the gentleman from Kentucky?

There was no objection.

#### PERSONAL EXPLANATION

Mr. FOUNTAIN. Mr. Speaker, on roll-call No. 224 on the conference report on the Disaster Relief Act of 1974, I was detained in the Cannon Office Building and did not hear the bells. Had I been present on the floor I would have voted for the conference report.

#### WHILE THE WORLD LOOKS THE OTHER WAY

(Mr. LEHMAN asked and was given permission to address the House for 1 minute, to revise and extend his remarks and include extraneous matter.)

Mr. LEHMAN. Mr. Speaker, in recent years the world has apparently accepted as a matter of course the repeated Arab terrorist attacks on innocent civilians. The Lod Airport massacre, the Munich massacre, the Athens massacre, the Rome massacre, the murder of U.S. diplomats in Khartoum, and the 18 civilians who were murdered at Kiryat Shmona only a few weeks ago, have all been forgotten. But the silence and the short memory of the world has served only to encourage new terrorist attacks.

After the murders at Kiryat Shmona last month when small children were thrown to their death from third-floor windows, the Israeli Government ordered reprisal raids into Lebanon. A number of Arab houses were blown up in villages which had supported the terrorists.

The U.S. Government responded by joining with a majority of the members of the U.N. Security Council in voting to condemn Israel for the raid into Lebanon but not to criticize the Arabs for the slaughter of Israeli women and children.

Unfortunately that action by our Government did not discourage the Arab terrorists and perhaps even signaled them that future attacks against Israeli civilians would be ignored by the United States—a policy which negates every

moral principle upon which our Nation rests.

Once more we are being shown quite clearly what happens when the world closes its eyes to terror. An entire school full of children is the target of the latest Arab terrorist attack.

Seven months ago, Arab armies launched a surprise attack against Israel on Yom Kippur, the holiest of Jewish holidays. Foreign governments reacted either with indifference or by breaking diplomatic relations with Israel. Many called for an "evenhanded" response to the Arab attack.

There can be no "evenhanded" solution to Arab aggression against Israel. Across-the-border attacks, whether by terrorist raiders or by invading armies, are acts of war which would not be tolerated for one second by this country and would result in fierce retaliation.

If terrorists had crossed our borders and attacked the school where our children or grandchildren were present, we would not be sitting by to decide how to be more "evenhanded." Nor would we condemn any action by our Government to punish those responsible for these terrorist attacks, if neighboring governments had repeatedly refused to do so.

As long as the Arabs believe the world will look the other way, they will continue to cross Israel's borders to carry out acts of terrorism and war.

Because Israel has respected world opinion in the past, it has carefully restrained its responses to Arab attacks, time and time again.

Let us not rise up in righteous indignation if Israel begins to lose its patience at the U.N. and the world's indifference to Arab barbarities.

#### POLICE OFFICERS MEMORIAL DAY

(Mr. HOGAN asked and was given permission to address the House for 1 minute, to revise and extend his remarks and include extraneous matter.)

Mr. HOGAN. Mr. Speaker, it was a privilege to have the opening prayer offered today by the Reverend R. Joseph Dooley, the president of the International Conference of Police Chaplains in recognition of Police Officers Memorial Day.

I wish to pay my respects to those law enforcement officers who have dedicated their lives for the safety and well-being of all Americans. I include the names of those police officers who were killed in the line of duty from May 15, 1973, to May 15, 1974, in the RECORD at this point.

#### INTERNATIONAL CONFERENCE OF POLICE CHAPLAINS ROLL OF HONOR

LAW ENFORCEMENT OFFICERS KILLED MAY 15, 1973-MAY 15, 1974

Deputy James C. Douglas, Brazoria County, Texas, 5-15-73.

Deputy Charles A. Rodgers, Greenwood County, South Carolina, 5-16-73.

Patrolman Adolfo A. Solis, Police of Puerto Rico, 5-18-73.

Patrolman Wilfredo R. Cintron, Police of Puerto Rico, 5-20-73.

Officer William V. Welch, Fort Worth, Texas, 5-20-73.

Patrolman Henry Wolf, Oak Park, Michigan, 5-21-73.

Patrolman David W. Clark, Memphis, Tennessee, 5-21-73.

Patrolman Robert W. Blan, Oakland, California, 5-23-73.  
 Sergeant David H. Anthony, Sr., Hattiesburg, Mississippi, 5-23-73.  
 Patrolman Robert B. Laurenson, New York City, N.Y., 6-2-73.  
 Officer Sidney Thompson, New York Transit Authority, 6-5-73.  
 Sergeant James H. Rutledge, Berkeley, California, 6-14-73.  
 Patrolman Ralph Stanchi, New York City, N.Y., 6-17-73.  
 Patrolman Larry Barkwell, Atlanta, Georgia, 6-19-73.  
 Patrolman Frederic D. Vacha, Cleveland, Ohio, 6-20-73.  
 Officer Charles C. Caraccilo, Los Angeles, California, 6-21-73.  
 Deputy Sheriff George E. McMurren, Yavapai County, Arizona, 6-24-73.  
 Chief of Police George L. Lashley, Gibsonville, North Carolina, 6-30-73.  
 Patrolman Russell Spannagel, San Antonio, Texas, 6-30-73.  
 Deputy Sheriff James E. Orr, Kershaw County, South Carolina, 7-2-73.  
 Patrolman Elwood Ridge, Camden, New Jersey, 7-2-73.  
 Patrolman Daniel H. Bruns, Dayton, Ohio, 7-3-73.  
 Deputy James A. Auterbury, St. Charles Parish, Louisiana, 7-4-73.  
 Officer Emilio Maestes, Clayton, New Mexico, 7-19-73.  
 Deputy Luis Garza, Atascosa County, Texas, 7-19-73.  
 Officer John Ruggerio, Fall River, Massachusetts, 7-23-73.  
 Patrolman Austin Hepburn, Jr., Hallandale, Florida, 7-27-73.  
 Officer Vernon L. Jarrell, Richmond, Virginia, 8-1-73.  
 Chief of Police Phillip de Santis, Woodbine, New Jersey, 8-6-73.  
 Sergeant Freddie J. Karp, Mountain Brook, Alabama, 8-6-73.  
 U.S. Park Ranger Kenneth C. Patrick, Olema, California, 8-6-73.  
 Drug Enforcement Officer Emir Benitez, Fort Lauderdale, Florida, 8-9-73.  
 Officer Steven D. Hensley, Delta, Colorado, 8-11-73.  
 Officer Anthony Raymond, Hillside, California, 8-18-73.  
 Sergeant Salvatore G. Mosqueda, Fresno, California, 8-20-73.  
 Deputy Elbert Watkins, Falls County, Texas, 8-21-73.  
 Deputy Dean Humphus, Falls County, Texas, 8-21-73.  
 Lieutenant Thomas Jackson, Moultrie, Georgia, 8-25-73.  
 Officer Gary D. Mills, Boulder, Colorado, 8-25-73.  
 Sergeant John H. Howell, II, Lincoln County, North Carolina, 8-26-73.  
 Officer Roy Bradshaw, Nespelem, Washington, 8-27-73.  
 Patrolman James M. Vigil, Alamogordo, New Mexico, 8-29-73.  
 Officer George L. Pomraning, Arlington County, Virginia, 9-2-73.  
 Deputy Delbert L. Berry, Apache County, Arizona, 9-2-73.  
 Patrolman Casper Buonoacre, Jersey City, New Jersey, 9-12-73.  
 Patrolman David Huerta, Houston, Texas, 9-19-73.  
 Patrolman Calvin M. Rodwell, Baltimore, Maryland, 9-22-73.  
 Inspector Joseph T. Moretti, Revere, Massachusetts, 9-24-73.  
 Patrolman Edward L. Barron, Chicago, Illinois, 9-28-73.  
 Officer Wendell I. Troyer, Oakland, California, 10-2-73.  
 Officer David Guider, Oakland, California, 10-2-73.  
 Patrolman Felix Underwood, Birmingham, Alabama, 10-7-73.  
 Deputy Sheriff Dalton Burnam, Dodge County, Georgia, 10-7-73.

Patrolman George R. Mead, New York City, N.Y., 10-10-73.  
 Officer Donald B. Ziesmer, Minnesota Highway Patrol, 10-15-73.  
 Officer Clarence E. Harris, Atlanta, Georgia, 10-20-73.  
 Patrolman Daniel J. Swift, Hornell, New York, 10-24-73.  
 Patrolman Robert J. Ahrens, Mt. Clemens, Michigan, 11-1-73.  
 Patrolman Raymond L. Wheeler, Nashville, Tennessee, 11-5-73.  
 Patrolman Edgar D. Cooley, Honea Path, South Carolina, 11-6-73.  
 Detective Gerald W. Sawyer, Los Angeles, California, 11-6-73.  
 Patrolman Robert T. Moore, Detroit, Michigan, 11-8-73.  
 Special Agent Pedro P. Castro, Police of Puerto Rico, 11-10-73.  
 Sergeant Alvin P. Morris, Detroit, Michigan, 11-12-73.  
 Trooper Claude H. Baker, Jr., Florida Highway Patrol, 11-17-73.  
 Patrolman William Robinson, Newburgh, New York, 11-18-73.  
 Detective Jorge L. Sierra-Vasquez, Police of Puerto Rico, 11-19-73.  
 Patrolman Edward J. Hammond, Jr., Memphis, Tennessee, 11-23-73.  
 Deputy Sheriff Bristol Taylor, Knott County, Kentucky, 11-23-73.  
 Officer John B. Schroeder, Boston, Massachusetts, 11-30-73.  
 Deputy Sheriff Bruce R. Verhoeven, Sacramento County, California, 12-4-73.  
 Field Supervisor Steve Armenta, California State Bureau of Narcotics Enforcement, 12-5-73.  
 Patrolman Henry L. Jones, Atlanta, Georgia, 12-2-73.  
 Officer Donald P. Tucker, Dallas, Texas, 12-12-73.  
 Patrolman Ronald Reagan, Milwaukee, Wisconsin, 12-13-73.  
 Sergeant Wayne J. Truttman, Brown County, Wisconsin, 12-20-73.  
 Trooper Ronald G. Smith, Florida Highway Patrol, 12-23-73.  
 Patrolman Thomas Carpenter, Colorado Highway Patrol, 12-27-73.  
 Deputy Sheriff Larry Smith, Otero County, Colorado, 12-27-73.  
 Officer William P. Conboy, Jr., Montgomery County, Maryland, 12-29-73.  
 Corporal Thomas Hanson, Pueblo, Colorado, 12-29-73.

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Deputy Sheriff Joe Smith, Jr., Cumberland County, North Carolina, 1-5-74.  
 Patrolman William F. Brown, Lima, Ohio, 1-5-74.  
 City Marshal Don R. Williams, Thompson Falls, Montana, 1-7-74.  
 Game Warden Eugene Sara, Montana State Fish and Game Dept., 1-7-74.  
 Deputy Sheriff Edward Williams, Harris County, Texas, 1-12-74.  
 Sergeant Leonard Todd, Detroit, Michigan, 1-16-74.  
 Officer Edward Pakula, Detroit, Michigan, 1-16-74.  
 Deputy Sheriff Charles L. Wilkerson, Escambia County, Florida, 1-19-74.  
 Officer John D. Branhan, Oakland, California, 2-7-74.  
 Officer David E. Marks, Oakland, California, 2-7-74.  
 Patrolman Kenneth Browning, Clarksville, Tennessee, 2-13-74.  
 Officer Arthur G. Craft, Jr., Greensboro, North Carolina, 2-14-74.  
 Investigator Dennis F. Cronin, Alaska State Police, 2-18-74.  
 Trooper Bobby S. Gann, Alabama Highway Patrol, 2-21-74.  
 Officer Richey O. Finch, Forest Acres, South Carolina, 2-21-74.  
 Deputy Ernest C. Potter III, Kershaw County, South Carolina, 2-21-74.  
 Patrolman George N. Ramsburg, Balti-

more-Washington International Airport, 2-22-74.  
 Officer Dennis J. McInerney, New Orleans, Louisiana, 2-26-74.  
 Patrolman William C. Marsek, Chicago, Illinois, 2-27-74.  
 Patrolman Bruce Garrison, Chicago, Illinois, 2-27-74.  
 Patrolman Leslie G. Lane, Dallas, Texas, 3-2-74.  
 Sergeant William K. Mortimer, Sr., Dayton, Ohio, 3-4-74.  
 Patrolman Timothy Hurley, New York City, New York, 3-9-74.  
 Deputy Sheriff Michael Maybourne, Winnebago County, Illinois, 3-15-74.  
 Officer Richard J. Barth, Downers Grove, Illinois, 3-18-74.  
 Deputy Jimmie H. McKay, Sr., Harris County, Texas, 3-22-74.  
 Officer Buster Adams, Crestview, Florida, 3-26-74.  
 Patrolman Earl R. Hoggard, Ketchikan, Alaska, 3-30-74.  
 Patrolman Meredith S. Runck, Riviera Beach, Florida, 4-5-74.  
 Sergeant Michael Lingham, Philadelphia, Pennsylvania, 4-14-74.  
 Sergeant John P. Tsolis, Highland Park, Michigan, 4-16-74.  
 Officer James D. Chamblin, Oklahoma City, Oklahoma, 4-16-74.  
 Officer Martin D. Chivas, Troy, Michigan, 4-22-74.  
 Deputy Sheriff Emery G. Mabry, Carroll County, Virginia, 4-22-74.  
 Patrolman William Shapiro, Cleveland, Ohio, 4-26-74.  
 Patrolman Morris Greenwald, Hazen, Arkansas, 4-29-74.  
 Wildlife Officer Danese B. Crowder, Mayo, Florida, 5-3-74.  
 Patrolman Frank W. Whitby, Jr., Baltimore, Maryland, 5-5-74.  
 Patrolman Michael L. Edwards, Los Angeles, California, 5-11-74.

## FDA RECALL AUTHORITY

(Mr. KOCH asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. KOCH. Mr. Speaker, even if food, drugs, or cosmetics are found dangerous to human health, the Food and Drug Administration currently has no power to force a manufacturer to recall a product.

This fact came to my attention when I corresponded with the Department of Health, Education, and Welfare concerning FDA's "voluntary recall of hair sprays using vinyl chloride. In the last several months, a possible link had been discovered between vinyl chloride and a rare form of liver cancer.

The Department of Health, Education, and Welfare said that it does currently have the power of seizure, but admitted in their letter to me that this procedure has "major limitations," the most significant of which is "the time required to implement a seizure action." Where numerous lots of a product are dispersed nationwide, numerous seizure actions would be necessary, while further dangerous product dispersal is still taking place.

According to HEW—

The Federal Food, Drug, and Cosmetic Act contains no provisions which authorize this Agency to require or insist that a manufacturer or distributor recall any products.

This is a legal vacuum which could be disastrous to the health of Americans if

a manufacturer at some time refused to comply with FDA's "voluntary" recall request.

For this reason, I am today introducing legislation which will authorize the Secretary of Health, Education, and Welfare to halt the sales and distribution of food, drugs, and cosmetics adulterated or misbranded in a manner which presents an imminent hazard to the public health and to require their recall or destruction, as may be appropriate.

Correspondence that I have had with the Food and Drug Administration and Environmental Protection Agency on the subject of vinyl chloride is appended.

The correspondence follows:

U.S. HOUSE OF REPRESENTATIVES,  
Washington, D.C., April 4, 1974.

ALEXANDER M. SCHMIDT, M.D.,  
Commissioner, Food and Drug Administration, Rockville, Md.

DEAR DR. SCHMIDT: I read with interest the Clairol Inc. announcement that it was recalling from the nation's store shelves about 100,000 cans of aerosol hair spray, some containing a chemical recently linked to a rare form of liver cancer. It was reported in the press that the cosmetic concern said that the request for a voluntary recall had come from the Food and Drug Administration following reports that at least 10 industrial workers exposed to the chemical, vinyl chloride, had developed angiosarcoma.

While I applaud the voluntary action taken by Clairol Inc. I am at a loss to understand why the FDA would, in a case where it believes the public safety is endangered, rely on a voluntary action and not insist on a mandatory procedure. I should like to be apprised of how that determination, a voluntary as opposed to a mandatory action, was reached and what the considerations were in making that decision in this particular matter. I should also like to know whether any measures have been taken with respect to any other uses of the vinyl chloride chemical now linked to liver cancer and if so, what those measures are.

Sincerely,

EDWARD I. KOCH.

FOOD AND DRUG ADMINISTRATION,  
Rockville, Md., April 18, 1974.

HON. EDWARD I. KOCH,  
House of Representatives,  
Washington, D.C.

DEAR MR. KOCH: Commissioner Schmidt has asked me to thank you for your letter of April 4, 1974 concerning the Food and Drug Administration's request for a "Voluntary" recall of certain aerosol hair sprays manufactured by Clairol Inc. due to the presence of vinyl chloride monomer (VCM).

We are sending letters to all other manufacturers and major distributors of aerosol cosmetics requesting that they also recall any of their cosmetic products which contain VCM as a propellant.

Reviews by our scientists of the available toxicological and epidemiological data indicated that VCM may be dangerous when exposure is by the inhalation route. Based on these findings we concluded that these aerosol cosmetics which contained VCM as a propellant represented a potential health hazard and therefore should be removed from consumer channels as soon as possible.

The only statutory instrument available to the Food and Drug Administration under the Federal Food, Drug, and Cosmetic Act to get such products out of commerce is seizure. Although seizure is a valuable tool, which does not require any voluntary action on the part of the manufacturer, it does have major limitations. The most significant of these limitations is the time required to im-

plement a seizure action. This time-delay is compounded severalfold in situations, such as this, where numerous lots of products have been distributed nationwide. A separate seizure action against each lot of goods in each different locale would be necessary. Much of the defective products would be further dispersed before they could be located by the Food and Drug Administration and seizure implemented.

Recall is usually a much more efficient and practical means for reversing the chain of product distribution. The recalling firm usually has readily available all data with respect to quantity of products manufactured and/or distributed, names and addresses of customers and other pertinent identifying information. A notification to customers to return any defective merchandise can therefore be accomplished in a minimum of time. Recall is especially preferable to seizure in situations where potentially hazardous products are involved and speed in retrieval is all important.

We must point out however that the Federal Food, Drug, and Cosmetic Act contains no provisions which authorize this Agency to require or insist that a manufacturer or distributor recall any products.

Due to the nature of the hazard involved with these aerosol cosmetics, we felt that recall was the most appropriate means of assuring a rapid removal of these products from the market.

Clairol Inc. initiated this recall only after we advised them to do so. We were prepared to issue public warnings and institute seizure actions if the firm had not responded favorably to our request for recall.

We hope these comments are helpful to you in assessing the merits of our decision in this instance to request that these aerosol cosmetics be recalled.

Please let us know if we can be of any further assistance.

Sincerely yours,

ROBERT C. WETHERELL,  
Acting Director, Office of  
Legislative Services.

FOOD AND DRUG ADMINISTRATION,  
Rockville, Md., April 19, 1974.

HON. EDWARD I. KOCH,  
House of Representatives,  
Washington, D.C.

DEAR MR. KOCH: This is in further response to your April 4 letter regarding the vinyl chloride issue.

Commissioner Schmidt signed on April 16, 1974, a *Federal Register* notice which when published in final form will effectively ban vinyl chloride as an ingredient in drug and cosmetic aerosol products.

In a companion *Federal Register* notice signed by Commissioner Schmidt on April 15, the Food and Drug Administration is requiring under the authority of the Drug Listing Act of 1972, a list of all human drugs which are being manufactured, prepared, propagated, compounded or processed for commercial distribution and which contain vinyl chloride whether or not the vinyl chloride is an active or inactive ingredient, and a list of all human drug products packaged in vinyl chloride containers with polyvinyl chloride liners.

We anticipate that these documents will be published in the *Federal Register* on April 22 or soon thereafter. Advance copies of these documents are enclosed for your information.

We will keep you apprised of any further actions we plan to take with respect to this issue.

Sincerely yours,

ROBERT C. WETHERELL,  
Acting Director, Office of  
Legislative Services.

A similar letter was sent EPA:

U.S. ENVIRONMENTAL  
PROTECTION AGENCY,  
Washington, D.C., May 8, 1974.

HON. EDWARD I. KOCH,  
House of Representatives,  
Washington, D.C.

DEAR MR. KOCH: Thank you for your letter of April 4, 1974, concerning EPA action against pesticide products containing vinyl chloride as an aerosol propellant.

As you may know, on April 24, I did suspend the registrations of pesticide products containing vinyl chloride as a propellant which were registered for indoor use. The suspension order, which went into effect immediately, prohibits the further distribution, sale, or use of the affected products. At the same time, I requested that all existing stocks of these products be recalled.

You ask why the issuance of such an order was delayed, and why the Agency, at least for a time, sought voluntary action to prevent further sale of the product. The issuance of a suspension order must be predicated upon a determination that such action is necessary to prevent an imminent hazard during the time required for cancellation (Section 6(c)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act). At the time of our first news release requesting voluntary recall of products by the manufacturers, data concerning the extent and duration of the exposure which could result from the use of such aerosol pesticide products was lacking. The other human and experimental data available to the Agency linked exposure to vinyl chloride gas and angiosarcoma of the liver only after substantial repeated and continued exposure. The finding of an imminent hazard, then, would have been tenuously based at best.

Since that first press announcement on April 17, however, preliminary EPA tests have indicated that during a typical spray of a vinyl chloride-containing aerosol, the user could be exposed to significant levels of the gas. The tests and subsequent calculations further indicated that residues of the gas could remain in an enclosed area for some period of time, albeit at lower levels. The results of these experiments, coupled with additional results from animal tests, made the case for suspension of these products considerably stronger. I should emphasize, though that we are still uncertain as to the health risks associated with the short term exposure to vinyl chloride gas such as is produced by the use of an aerosol pesticide product. As I stated in the suspension order, however, based on the newly acquired test results, "it is prudent to assume that any exposure at these levels will have increased the risk of cancer should the strongly suspected causal relationship between vinyl chloride and cancer be finally confirmed". I enclose a copy of the order itself, and copies of our two press releases on vinyl chloride actions.

As to general action taken by the Agency with respect to vinyl chloride, I established a Task Force on February 14, 1974, under the direction of the Director of the Office of Toxic Substances, to examine the broader issue, including air and effluent emission standards. I enclose a copy of the press release outlining the operation of the Task Force. We are now collecting and monitoring data and other information which will enable us to evaluate the need for further action under the other authorities of the Agency.

We appreciate your interest in the vinyl chloride issue, and assure you that we share your concern for the safety of the consumer. Please let me know if I may provide further information.

Sincerely yours,  
JOHN QUARLES, Deputy.  
(For Russell E. Train, Administrator).

## BUDGETARY REFORM

The SPEAKER pro tempore (Mr. McFALL). Under a previous order of the House, the gentleman from Florida (Mr. BAFALIS), is recognized for 60 minutes.

Mr. BAFALIS. Mr. Speaker, the gentleman from Colorado (Mr. ARMSTRONG), and I have asked for this time in order to afford an opportunity to the freshmen Members on the Republican side to discuss budgetary reform. In preparation for this, a number of the Members have signed a resolution which I think is appropriate along that line, and for that purpose I will now yield to the gentleman from Pennsylvania (Mr. SHUSTER).

## GENERAL LEAVE

Mr. SHUSTER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the subject of the special order taken today by the gentleman from Florida (Mr. BAFALIS), and the gentleman from Colorado (Mr. ARMSTRONG).

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

Mr. BAFALIS. I thank the gentleman from Pennsylvania.

I yield to the gentleman from Texas (Mr. STEELMAN).

Mr. STEELMAN. Mr. Speaker, I think most Members of the House agree that unwise continued deficit spending on the part of the executive branch and the Congress will only lead to further inflation. Wage and price controls have been the major weapons used, both by the Congress and by the executive branch, during the last 3 years to combat this. The result has not been to abate inflation, but rather to continue inflation at extremely high and dangerous rates.

I think we have all learned the lesson about wage and price controls, and that we never go back to them.

Mr. Speaker, I want to say that Congress, for too long, has been on the course of not knowing what effect spending programs would have on the expected tax revenues, and vice versa. We have had no way of coming up with an allover plan to balance the two against each other.

Mr. Speaker, I want to compliment the gentleman in the well for his initiative in getting this special order together. I will say that I, for one—and I think most other Members of the freshman class—think that the most significant piece of congressional reform at this point in our history would be to reform our budget process. I hope we will all see in this session the conference report on this, so that we can adopt it and at least begin fiscal year 1975 with a saner approach toward our budget.

Mr. BAFALIS. I now yield to the gentleman from New York (Mr. GILMAN).

Mr. GILMAN. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, I rise in support not only of the efforts of the gentleman from Florida for bringing this highly important issue before our body at this time,

but I also strongly support the joint resolution offered by the gentleman from Pennsylvania—a resolution which I was pleased to cosponsor.

I am joining my freshman colleagues in the 93d Congress in presenting this special order in order to focus attention on one of the overwhelming problems confronting our Nation—spiraling inflation.

Although I have been a Member of the House of Representatives for less than 2 years, the vexing reality of the fiscal responsibility of Congress has repeatedly plagued me.

While our wage earners at home are grappling and struggling with escalating food and gas prices, increasing utility rates and climbing taxes, the Congress has not been providing any remedies. Instead, measures are passed authorizing \$5 million for the funding of a Commission on Productivity; \$34,000 for a committee to study the House Restaurant, and \$8.6 million for building a Visitors Reception Center in Washington. Obviously, something is amiss.

While those of us who are cosponsoring this resolution recognize the absorbing problems of fiscal responsibility, we also share the frustration of having such a limited voice in correcting these problems.

It is evident that the majority in the Congress still labors under the misconception that the bandaid of Federal dollars adequately heals the many problems facing our Nation, continuing to authorize and appropriate in an archaic, haphazard, patchwork type of funding—providing programs which appear to meet the problems, but which, in fact, are only a panacea, superficially treating the symptom but failing to provide a cure.

This disjointed funding process has placed many of us in an untenable position. While it is our intent to provide responsible spending and to try to get the best return on the taxpayer's dollar, we are prevented from achieving that goal by our majority colleagues who continue to extend and to refund without seriously considering the end result—rampant, uncontrollable inflation.

Any attempts by responsive Members of Congress for reforming outdated systems and methods are soon squelched by a few powerful Members who resent any weakening of their own positions.

Most recently, the bipartisan Committee on Committees came forth with a proposal for reforming the committee structure of the House, providing for more effective legislating and closer control over the budgetary process. Because this measure rattled some of the thrones of our committee and subcommittee chairmen, the proposal was quickly defeated in the Democratic caucus. As a result, we may not have the opportunity to vote on any of the proposed reforms during this session of the Congress.

While we are impeded by the present system of minimal planning and distorted priorities there have been some marginal gains. The House passed and is awaiting the conference report on the Congressional Budget Act of 1973, providing for the first time, an overall, unified process for appropriating funds.

This long overdue proposal which I was pleased to support is eagerly anticipated by the Members so that we can begin to implement its provisions which for the first time will provide a long-range budgetary planning.

The manifold problems facing our economy are critical. Many of our leading economists are painting bleak pictures for the coming decades, viewing recession or continuing inflation as the predominant trends. While neither of these alternatives are acceptable to most of us, and while there does not appear to be an immediate workable solution to our economic woes, wasteful and abusive governmental spending is one area where we can readily look to ease our financial burdens.

At best this is a difficult task. It calls for a reversal of all of those bad habits which have crept into the Nation's budgetary process over the last two decades. It means developing a rational system of establishing priorities, of making long-range fiscal plans, of cutting corners to make ends meet. In essence, it means that the Congress must accept its constitutional responsibilities of effectively controlling the Federal purse strings.

Only with strong fiscal leadership in the Congress can we begin to stem the tide of spiraling inflation and begin to return to a reasonably stable cost of living. Accordingly, I am pleased to join my colleagues today in presenting this special order focusing attention on the haphazard congressional fiscal policies and I urge all of our colleagues in the House to seriously consider the effects of fiscal irresponsibility on the taxpayers of our Nation.

Mr. BAFALIS. I now yield to the gentleman from Massachusetts (Mr. CRONIN).

Mr. CRONIN. Mr. Speaker, I should like to thank the gentleman in the well for his initiative in this area.

Mr. Speaker, I rise in support of the bill H.R. 7130 which establishes new budget reform procedures in Congress. It is desperately needed especially at this time to help manage the Nation's economy and to alter the country's outmoded system of priorities.

Congress was given the responsibility of representing the people. Passage of this legislation would strengthen and redefine this constitutional responsibility in a manner that will affect every American. It would give Congress the opportunity to put our economy in a more stable position and keep it there. We cannot solve such pressing national issues of unemployment housing and energy unless we allocate our funds in a responsible manner. The problem of inflation stems from long-term fiscal irresponsibility and deficit spending and indicates to me that we in Congress must take a leading role in changing the situation. My freshmen colleagues agree with me regarding the importance of the bill we discuss today.

The legislation creates a budget committee which will have the power and responsibility to seek answers to far-reaching questions that Congress has in the past ignored. It also streamlines the appropriations process by allowing for in-

creases and decreases in revenues and adjustment of the public debt limit. Under the bill, Congress would control spending for the obligatory commitments of the government, which have in the past not required congressional approval, thus eliminating one of the biggest threats to the American economy—back-door spending.

By enacting this bill, we would help restore the country's faith in our system of government. Rational spending of the taxpayers' money would be a giant step by Congress toward winning the confidence and respect of the country. Let us not waste any more time on this issue. It has been over 5 months since the bill originally passed the House and yet action has not been completed. I urge the conferees to act as rapidly as possible.

Mr. BAFALIS. Mr. Speaker, I yield to the gentleman from New York (Mr. KEMP).

Mr. KEMP. Mr. Speaker, I appreciate the efforts of the Republican freshman class for taking this time. There are indeed very few actions which are as important to the economic health of our country and the stemming of inflation as control of the runaway Government spending now underway.

For, Government spending is supported by the raising of revenue—taxes, excises, imposts, and duties—which come from the people in whose interests we are required to act.

Government spending—when it exceeds that level of revenue raised, however—results in increases in the national public debt borne by each of us—and by our children and our grandchildren.

And, perhaps worst of all, deficit Government spending—and the issuance of paper money to sustain it without a commensurate increase in national productivity—is the basic cause of inflation. Rest assured of this: The rampant inflation which we have witnessed during the several years—inflation which robs each of us of our purchasing power, thereby making each of us poorer—is a direct result of irresponsible Government spending and expansionist monetary policies of the Federal Reserve System.

One can see the crucial importance of the Congress coming to grips with this problem. A major responsibility rests upon our shoulders to stop this reckless spending which has characterized Congress of late. And, a major responsibility rests upon our shoulders to halt the erosive, inflationary character of our monetary policies. If we fail, the people will hold us accountable. And, they should. If Members put their big spending proposals and their own ideological, philosophical, and political—even artisan—motivations ahead of the general welfare of the people, then they should be turned from office. That turning from office of those who act in disregard of the welfare is what our form of Government is all about.

I have risen on the floor of this House on a number of occasions to vote against big spending proposals, to vote against reckless authorizations, to speak out against misdirected or ill-conceived fiscal and monetary policies. My position

is one of record for all to examine who wish. I need not, therefore, repeat myself today.

I wish now, rather, to make some observations in support of those who argue here that the failure of the conference committee on the proposed budget reform act to report out a bill to the floor of both Houses at the earliest possible date is potentially destructive to our economic health and runs the risk of being a refutation of the will of both Houses to have meaningful, substantive budget reform this Congress.

The Constitution of the United States gives to the Congress clear authority with respect to the raising of revenue and the expenditure of funds. Only the Congress can impose taxes, excises, imposts, and duties. Only the Congress can authorize the appropriation of funds and their actual expenditure.

But, over the decades and accelerating at a dangerous rate as Government has grown, the Congress has quietly yielded much power to the executive. The departments and agencies submit their budget requests, not directly to the Congress, but through an arm of the executive—the Office of Management and Budget—which then determines priorities for the preparation of a total Federal budget submission to the Congress.

That submission is not a neutral document. Within its pages are such recommendations as changing the size of agencies and their personnel forces, cutting back or expanding existing programs, authorizing and funding new ones, restructuring program approaches, as well as inferences on such matters as tax increases and projected deficits.

The Congress receives this budget request at the beginning of each session in January. Without any comprehensive and unified approach, the many committees of the Congress set about their tasks in relation to that document, and the House and Senate Committees on Appropriations set about the formidable tasks of recommending specific dollar levels for appropriations. There is no determination by the Congress of priorities amongst the many programs proposed in the budget, much less the thousands of new or expanded programs recommended in bills and resolutions introduced in each session. And, there is no establishment by the Congress of a total Federal spending level beyond which all appropriations could not go for a fiscal year and within which Congress would have to establish priorities.

This system is simply unworkable. To those who contest that conclusion—and say that the present system ought to be preserved—I call their attention to a few relevant facts. The Federal budget recommended for the single forthcoming fiscal year alone stands at \$304 billion and will probably be higher once everything is funded. The national public debt is an astounding \$477 billion, with the administration now reported as being ready to ask the Congress for an increase in that debt of yet still another \$29,800,000,000.

The statistics point toward the dangers inherent to relying any further on

the present system. That is why we need reform in the processes by which the Congress works with the budget.

We need to bring to the Congress a capability of preparing the budget, establishing an annual dollar spending ceiling within which priorities can be determined, fleshing out a professional staff capability to have as much fiscal and monetary information at our fingertips in debate as those who argue on behalf of the agencies. The bill may not be all that we want, but it is a step in the right direction.

There are few times when a bill is before the Congress with a potential for great improvement in the processes in which we function as a government and a society. This is, truly, such a bill.

We have an opportunity to change the institutional processes by which the Congress makes determinations affecting the economy, spending, and how much of the peoples' money—taxes—we will need to sustain that spending.

This Nation cannot long survive the irresponsible tax-and-spend-and-tax, ever spiraling upwardly spending policies which have characterized the past several decades.

I urge the members of the committee on conference—House and Senate alike—to break the impasse on this measure. The will of each House is that there be substantive budget reform this session. That will should not be frustrated. Conference committees work out major differences on other bills within days, or at the most, weeks.

And, I commend the gentleman from Florida (Mr. BAFALIS) for taking this special order today to afford Members an opportunity to speak out on this issue.

Mr. BAFALIS. I thank the gentleman from New York.

Mr. Speaker, I yield at this time to the gentleman from Illinois (Mr. HANRAHAN).

Mr. HANRAHAN. Mr. Speaker, the greatest single problem faced by the people of America today is that of runaway inflation. One of the most significant causes of this Nation's recent double figured annual inflation rate is uncontrolled Federal spending.

I am proud to join with my colleagues in urging the conferees now reviewing the Congressional Budget Act of 1973, to report out a bill which will require Congress to set a firm spending limit. The Congress must act more wisely in making critical budget decisions. It is my sincere hope that the new Budget Act will enable the Congress to make more intelligent budget decisions that will reflect the national priority of controlling runaway inflation.

Only by establishing thorough budget examination procedures and placing a definite limit on Federal spending, will we be able to deal effectively with the No. 1 concern of most Americans: runaway inflation.

I respectfully urge the conferees on this crucial bill to act as resolutely as possible.

Mr. BAFALIS. Mr. Speaker, I thank the gentleman for his comment.

Mr. Speaker, at this time I yield to the gentleman from Missouri (Mr. TAYLOR).

Mr. TAYLOR of Missouri. Mr. Speaker, I am pleased to add my voice to that of my freshman Republican colleagues who believe that fiscal responsibility should be a primary concern of this Congress and are dismayed at the inaction of the conference committee on H.R. 7130, the Congressional Budget and Impoundment Control Act.

I believe the issue foremost in the minds of the citizens of southwest Missouri and across the country is the rate of inflation which during the first quarter of this year galloped its way into the two-digit category when prices increased by 10.2 percent. The people want to see Congress take some action which demonstrates its recognition of this serious problem and show a desire to do something about it.

My constituents demand that Congress turn its attention to the expenditure side of the budget, and make a serious attempt to control Government spending. They want the Congress to put its own House in order and to adopt a responsible system for making spending decisions. The machinery for such a budget control system is contained in the budget reform legislation which has already passed each body and is now stalled in the conference committee.

I think the overburdened, overtaxed, overregulated American citizen wants Congress to move ahead with the legislative effort that seeks to set a congressional limitation on expenditures and to adopt a mechanism that makes possible a comprehensive review of congressional priorities.

My constituents want something done to reduce the approximately \$25 billion that goes down the drain every year in interest on the Government debt and they want something done to reduce the 43 percent of every taxpayer's earnings which are confiscated by Government at all levels.

Setting a congressional limitation on expenditures and adopting a mechanism for the comprehensive review of the legislative budget, as recommended by H.R. 7130, would be evidence of our real concern for the plight of the overburdened, overtaxed, overregulated American citizen.

I urge the conference committee on H.R. 7130 to stop delaying and to work industriously to report out a compromise version of this legislation that could receive the final approval of both bodies of Congress at the earliest possible date.

Mr. BAFALIS. Mr. Speaker, I thank the gentleman from Missouri for his comments.

Mr. BAFALIS. Mr. Speaker, I thank the gentleman very much for his comments.

Mr. SYMMS. Mr. Speaker, will the gentleman yield?

Mr. BAFALIS. I yield to the gentleman from Idaho.

Mr. SYMMS. Mr. Speaker, I wish to commend the gentleman in the well for his efforts not only here today but also

ever since he has been a Member of Congress in working toward a lump sum budget or a piece-of-pie budget so we could establish our priorities and not continue to expand the national debt.

I think the problem facing the American people is that the politicians in Washington refuse to face the truth about inflation. We create inflation with the printing press down on 14th Street and with the expansion of the money supply through the central banking system.

If we had a lump sum budget, then we could start rewarding the people in Congress for being responsible, instead of the system we now operate under where we reward those who are irresponsible and vote for every spending proposition that comes up.

It reminds me of the situation in 1949 in this same Chamber. The late Speaker Sam Rayburn said, if I can paraphrase him:

I say to my Democratic friends after listening to this debate that the people who get along the best here are those that go along the most.

I think this is as true today as it was in 1949. We can see what is happening. We continue to print "counterfeit" money, which is another form of taxation and continue to expand the money supply, which is much greater than the productivity of the country.

If we could vote on a lump sum budget at the beginning of each session of Congress or early in the session, then we would be in a situation where we could work with our friends on both sides of the aisle and argue about what the priorities should be, whether it should be spent on health services or military services or wherever people think best; but keep it within a certain amount of money.

In my own State of Idaho we have a policy in our constitution that forces the politicians not to spend more money than they take in in taxes. Every year we go through the same process. There is a big hassle between the health people, the educators, the farmers, and others; but at the end of the session somehow they come out with a budget that spends no more money than they take in in taxes. Sad as the case is, that is not the case in Washington. What we do, we continue to appropriate until the end of the session and then we go into supplemental appropriation season and that is where we get into the "counterfeit" money where everyone cannot live within their budgets for the remainder of the year. Then the people that oppose these requests in the sense of fiscal responsibility are punished by their colleagues because they do not go along.

It has been brought to my attention by members on the Committee on Appropriations when I have offered amendments to cut these appropriations by 5 percent. They say, "If he votes for these cuts or offers amendments for fiscal responsibility. We will take that appropriation out of his district."

If we had a lump sum budget, this would not be the case. Those that are fis-

cally responsible would be rewarded by the American people and they would not be voting against fiscal responsibility, but voting for it.

I would hope the U.S. Chamber of Commerce or the National Association of Manufacturers or some group that is interested in fiscal responsibility would create a rating system of how Members of Congress vote in regard to spending issues and rate them that way, giving a no vote if they vote for spending and a plus vote if they vote against it and see on a dollar-expenditure basis if they voted for a balanced budget or an unbalanced budget.

I might say to the gentleman from Florida that the National Taxpayers Union has made an attempt recently to do this. They have made a great deal of headway with their ratings, but it does not go far enough because it does not delineate between a \$1 million and a \$1 billion appropriation. It rates them all the same.

I think until Members of Congress face this problem of the money supply in Washington, D.C., we will never face the real difficulties that the American people face and we will never solve any of our problems. It must be done.

The rating of Congress in the eyes of the public is down to 21 percent. I think if the American public realized how irresponsible we really are with the people's money, their rating would be a minus 21 percent. It would be none too high if they take note where the inflation is coming from. It is right here in the House of Representatives.

I praise the gentleman from Florida because he has made an effort in his short time in Congress to be fiscally responsible and try to address this subject so we can get the stagecoach that is heading toward the cliff of financial disaster turned around before it is too late. In my opinion it is still not too late—

Mr. ABDNOR. Mr. Speaker, will the gentleman yield?

Mr. BAFALIS. Mr. Speaker, I yield to the gentleman from South Dakota.

Mr. ABDNOR. Mr. Speaker, I also want to add my remarks to this special order. I commend the gentleman from Florida for taking it out so as to once again give Members of the 93d class an opportunity to speak out on what we felt was one of our prime goals when we arrived here, that of obtaining some kind of fiscal responsibility in Congress.

Mr. Speaker, our oratory on the perils of skyrocketing inflation fills the air; our newsletters are filled with comments on what inflation is doing to our constituents; our questionnaires seek to confirm our concern. It is an almost certain bet that everyone running for Congress this fall will have at least one TV spot dealing with inflation.

We keep pointing fingers of blame at the President for his role in the budget. In fact we tend to blame everyone except ourselves for the situation. Yet, Congress is more to blame than any other single factor in creating and perpetuating inflation. By our actions we have permitted a situation to develop where 75 percent of the budget is beyond

our control. We have passed program after program, but we have never found time to add up the total. We just complain when the President submits the next budget.

It is no wonder that the Congress is in so low repute with the people of this Nation. We talk and talk about what we should do, but we do not do it. Until we complete action on a strong bill mandating an overall spending limit together with the necessary structures to implement budget control, all of our great concern about stopping inflation is just so much political bombast and hot air.

The greatest single factor propelling inflation in the giant chasm between Federal income and Federal expenditures that has existed for nearly a half century. Still we continue to enact and expand more and more costly programs.

If we are to avoid financial disaster for our Nation, we must have expeditious action on the Congressional Budget Act and vigorous implementation of it once it is signed into law. The time has come to stop talking about inflation and start doing something about it. The place to start is at our own doorstep and accept congressional responsibility for enacting sound, sensible spending programs meeting the need of our people while at the same time costing what we can afford to pay.

It is a big order, but if we are really serious about our inflation oratory, the time has come to act.

Mr. COCHRAN. Mr. Speaker, will the gentleman yield?

Mr. BAFALIS. Mr. Speaker, I yield to the gentleman from Mississippi.

Mr. COCHRAN. Mr. Speaker, I want to commend the gentleman from Florida for taking this special order, and also for the leadership he has shown during his tenure in Congress in trying to establish concern on the part of the Members for fiscal integrity and responsibility for inflationary spending programs.

In the past 6 years, the Federal Government with the blessings of Congress has spent \$162 billion more than it has taken in. To finance its expensive exploitation, the Government has bought up surplus capital at the expense of private investment; driven up interest rates and glutted the money supply with credit created through the Federal banking system.

Such fiscal irresponsibility is one of the primary causes of inflationary pressures on the economy, and continued deficit spending serves only to aggravate this already critical problem. After years of ill-conceived control efforts aimed at eradicating the effects of inflation rather than correcting its causes, we can no longer avoid facing the real root of the problem: Congress has too long lacked an overall perspective of the budgetary process. Priorities have been set by accident as much as by deliberate and informed congressional decision. The result has been a piecemeal budget process characterized by unnecessary duplication and ineffective overspending.

The amount of Federal spending under the actual controls of the appropri-

ation process is steadily dwindling. In fiscal year 1974, only 44 percent of the total budget passed through regular appropriations channels, with the balance classified as mandatory or relatively uncontrollable expenditures. By failing to impose an effective limit on total Government expenditures, we have avoided the politically uncomfortable reconciliation of taxes with spending, leaving for future generations the burden of our fiscal irresponsibility.

Only the implementation of comprehensive budgetary reforms, such as the budget control legislation presently in conference, can enable the Congress to begin attacking the twin problems of inflationary deficit spending and inadequate economic planning.

I hope the conference committee will report legislation which, first of all, creates a central oversight committee on the budget in both Houses, and second, requires careful consideration of spending priorities, and third, sets ceiling limits on total Government outlays.

Mr. Speaker, the bill should also force the Congress to take notice of the fiscal realities of economic planning by requiring that an automatic tax surcharge be imposed if the actual deficit should exceed an established budgetary limit. Congress' fiscal irresponsibility has brought our Nation's economy to the brink of disaster.

These budget reforms are a long-awaited opportunity to acquire responsible congressional control over a well-planned and economically sound national budget.

Mr. Speaker, I thank the gentleman for yielding.

Mr. LAGOMARSINO. Mr. Speaker, will the gentleman yield?

Mr. BAFALIS. I yield to the gentleman from California.

Mr. LAGOMARSINO. Mr. Speaker, the gentleman from Florida (Mr. BAFALIS) has graciously extended an invitation for me to join the members of the Republican freshman class in this special order today. I certainly appreciate the opportunity and want to express my agreement with the comments made during the first special order on this topic a year ago, under the leadership of the gentleman from Arizona (Mr. CONLAN).

Mr. Speaker, I read in the press last night where the national debt is expected to nudge past the \$475 billion mark before the end of June. When you start talking about debts on the order of hundreds of billions of dollars, it is hard to place it in perspective. But put another way, we are soon going to be asked to raise our national debt ceiling above the one-half trillion dollar mark.

The national debt, of course, is the result of deficit spending. Deficit spending is sometimes unavoidable; we have all faced situations where we have had to borrow money. But not all deficit spending can be traced to emergencies, sometimes it is a simple result of reckless spending. Since it is very hard to give a ticket to Congress, maybe we should consider policing ourselves, and it is my un-

derstanding that is what the budget reform bill will do.

Mr. Speaker, while I was still a member of the California Legislature last year, we considered a proposal for a ceiling on State expenditures. The proposal was not very popularly received by State employees, and an unfortunate combination of tax rebates, clever campaign tactics by opponents, and difficulty of language combined to cause defeat of the measure. However, I still feel the concept is a good one, and there was much that I learned in the course of the debate. For example, the fact that 43 cents of every dollar earned in California now goes to Federal, State, and local government. We did succeed in clamping a lid on local government costs in our State, and despite the failure of the State expenditure ceiling, we have managed to operate in the black for the past several years.

What I am suggesting, Mr. Speaker, is that it is time to apply some of this same philosophy to the Federal Government. I realize that I am a new Member, one who perhaps does not have a full grasp of the intricacies of Federal Government. But sometimes a fresh eye can lend a needed prospective to things.

In this case, I feel there are three essential elements lacking in the present congressional budgeting system. First, the Congress lacks an independent source of information about the Federal budget. We should have an independent staff available to the entire Congress and to our fiscal committees to review the budget proposals of the executive. To tell us where spending can be cut and how our dollars can be better spent. Second, we need to enact a single budget bill, prior to the commencement of the fiscal year, rather than the series of appropriation bills we now use.

Third, we need to establish an overall spending ceiling at the start of each fiscal year, and stick with that ceiling. If we find as the year progresses that unavoidable expenses will be incurred, then we should face up to the problem and set about raising the necessary revenue to pay for our excesses. This is a painful procedure, but in the long run, by far the best. First, because it would force us to face up to the fact that every dollar of expenditure that we vote for on this floor, must ultimately be taken from the pockets of the American taxpayer; given that knowledge, perhaps we will be more careful about how we vote. Second, in the long run, we will benefit because every time we go into debt, every time we increase the Federal deficit, not only are we obligating future taxpayers to pay for our negligence, but we are contributing to the inexorable process of inflation, the evil which is eating away the real purchasing power of the American citizen. And inflation, of course, increases the costs the Government must pay for services.

It is my understanding the bill now in conference, and which is the subject of this special order, contains all three of these safeguards. Can we do anything less than that which our constituents

have sent us here to do—act responsibly and pass this bill?

Mr. ROUSSELOT. Mr. Speaker, will the gentleman yield?

Mr. BAFALIS. I yield to my good friend, the gentleman from California.

Mr. ROUSSELOT. Mr. Speaker, I am a cosponsor of the resolution introduced by my colleague from Florida, Congressman SKIP BAFALIS, and I commend him for taking this special order today to give us the opportunity to speak out on this important issue.

The resolution urges the conference committee on the Congressional Budget Act move quickly, and report out "a strong bill which will mandate an overall spending limit as well as provide the necessary committee structure, staff and resources by which Congress may review and control expenditures, and, thereby, control inflation."

Inflation is the No. 1 problem facing the citizens of this Nation, and we in Congress, as the elected representatives of the people, have a responsibility to control the inflationary spiral. Article I, section 8 of our Constitution gives Congress the authority to pay the debts of the United States, and article I, section 9 further mandates that—

No money shall be drawn from the Treasury, but in consequence of Appropriations made by Law.

I believe that under the current fragmented system of appropriating funds without a congressional budget limiting expenditures, and without regard to, or knowledge of, how the appropriation compares with the total appropriations for that fiscal year, we are abrogating our constitutional responsibility. The President has found it necessary to withhold appropriated funds in order to keep down Federal spending. The Congress must assume its proper role, and this can only be accomplished by completing action on the Congressional Budget Act, and including strong provisions in this legislation that will allow Congress to establish its own priorities and spending limitations.

Congressional approval of a budget reflecting anticipated revenues, and limiting expenditures before proceeding with the appropriations process is, I believe, one of the most important steps Congress can take to bring Federal spending under control, and ease the burden of inflation on our Nation's citizens.

At the beginning of the 93d Congress, I joined with my colleague from Florida in cosponsoring another piece of legislation, House Joint Resolution 332, proposing a constitutional amendment "to provide that appropriations made by the United States shall not exceed its revenues, except in time of war or national emergency; and to provide for the systematic paying back of the national debt." The President's proposed budget for fiscal year 1975 offers no relief. It calls for an estimated \$29.7-billion increase in Federal spending over this fiscal year, and would operate at a deficit of \$17.9 billion in Federal funds. We can no longer ask the taxpayers to bear the

brunt of the whopping deficits incurred as a result of our congressional fiscal irresponsibility.

As we have seen in recent years, large sustained deficit spending puts pressure on the Federal Reserve to finance these deficits by increasing the supply of money in the economy which lessens spending power, and the result is continued inflation. One of the major problems that has contributed to increasing deficits is that Congress does not consider debt increase legislation until after it has already appropriated and committed funds.

An editorial which appeared in today's Wall Street Journal reminds us that the Ways and Means Committee is currently considering an administration proposal to increase the debt limit. The editorial also points out that this increase may be inevitable if Congress continues to approve large Federal spending bills, such as pending legislation which would authorize \$24 billion to be spent on mass transit over the next 6 years. To quote from the Wall Street Journal:

Congress has been talking about reforming itself by setting up a means to coordinate all its spending proposals so that when they are added up they bear some relationship to foreseeable revenues. The proposed mass transit bill would suggest that there is an urgent need for such an effort.

The full text of the editorial follows, and I urge all my colleagues to read it carefully:

#### A PERVERSE THOUGHT

While the House Ways and Means Committee stewes over an administration proposal to raise the federal debt limit about the half-trillion-dollar mark, the House Public Works Committee is doing what it can to leave little choice in the matter.

Public Works, according to reports, is putting the finishing touches on a bill that would authorize \$24 billion in federal spending on mass transit over the next six years. The money would supposedly come from "new revenues" but it doesn't seem very clear yet what that means.

Since there aren't many prospects for a federal tax increase, aside from some proposed swipes at oil industry profits, we assume that the money would come out of whatever "fiscal dividend" there might be over the next few years from the effects of inflation on federal revenues generated by the present tax structure. Given all the various other ideas Congress and the administration have for spending the fiscal dividend, it is going to have to carry a very big burden. The administration, by the way, has its own mass transit plan, which would cost only \$16 billion, and it would be financed partly from the highway fund.

The more likely outcome is that the mass transit bill, if it gets through Congress, would simply add to the federal deficit. And it may not be long at that rate before the Congressmen over at Ways and Means wonder why they worried over a half-trillion-dollar debt ceiling.

Mass transit may well be deserving of federal attention. So, indeed, may be health care, the Penn Central railroad and all the other spending ideas the Congress and administration have in mind. But that little problem of money is getting to be a bigger and bigger problem.

Congress has been talking about reforming itself by setting up a means to coordinate all its spending proposals so that when

they are added up they bear some relationship to foreseeable revenues. The proposed mass transit bill would suggest that there is an urgent need for such an effort.

It's enough to stir the perverse thought that maybe Ways and Means should just refuse to budge on the debt ceiling. Disrupting the whole government would be a dramatic blow, perhaps even gaining the attention of the other money-spending committees in Congress. In those perverse moments, the battle cry rises: Fight irresponsibility with irresponsibility.

Probably it's a bad idea, since gimmicks seldom solve anything. But by this time we're not ready to write off any idea that might give pause to everyone who has some scheme for spending money and no scheme for raising it.

Mr. Speaker, I testified before the Joint Committee on Budget Control, and the Rules Committee urging that provisions be included in the budget control bill which will allow Congress to reduce Federal expenditures in order that they balance with anticipated revenues. I also urged that this action be combined with legislation reported from the Ways and Means Committee to provide for the systematic repayment of the existing public debt in order that repayment provisions can be included in the congressional budget.

The first step in accomplishing these goals is the final approval of the Congressional Budget Act, and the inclusion in this legislation of strong provisions that require spending limitations. This would establish the basic framework to provide for the restoring of economic stability, and relief from continued rising inflation for the citizens we represent.

Mr. BAUMAN. Mr. Speaker, will the gentleman yield?

Mr. BAFALIS. I yield to the gentleman from Maryland.

Mr. BAUMAN. Mr. Speaker, I would like to add my comments to those which were made by the gentleman from Florida (Mr. BAFALIS).

I have found continually as I travel around the First Congressional District of Maryland that the question is put to me: "What are you doing in Congress to fight this battle of inflation?"

The gentleman from Florida by his remarks exemplifies the many people who are concerned with Members of Congress doing something about inflation. The fact that we are here today is testimony to that.

I wish to commend the gentleman from Florida on this occasion for his continued fight. It is very pleasing for me to be able to join the gentleman here today in his efforts.

Mr. Speaker, the problem of inflation has been with us for a long time. But in the past year it has become so severe and so all-pervasive in our economy that it has become the major concern of all Americans, far outdistancing Watergate, the energy crisis, and even taxes in the minds of nearly everyone. A poll which I took in my district in Maryland during the months of February and March, when the energy crisis was at its worst, still showed inflation to be the principal worry of my constituents.

That much is obvious. The question, then, is what we will do about it, and here there is considerable disagreement. Naturally, what we do to solve the inflation problem depends on what we perceive to be the cause of inflation, and I believe there are several contributing factors.

The first of these is the size of the Federal budget, and the rate at which it has grown in recent years. As the budget grows in proportion to the country's total gross national product, it brings more and more influence to bear on the performance of the American economy. All too often, the money we spend here in Washington goes into areas which are nonproductive, and which contribute little or nothing to national productivity. In short, we are throwing around more and more dollars, which in turn do less and less work.

A more or less permanent feature of the Federal budget, it would seem, is red ink. Budget deficits, which have totaled more than \$100 billion since the present administration took office, are particularly damaging. The interest on this debt runs in excess of \$26 billion a year, which comes out of the pockets of all taxpayers. And as Uncle Sam spends more than he takes in in taxes, he pushes more and more money into the economy, and forces the rate of inflation inexorably skyward.

And finally, the Federal Reserve Board continues to make its contribution to the inflation problem by incessantly expanding the Nation's money supply at a rate considerably higher than that at which our real income and productivity are rising. Excessive monetary expansion is a prime cause of inflation, and the Fed knows it. We all know it. Politically, steep rates of monetary expansion are popular over the short run. People think they have got more income to spend, simply because there are more dollars in their hands. But this sort of thinking is akin to going on a good drunk—it feels pretty good for a while, but the hangover comes all too soon, and it is painful, indeed.

Classic inflation is defined as too many dollars chasing too few goods and services. Rapid growth of the Federal budget, large budget deficits, and excessive monetary growth all have the effect of putting too many dollars into circulation to chase too few goods and services, and to cure inflation, these three causes must be eliminated.

Once already in this decade, we have tried to do something about rapidly rising prices. In August of 1971, the President ordered mandatory economic controls, and about 2 weeks ago we let those controls die a natural death. By the end of April, it was obvious to all what had apparently been obvious to only a few of us who objected to controls when they were first imposed. It had become quite clear that controls do not work. The reason they do not work is that they are aimed at the symptom of inflation, and not the cause. Wage and price controls do nothing about the Federal budget; they do nothing about huge budget defi-

cits; and they have no effect on wrong-headed monetary policies.

The hour is now late. Inflation has become so severe that prices are rising at an annual rate of from 10 to 15 percent. We have delayed too long in performing the difficult task of dealing with the real causes of inflation.

Excessive growth in the size of the Federal budget can be cut down only by a firm resolve among those of us in this Chamber and among our counterparts in the Senate to stop trying to be Santa Claus to every group and subgroup in our constituencies. The new budget reform measure which passed both Houses overwhelmingly earlier this year will help. But it is not the whole solution.

The red ink which has stained so many Federal budgets during recent decades can be eliminated by an excellent measure offered by the gentleman from Florida (Mr. BAFALIS). He proposes a constitutional amendment which I ardently support, one which would prohibit deficit spending, and require the eventual repayment of the entire national debt. This measure is simple commonsense, and excellent economic sense. It will eliminate forever a major cause of inflation, and contains the added benefit of placing a certain restraint on congressional spending habits. Many of those who occupy this chamber will find themselves far less inclined to spend huge amounts of money if to do so they must explain just where—besides the Treasury Department printing press—they are going to get that money in the first place.

Finally, restraints are necessary on Federal Reserve Board policies governing monetary growth. Whether these are to be statutory or whether they will come from the Fed with a little prodding instead, such a move is an absolutely essential element to any effort to cut inflation.

Much has been made recently of a proposal made by Prof. Milton Friedman, of the University of Chicago. This highly regarded economist has proposed a system of "indexing" to help soften the effects of inflation and attempts to deal with it. Briefly stated, his plan would hike interest rates according to the rate of increase in the Consumer Price Index, tie tax rates to the CPI increase, and a host of other measures designed to minimize the effects of inflation where potentially serious damage to the economy is possible. Many individuals, liberal and conservative, have endorsed the plan, since it so obviously would be beneficial. But it is vital to note that Mr. Friedman proposes the plan only as a means of softening the effects of taking steps to deal with the root causes of inflation. Indexing will allow us to cut the monetary growth rate, deficit spending, and excessive growth of the national budget without experiencing the unacceptable byproducts of high unemployment or recession. Indexing without the concurrent efforts to deal with these root causes will be largely useless.

In short, let us not fight inflation with our eyes shut. We have to open our eyes

to the real causes of the problem, and deal with them accordingly. The American people cannot tolerate any more delay. Each trip to the supermarket, each price increase on countless goods and services, heightens public resentment over our failure to deal effectively with the problem. And while the situation is serious for all of us, it is now critical for those on fixed incomes. We in the Congress must act decisively, and we must act now.

Mr. BAFALIS. Mr. Speaker, I thank my good friend, the gentleman from Maryland.

Mr. Speaker, despite what the columnists write and the newspapers print in their headlines, despite what the political pundits and many of our colleagues say, the No. 1 issue, in the 10th District of Florida, and, I believe, throughout this Nation, the No. 1 issue facing this Congress and facing each and every one of us as we come up for reelection in November, is the issue of inflation.

This inflation constitutes what I consider to be probably the most insidious form of taxation we have ever seen in this Nation.

This year we are approaching a national debt of one-half a trillion dollars, that is in excess of \$500 billion. The interest alone this year on that debt will be approximately \$31 billion. We are going to have a budget for fiscal year 1975 in the neighborhood of \$305 billion, some \$11 billion over the anticipated income of \$294 billion.

Mr. Speaker, prior to coming to the Congress, I had the opportunity to serve in the State legislature in Florida. In the State of Florida we have a constitutional prohibition against spending more money than we anticipate collecting during any given year. As a result, today Florida does not have a deficit; as a matter of fact, it has a surplus.

We have learned in the State of Florida that we must set priorities, and that we must live within our income. Obviously, we have not done that here in the Congress.

Upon arriving here, in the early part of 1973, I introduced a constitutional amendment that would prohibit us from spending more money than we take in during any given year, except in time of war or in time of national emergency.

I had the audacity, some might say, to include a provision that mandates us to pay off our national debt at the rate of 10 percent for each period of 10 years, so that during the next 100 years we would pay back this half a trillion dollars.

There are now some 40 cosponsors of this legislation. It has not been heard in a year and a half, and unfortunately it seems unlikely that it will receive a hearing.

Mr. Speaker, I do commend this freshman class of Congressmen, of which I am very proud to be a Member. We have voiced our concern over and over again regarding the reckless spending practices in this Congress. I do hope our effort will have an impact in making certain that the proposals which came out of the Joint Budgetary Committee and

the resulting legislation which is now before the conference committee, will finally come to this floor so that we will for the first time in many years have an opportunity to put a spending ceiling on our expenditures and exercise budgetary control over those expenditures. This will at the very least begin to reduce our rapid rate of inflation.

Mr. Speaker, I am firmly convinced that the root cause of inflation rests right here on Capitol Hill within this Congress. I think the American people know that we have spent more than we should have spent and supported programs that have been costly and unworkable. They are telling us now and I think they will tell us again in November, "Do as we do; live within your income."

Mr. Speaker, I hope that the Congress in its infinite wisdom takes the necessary steps to do exactly that.

Mr. CONLAN. Mr. Speaker, dollars being spent by Americans today have less than one-third the purchasing value of dollars in 1940. To be exact, today's dollars are worth only 32 cents, which means that it takes more than \$3 today to buy what \$1 bought just 34 years ago.

Alongside this vexing erosion of the dollar's purchasing power, prices and taxes have skyrocketed, far outpacing wage increases American workers have earned during the past three decades. It is a vicious cycle of inflation, which many politicians and bureaucrats have wrongly blamed on private business and industry.

Inflation—the word we use to summarize this decline of the dollar's value and related economic woes—is not the fault of producers in our economy. It is the fault of government, which cannot provide anything to American citizens that has not first been taken from them in one way or another.

Specifically, inflation is the fault of Congress, which since 1940 has greatly enlarged and expanded Federal programs at a tremendous cost, without having the courage or forthrightness to pay for them through direct taxes. Instead, Congress has played the role of Uncle Sugar to just about all of us through one federal program or another, writing off most of the bill through deficit spending and by expansion of the money supply, which has thus eroded the value of all dollars.

Mr. Speaker, inflation weighs heaviest on individual working citizens and their families. Rising prices have distorted family economic planning, endangered savings and economic stability, and injured those on fixed incomes.

Since Government is responsible for this inflationary spiral that has severely dislocated the free market, Congress must take concrete steps to reform Federal taxing-spending practices and to put a firm ceiling on Federal spending each year. Freshman Members of the 93d Congress expressed their strong bipartisan support for such budget reform last year, and such reform is still a major item of unfinished business midway into the second session.

No government, not even the richest on Earth, can continue this hodge-podge system of raising and spending Federal revenue, overspending by multibillions

of dollars nearly every year, and still not eventually plunge itself into financial disaster. If conferees on the budget reform legislation approved by both Houses of Congress waste no more time on this inflation control measure, we can move further along toward the sound fiscal policy we need in the appropriations process.

Mr. Speaker, Americans all over the country are writing to tell us that inflation will be a major issue in the next election. They realize that rising prices and rising taxes—the whole inflationary spiral—is largely the result of this body's helter-skelter spending habits. And unless Congress does something now, these Americans will understandably punish those Congressmen responsible with their votes next November.

To demonstrate the relationship between the deteriorating purchasing value of the dollar and annual Federal deficits, I asked economists at the Library of Congress to provide me with statistics going back to 1940, showing both the annual rate of inflation and the Federal deficit or surplus for each year to the present.

As I have already pointed out, this study shows that the 1940 dollar is now worth only 32 cents. Federal deficits since 1940 have totaled almost \$446 billion.

I include this table in the RECORD for the benefit of all my colleagues:

INFLATION SINCE 1940

Year	Decreased purchasing power of dollar (percent)	Value of dollar	Federal deficit (billions)
1940	0	\$1.00	-\$3.9
1941	-4.9	.95	-6.1
1942	-9.7	.86	-21.4
1943	-5.8	.81	-57.4
1944	-1.6	.80	-51.4
1945	-2.2	.78	-53.9
1946	-7.8	.72	-20.6
1947	-12.6	.63	+7
1948	-7.2	.58	+8.5
1949	+1.0	.59	-1.8
1950	-1.0	.58	-3.1
1951	-7.4	.54	+3.5
1952	-2.2	.53	-4.0
1953	-8	.52	-9.4
1954	-4	.52	-3.1
1955	+3	.52	-4.1
1956	-1.5	.52	+1.6
1957	-3.4	.50	+1.5
1958	-2.7	.48	-2.8
1959	-8	.48	-12.4
1960	-1.6	.47	+1.2
1961	-1.1	.47	-3.8
1962	-1.1	.46	-6.3
1963	-1.2	.46	-6.2
1964	-1.3	.45	-8.2
1965	-1.6	.44	-3.4
1966	-2.8	.43	-2.2
1967	-2.8	.42	-9.8
1968	-4.0	.40	-28.3
1969	-5.1	.38	-5.4
1970	-5.6	.36	-13.1
1971	-4.1	.35	-29.8
1972	-3.2	.33	-29.1
1973	-5.9	.32	-34.1
1974			-27.8

<sup>1</sup> Estimate.

Source: Library of Congress.

Mr. ARMSTRONG. Mr. Speaker, the cost of living is at an all-time high; the Nation is reeling from the sharpest yearly price rises in over 20 years.

The American worker who received a 50-percent increase in pay since 1964 actually lost money because of a 45-percent inflation and higher actual taxes.

Over the years we have been warned

repeatedly that runaway inflation will result from continued budget deficits, and indeed, year after year this prophecy has been realized as the Federal debt has increased by \$170 billion in the last decade alone.

The House has at least realized the severity of the problem and passed the Budget Control and Impoundment Act of 1973.

The Senate has passed a similar bill; hopefully, the conferees will report an effective measure back in the near future. It is too late for further delay.

But we should remember this is only a first step. The Budget Control Act does not automatically balance the budget or stabilize prices. It only insures that Congress must make a clear decision, rather than decide by default. But there is absolutely no hope for controlling the price spiral until the Federal budget is balanced and a lid on new spending is kept there long enough to cool an economy overheated for all too long.

Such a decision will not be easy; it is likely not to be popular. However, each day it is delayed only adds fuel to the fires of inflation, only drags down the dollar's purchasing power further.

In conclusion, I would like to point out an overlooked fact about deficit spending. It is borrowing from the future to pay for something now. And to borrow, we pay interest.

In paying for yesterday's follies and lack of economy, we pay \$30 billion a year in interest. That is more than the total expenditure of six Government agencies—Agriculture, Commerce, DOT, HUD, Justice, and the Interior.

The need to control the Federal budget before reckless spending ruins our country is the proper concern of all Americans, but particularly of those of us who serve in Congress and who have the constitutional duty to control spending and the moral obligation to do so wisely.

Let us get on with it.

Mr. LOTT. Mr. Speaker, I too, would like to add my comments regarding the importance and necessity of the conferees reporting a strong Budget and Impoundment Control Act that establishes an overall spending limit, thereby enabling the Congress to take the reins in curbing inflation in this country.

I think it particularly significant that for the first time Congress has a chance actually to legislate to itself a mechanism for analyzing and effectively controlling budget outlays. Our head-over-heels fiscal spending policy is catching up with us; and we have known, or should have known, that it would for several years. Congress has simply spent too much money—money that has influenced directly the upward spiral of inflation.

Let us face it, our dollar is not what it used to be, and it should come as no surprise that we are paying more and getting less. That is one big reason why it is imperative that Congress make a concerted effort to conduct its affairs in a business-like manner with some sense of monetary responsibility. We are all aware that if a business—an operated his business with as much irregularity and with as much disregard for his assets as

Congress, he would not be in business for long.

Thus, Congress has an excellent opportunity to redeem itself and, in doing so, not become further derelict in the duty to the taxpayers of this Nation. The Budget and Impoundment Control Act is probably the most important and could have the most far-reaching economic impact of any legislation passing the 93d Congress. We must in good faith carry through on the mandate which this act provides and learn to operate within a thoroughly reviewed and prescribed Federal budget, which outlines a spending pattern designed to stimulate our economy and at the same time curtail the rate of inflation.

Mr. MARTIN of North Carolina. Mr. Speaker, it is with great pleasure that I rise in support of this resolution. We have within our grasp, if we care to do the grasping, an opportunity to take one essential step toward a return to fiscal responsibility. We are not asking for much, really, just that the Congress sit down and do what any sensible individual or board would do at budget time: look at income and expenses as one picture and try to make the former at least balance the latter.

When I decided to participate in this discussion, my first inclination was to launch into a discussion of economic principles, but on reflection it seemed better that I leave that dismal science to those better trained in its discipline.

Instead, I would like to address my remarks to the American wage earner. In case we have forgotten, that is our boss.

By turning down—quite properly—our own salary increases this year, we have given ourselves a lot of good "P.R." and enough, I suspect, for many to say that by that gesture the demand for fiscal responsibility is satisfied. But, it is not.

In my district there is a long tradition of support for fiscal conservatism. I have recently conducted a survey—my second annual questionnaire. The returns are not yet tabulated, but I have studied them enough to be able to say something about them. I asked whether, in dealing with the problem of Federal budget deficits, constituents would prefer to cut into defense programs, cut into social programs, or, in extremis, raise taxes. Almost everyone responded affirmatively to at least one of those options. In fact, a very substantial minority indicated that they would go along with a tax increase if that were necessary to balance the budget.

I believe we are in error if we believe, politically, that we can go on into the distant sunset spending billions every year in excess of revenues. People are waking up to the effect this deficit spending is having on them. In addition, fewer people are buying the idea that there is a need for this spending in the absence of a war.

What are the effects on Mr. and Mrs. John Q. Citizen?

If Mr. and Mrs. Citizen want to move out of their apartment and buy a home of their own, and unless they just won a million-dollar lottery or inherited a small fortune, they will have to get a mortgage. They enter the money market in competition with their Government and find that their own Government is

sopping up, this year, \$9 billion of loanable funds—enough to finance a third of a million mortgages. Not only does that amount of money leave the market, what is left gets bid up in price. To a degree, deficit spending is responsible for scarce money and high interest rates.

If Mr. and Mrs. Citizen are living on a relatively stable income, they are probably eating more spaghetti than in the past, and are probably getting acquainted with the virtues of vegetable protein. Spaghetti is not to be derided, and vegetable protein certainly has its virtues, but I would doubt that inflation diets are a matter of completely free choice. Some of today's inflation is beyond the control of our Government. It is hard to see how we could regulate the price of King Faisal's oil. But, some of the present rate of inflation is subject to control. We are now contemplating dumping \$9 billion more borrowed, high-interest dollars into the economy. Sure, it will create jobs, and protect a few more—mainly on the Federal payroll. But, it will inflate the economy by that amount.

So, when Mr. and Mrs. Citizen back off from buying a house this year and decide they have to spend the money they earned and saved for a downpayment, they will be spending 1971 and 1972 dollars from their savings on goods at 1974 prices which have been inflated in part by the effects of Federal deficit spending.

It seems every time we look up from the crisis of the instant, we meet one more special interest protesting that its project or its program is so essential that not only must its funding not be cut, the funding must be increased. In discussing budget control, maybe we ought to require that every bill calling for an increase in spending include a section providing for an income tax surcharge sufficient to pay the freight. We could do the same for bills granting preferential tax treatments. It would save the taxpayers the cost of printing about three quarters of the bills introduced annually.

Some day, hopefully soon, we are going to have to bite the bullet and get our fiscal house in order. The cycle of tax and tax, spend and spend, and elect and elect is doomed. The American people are waking up to what Federal deficit spending is doing to them. Today's discussion can serve as an alarm clock for others.

This country needs firm controls on the Federal budget. The people of the country are beginning to demand it. Sooner or later, our bosses are going to begin to review our stewardship in light of what we have done about it. People who now decide that they cannot afford a new suit this spring will then decide they cannot afford a new educational program or research grant. They may decide some Members of Congress are too expensive.

So, we should get a move on and get a sound, tough budget reform bill enacted. Whether we do it because it is right, or we do it to save our necks; in any case, let us do it, and do it soon.

Mrs. HOLT. Mr. Speaker, I would like to thank my colleague from Florida (Mr. BAFALIS) for giving me this opportunity to urge our colleagues on the Budget Reform Conference Committee to act quickly and responsibly in reporting out a strong budget reform measure.

Congress has too long evaded the question of assuming responsibility for its historical control of the budget. Unless meaningful reform is enacted without further delay, we will continue to witness the awful consequences of inflation, spiraling taxes and general economic unrest, by this unrestrained deficit spending of billions of Federal tax dollars. Budgetary chaos has resulted from our hodgepodge organization of budgetary responsibility. Within the goals set by the new budget committees, the appropriations process will now bear a more direct responsibility for the allocation of the tax dollar, and this is certainly a step forward.

I would like to add a word of caution, however. While the specific recommendations of the conference committee will enable us to implement a process more responsive to the economic realities of our time, we must restructure our own thinking. We are surely witness to the faulty philosophy that government spending is the panacea for inflation. We cannot continue to buy popularity as a nation or as individuals. Federal funds are limited both in quantity and in ability to cure our myriad social ills. Until we accept this as an economic fact of life, all the budget reform in the world will not save us from continuing economic instability.

It is my earnest hope that the conferees will present to us, as expeditiously as possible, the means by which we can finally achieve control over Federal spending and economic policies.

Mr. MOORHEAD of California. Mr. Speaker, I rise in support of the resolution. I can think of no other single item so essential to the future health of the American economy, as well as to Congress effort to reestablish itself as a vital and responsive institution of Government, than the budget reform legislation which is presently in conference.

The American people are not fully aware of how Congress lack of budget control prevents a sound economy. Many of them do not realize that year after year, Congress appropriates legislation with no regard for spending priorities. At the end of the year, Congress adds up the totals. If we have a balanced budget—which is rare—it is purely an accident. Is it any wonder why Congress has received a positive rating of only 21 percent of the American people?

If the people were aware that Congress for years has had absolutely no formal mechanism through which it could make the rational fiscal decisions which need to be made, they would have surely voted its Members out, and well they should. For Congress has flatly ignored its constitutional responsibility to manage the taxpayers' money.

The 93d Congress, Mr. Speaker, deserves much credit for recognizing the danger of this blindman's approach to fiscal matters and for doing something to correct it. The special joint committee developed a comprehensive plan for reform that will force Congress to make the necessary fiscal decisions which it has long ignored. Both Houses of Congress deserve the highest praise for passing this legislation.

Now, only one final hurdle is left be-

fore this historic reform can be put to work for the people of America. Further delay is inexcusable. Denial of final passage is unthinkable. We have gone a long way toward filling the tremendous void of fiscal irresponsibility in the Congress. Now that the battle is nearly won, we cannot lose the commitment which prompted this monumental study in the first place. We cannot afford to rest until the budget reform bill is successfully out of conference and is sent to the President for his signature.

Mr. Speaker, the American people are tired of inflated prices at the marketplace. They deserve better from their elected representatives in Congress. This day, let us resolve that Congress will restore the sense of fiscal responsibility that is desperately needed.

Mr. HUDNUT. Mr. Speaker, while a longstanding commitment makes it impossible for me to participate personally in the special order of the freshmen Republican Members, as vice president of the 93d Club I did want to associate myself with the remarks of my colleague, the distinguished gentleman from Florida (Mr. BAFALIS) and others regarding the need for fiscal responsibility and budget reform.

Certainly next to peace, this is our No. 1 issue as it affects every citizen. The American people are sick and tired of seeing their family budgets wrecked by inflation. I ask, is it not possible to construct some sensible dikes against that onrushing torrent? I believe it is. All of us and our fellow Americans have to make ends meet when it comes to management of our affairs. We have to balance our budgets and live within our incomes—paying off debts as they become due. I would ask, is it too far afield to suggest the situation with the Federal Government is analogous?

I have always opposed deficit spending, and will continue to do so. I feel that we should pay our way as a nation, just as we do in our homes and businesses. There is nothing wrong with borrowing—we all do it; but we also pay back at interest what we borrow. I do not think we should pass along to our children and our children's children an incredible and disastrous burden of public indebtedness that will break their backs, the back of our currency, and the back of our country—which seems to be just what we are in the process of doing. We simply must get a handle on Government expenditures, control them as best we can, and see to it that outgo matches income.

To this end, during the past session of the 93d Congress, I introduced H.R. 7154. This bill provides that Federal expenditures shall not exceed Federal revenues except in time of war or grave national emergency declared by Congress. It also provides for systematic reduction of the public debt. Right now, the budget includes a figure above \$25 billion for interest on the public debt, and it is anticipated that in fiscal 1975, that figure will rise to \$29 billion. That figures out something like a little more than \$58,700 per minute that the American people are paying to service the national debt—much less retire it. My legislation—and other bills like it—is still pending before the Ways and Means Committee, and I

wish that hearings could be held on this subject and the public be given the chance to express itself to the committee, because I feel quite certain that most Americans disapprove of the astronomical figure that the public debt has reached.

We did make some progress toward budget reform in the last session of the Congress by passing H.R. 7130 in December. I was glad to vote for this measure, which, when it becomes effective, will require Congress to set ceilings on outlays and revenues each year, prepare its own budget proposals, return to the Appropriations Committee control of forms of spending which are now not subject to such review, and extend the fiscal year to begin on October 1 rather than July 1 so that all spending can be compared at one time to the earlier Budget Committee targets. The ceiling set earlier in the year can be reviewed and revised all at one time in September, but every step of the process has to be related to every other step. The process is cumbersome and is not a panacea. However, it is intended to provide a discipline within which the congressional will to govern can be rediscovered. It is a step in the right direction and I urge the House-Senate conferees to report out a strong bill as soon as possible.

Budget management must be established if we are to have stability and a basis for a healthy growth in the economy as a whole. We must establish a good basis for determining spending goals and priorities and always remember that everything the Government gives us with one hand it must take back with the other in higher taxes, more inflation, or both. Therefore, all new spending proposals should be looked at in this way, by asking whether they are worth either of the costs.

The Congress of the United States plays a vital role in determining the economic policy of the United States, and we are now in a position to implement the budgetary controls necessary to return sound fiscal policy to the appropriation process and, thereby, the Nation's economy.

Mr. PARRIS. Mr. Speaker, I welcome this opportunity to address my colleagues and urge the prompt enactment of the Congressional Budget Reform Act.

As we all know from correspondence and face-to-face conversations with our constituents, the spiraling inflation rate is one of the prime concerns of the American public. In response to a question on my February opinion poll of the Eighth Congressional District of Virginia which read "What do you believe are the most important issues facing the U.S. today?" Inflation was the issue most frequently placed at the top of the list.

Mr. Speaker, I respectfully submit that the primary cause of inflation is irresponsible Federal spending, for which this body can be held accountable. I believe the enactment of H.R. 7130 is a real step in the right direction toward removing the inherent problems in our current appropriations process, and strongly urge my colleagues now serving on the conference committee reviewing the Congressional Budget Reform Act to proceed expeditiously in reporting out this legislation.

Mr. BURGNER. Mr. Speaker, the cause of reforming the procedures whereby the Congress acts on budgetary matters has come a long way since March 7 of last year when the freshmen in this Congress rose as a body to urge adoption of a new, workable procedure.

At that time, these reforms were simply a desire felt by many Members of varying seniority.

Today both Houses of the Congress have acted on a measure to accomplish these reforms and a conference committee has been formed to resolve the differences between the versions.

How far we have come, Mr. Speaker, in a single year.

But to have come this far is not in itself sufficient cause for rejoicing. If the conference committee does not complete its work and report out a strong bill that can achieve final acceptance by both Houses, we may lose the progress already made.

These reforms must become law.

In the year that has gone by since the special order last March 7 this Congress has authorized expenditures of hundreds of billions of dollars. It has done so without the benefit of the perspective full budgetary consideration could provide.

In that year the Federal debt has increased by billions of dollars. I, for one, believe that this is an unfortunate fact. But what is even more unfortunate is that the Congress has taken action under which this debt has mounted without the benefit of budgetary analysis which would allow each of us to fully evaluate the ramifications of our actions.

The time has come to bring this bill forward and make it law. I doubt that it would be an exaggeration to say that this can be one of the most important measures passed by this Congress.

Mr. COHEN. Mr. Speaker, I rise in support of the resolution offered by my distinguished colleague, Mr. BAFALIS, exhorting the conferees now reviewing the Congressional Budget Act to act expeditiously in reporting out constructive legislation which will return to the Congress the necessary fiscal tools to control inflation.

Clearly, one of the most glaring problems plaguing the Congress revolves around the diffuse, inefficient, and time-consuming appropriation process. As presently structured, the process impedes effective legislative oversight, discourages fiscal discipline on the part of Congress, and nurtures inefficient and duplicatory Federal programs.

Despite the pressing need for reform of the congressional budgetary process—as pointed out in the report of the Joint Study Committee on Budget Control—a full year has now elapsed without final congressional action on the committee's recommendations. During this period, the critical problem of inflation has worsened considerably.

While the Congressional Budget Act is not a panacea that will cure all the economic ills of this Nation, it does represent an important and essential element in the broader effort to restore vitality and stability to our economy. By enacting the Congressional Budget Act, we in the Congress can insure that the legislative branch will play an active role in this effort.

Accordingly, I urge my colleagues to support this resolution.

Mr. FROELICH. Mr. Speaker, there is no question that inflation is one of the most serious problems facing our country today. It affects everyone and hits those on marginal or fixed incomes in an especially hard way.

For too long, the Halls of Congress have been filled with empty rhetoric on this subject. Many have spoken out against inflation but little concrete action has been forthcoming. For too long, the people have been fed empty promises but have found, in fact, that their buying power continues to dwindle and that inflation continues to rise.

We now have a chance to make good the decades of promises we have heard. We now have the opportunity to help enact legislation which will mandate spending limits, a crucial first step in bringing us back to a level of fiscal sanity. I urge the conferees now reviewing the Congressional Budget Act to take the lead in bringing us to this goal.

I would also like to call your attention to legislation I have proposed which would assure that we do not, in the future, worsen the problem of inflation unintentionally by actions we take. My resolution, House Resolution 1076, would provide that each committee report on a bill or joint resolution of a public character in the House contain a detailed analytical statement as to whether the enactment of that bill or joint resolution would have an inflationary impact on prices and costs in the operation of the national economy.

We must have a strong budget control bill. We must set sensible limits on what we must spend. And we must also assure that, in the future, we do not unknowingly feed the fires of inflation by passing legislation which is well intended but fiscally careless.

The time to act is now. Let us show the American people we intend to carry it through to meaningful actions which will bring about the fiscal relief we so urgently need.

Mr. REGULA. Mr. Speaker, on February 4, the President submitted his fiscal year 1975 budget to the Congress and the American public. It is the largest in the history of our Nation, recommending total outlays of \$304.4 billion; \$29.8 billion more than in 1974, with anticipated receipts of \$295 billion—an increase of \$25 billion over 1974.

Again we are faced with deficit spending; this time the red ink figures amount to \$9.4 billion. The deficit of 1974 was \$4.7 billion. It is obvious that deficit spending is on the increase.

Not only is the budget large, it is confusing and uses confusing terminology. The budget for fiscal year 1975 has been compiled on what is called the unified budget concept first used in the submission of the fiscal year 1969 budget. It includes both Federal funds, those funds which go into the general fund of the Treasury and are not earmarked for specific uses such as old-age and survivors insurance and the highway trust fund, and it includes trust funds.

The unified budget deficit for fiscal year 1975 is estimated to be \$9.4 billion. However, if trust funds are not counted, the deficit comes to \$17.9 billion. The difference is accounted for by an expected \$8.5 surplus in trust funds borrowed by the Treasury. The unified budget camouflages the facts and softens the impact of a budget in excess of \$300 billion and a public debt that will accumulate to \$495.2 billion requiring an interest payment of \$29.1 billion, an amount equal to almost 10 percent of the proposed 1975 budget.

Part of this phenomenal increase is due to the fact that approximately 40 percent of the Federal budget is no longer considered by Congress in the appropriations process. This backdoor spending complicates attempts to hold back expenditures by the Congress which must appropriate funds to back up obligations or commitments, previously made.

Seventy-three percent of the proposed fiscal year 1975 budget is uncontrollable under existing law. This means that only 27 percent of the proposed budget can be acted on with discretionary authority, or 27 percent of the budget is controllable. In 1967, 59 percent of the Federal budget was uncontrollable compared to 73 percent today. It is evident that the uncontrollable aspect of the Federal budget is growing.

In saying that the rising expenditures are uncontrollable, I mean that they are uncontrollable due to existing legislation. The programs can be controlled if legislation is enacted to change their nature.

If the uncontrollable segment of the budget continues to increase, Congress will find its hands chained and will be unable to act effectively in solving economic problems facing the Nation. We cannot run our homes or businesses in this manner, nor should our country pass on to future generations the obligation to pay for our excesses. It is more important now than ever before that we live within our capabilities.

During this time of spiraling inflation, Congress cannot afford—the Nation cannot afford—to wait for action. Congress must do its share to hold the line against the onslaught of ever higher prices. To do this the House of Representatives needs to exercise fiscal restraint and responsibility.

H.R. 7130, the Budget Impoundment Control Act of 1973, passed by the House of Representatives on December 5, 1973, will give Congress a means of dealing in an orderly and comprehensive fashion with both budget policy and national priorities. A similar bill, S. 1541, was passed by the other body on March 22. Both bills are in conference. When compromise is reached, I hope that it will represent a viable legislative budget reform and confirm the role of Congress as a coequal branch of the Government.

Essentially, the legislation will allow Congress to set an overall spending ceiling with ceiling targets in the various program categories and will revise the appropriation process timetable. Presently, the Executive Office of the Presi-

dent has 18 months to prepare a budget which is submitted to a Congress which has a few short months to make its decisions relying mainly on the executive branch information and expertise. This new legislative timetable will allow Congress to debate our national priorities early in the process. The annual formulation of a congressional budget will better enable Congress to coordinate its individual budget actions with the overall economic needs of this country. The proposed legislative budget office, an approximation of the President's Office of Management and Budget will give Congress more adequate and sophisticated machinery and manpower to inform itself of budgetary and economic matters.

Final passage of this legislation will mark a significant step forward in congressional reform and provide the tools necessary for Congress to do its part in controlling inflation.

Mr. MITCHELL of New York. Mr. Speaker, a little over a year ago, on March 7, 1973, I joined with a number of my colleagues in the House to voice strong support for needed action on the part of the Congress in the area of budget reform and fiscal responsibility.

I did so as a newcomer to this distinguished body, but one familiar with governmental budget processes by virtue of 14 years of previous experience as a village mayor and a member of the New York State Legislature.

Quite frankly, while I was dismayed and somewhat puzzled by the failure of Congress to previously come to grips with the apparent need for such reform, I was encouraged by the reaction to the comments of those of us who took part in that March 7, 1973, special order.

As you will recall, Mr. Speaker, the participants in that Special Order were, for the most part, freshmen legislators. To the person, we shared a common interest, to make a contribution to the perfection of a system that is already the best.

Our call for budget and fiscal reform was warmly received by a number of our distinguished senior colleagues. The media gave prominent mention to our efforts and praised our determination. Constituents wrote to us to express support. All seemed to agree that we were on the right course and should pursue it.

And yet, here we are a year later talking about the same subject with very little progress to report.

Each day it becomes more apparent, to me at least, that we need to control expenditures and give greater attention to fiscal priorities. Evidence to support this contention abounds. But the sad fact of the matter is the Congress simply is not tackling this assignment with the vigor it demands. Is it any wonder that we are at an all-time low in terms of public opinion? I do not think so.

We have an opportunity to do something about it and it is high time we seized it. I reiterate my support, with all the force and sincerity at my command,

for a Joint Congressional Committee on the Budget. The measure I endorse, H.R. 975, establishes such a committee and provides the necessary staff to analyze the budget and make recommendations.

The legislation also calls for a mandatory 5-year spending projection, limits spending authorizations by Congress to 3 years and requires that new Federal programs be initiated on a limited, trial study basis.

We can talk all day here on Capitol Hill about the need to restore the balance of power between the legislative and executive branches of our Government so that we, the elected representatives of the people, might be able to play a more meaningful role in the budget process. But talk will not get us very far. What we need now is action. Let us get on with the job.

Mr. CRANE. Mr. Speaker, under our system of government, the Congress is meant to be the single most important branch. The executive is meant to execute the laws passed by the elected representatives of the people in the Congress and the courts are meant only to make certain that such laws are not in violation of the Constitution. Neither the executive nor judicial branches of Government are meant to be lawmaking bodies. This role has been designated specifically for those elected to the Congress.

Along with congressional prerogatives, however, go serious congressional responsibilities. Writing in the *Christian Science Monitor* of September 29, 1973, Roscoe Drummond notes that—

The best example of what Congress is failing to do in its rightful effort to reclaim power and prestige concerns the way it goes about putting together the massive federal budget. It is as though it were trying to lay out a picture puzzle without the picture and with many of the pieces missing. It is a mess.

In the Congressional Budget Act of 1973, the Congress has finally accepted some of its long-dormant responsibilities. It has developed a mechanism to coordinate the separate actions of taxation committees and, more important, the legislative committees that have devised "backdoor" techniques for creating new programs and mandating big outlays on those programs in future years. This plan will produce the most basic reform of congressional procedure in half a century.

At present, Congress judges each money bill separately, as though it bore no relation to other outlays or to whether the funds were available to pay for it. Under the reform, the Senate and House each would create a new budget committee. Its members would, as a group, possess an overall view on both revenues and spending. This committee will be in a position to determine likely revenues and the proper level of national debt for the next fiscal year. Based on that information, the committees could recommend a spending ceiling designed to balance the budget. The spending limit would cover both outlays and new obligational authority. The budget committees would, in addition, recommend how to divide the total spending among broad categories of Government spending and would, in the process, determine the spending priorities.

Discussing the need for this important reform, the *Chicago Tribune* of May 10, 1974, declared that—

Rampant inflation and the apparent inability of the traditional economic machinery to control it without unacceptable social consequences may combine to bring about a long overdue reordering of the fiscal house of Congress. . . . The problem is that the nation cannot wait much longer for Congress to act. Inflation is cutting into the standard of living of most Americans by sharply reducing their purchasing power. A prompt resolution of the differences between the Senate and House versions of the reorganization bill is imperative.

Following is the text of this editorial from the *Chicago Tribune*:

#### SPEEDY HILL REFORM URGED

"Rampant inflation and the apparent inability of the traditional economic machinery to control it without unacceptable social consequences may combine to bring about a long overdue reordering of the fiscal house of Congress.

"Both the Senate and the House have passed separate legislation to change the method by which Congress deals with the federal budget. For the first time, Congress would consider the budget as a whole instead of piecemeal. The new legislation would create budget committees in both Houses. These committees would determine national priorities and set a spending ceiling. If, after all the appropriation bills are enacted, Congress has exceeded its ceiling, it would be required to raise taxes to produce the revenue necessary to cover the shortfall or to cut spending. Moreover, in one version, Congress would be prohibited from adjourning until the reconciliation process has been completed.

"We have long believed that Congress was negligent and irresponsible in its handling of spending authorizations and appropriations. Each specialized committee has treated its programs and agencies as a private preserve and has spent public money without regard for the impact on the whole economy. This disorderly spending practice has resulted in an aggregate deficit of \$109 billion in the last five years.

"To a large extent, this fiscal irresponsibility has caused today's inflation. And while much of the blame can be placed on Capitol Hill, the Nixon administration must share in the responsibility. No longer can President Nixon shift the blame for inflation to the Johnson Administration and the Viet Nam War. He has been the Chief Executive for five years and it has been more than a year since our troops pulled out of Viet Nam. Instead of exerting leadership in economic policy, Mr. Nixon has yielded to political pressure for wage and price controls, and then failed to remove them once they proved their long-run ineffectiveness.

"In a speech to the Society of American Business Writers, John T. Dunlop, director of the Cost of Living Council, said, "The simple fact is that monetary and fiscal tools are not enough [to deal with the present inflation], and we must get to the task of developing other measures even though their contribution might be less immediate or powerful."

"He said a whole series of structural changes are needed in the economy in order to restrain inflation. The single most important, he said, is to coordinate the taxing and spending functions of Congress and enable it to cooperate with any administration toward a sound fiscal policy.

"The problem is that the nation cannot wait much longer for Congress to act. Inflation is cutting into the standard of living of most Americans by sharply reducing their purchasing power. A prompt resolution of the differences between the Senate and House

versions of the reorganization bill is imperative."

It is my hope that the conferees now reviewing the Congressional Budget Act of 1973 act expeditiously in reporting out a strong bill which will mandate an overall spending limit as well as provide the necessary committee structure, staff, and resources by which Congress may review and control expenditures. This is the only way in which inflation may be controlled and in which Congress can reassert its legitimate authority in this important area.

For years Congress has been enacting revenue and appropriation bills without any total knowledge of what revenue would be and what its appropriations would add up to. It receives a coherent budget from the President and then proceeds to examine it piecemeal.

Now is the time for Congress to reestablish its own authority and its credibility with the American people. The power of the purse is the most powerful tool in the possession of the Congress. Only by acting now with regard to the Congressional Budget Act of 1973 can Congress recover it fully.

Mr. SPENCE. Mr. Speaker, I want to commend my good friend and colleague from Florida, Mr. BAFALIS, for organizing this opportunity for Members of Congress to express our concern about the cruel "hidden tax" called inflation. Since coming to Washington, Congressman BAFALIS has been a leader in efforts to bring about fiscal responsibility on the part of Congress, and in addition, he has proposed a constitutional amendment which addresses the real root cause of inflation in this country—Government spending. I am proud to be a cosponsor of the budget-balancing and debt-eliminating amendment offered by Congressman BAFALIS.

Mr. Speaker, while few of us fully understand the technical meanings and causes related to inflation, it is nevertheless significant that an overwhelming majority of the American people instinctively know where to place the blame. In January of this year, 74 percent of those responding to a Harris survey reported that the greatest single cause of inflation was Federal spending.

Recently, both the House and the Senate overwhelmingly approved legislation which would at least serve as a tentative beginning step toward asserting congressional responsibility in the area of spending control. While by no means perfect, this legislation would at least represent a positive step which could hopefully be built on through future legislative action.

Sad to say, even this small step toward inflation control is being thwarted by inaction on the part of the conference committee which has been appointed to iron out the differences between House and Senate versions of this legislation. I urge my colleagues on that panel to meet as soon as possible so that deliberations aimed toward compromise can begin. Delay is unconscionable, for the inflation rate increases with every passing month.

It has been nearly 3 months since the conferees on budget reform have been

appointed—the American people are waiting and watching.

One of the possible legislative approaches which can be built upon this beginning step, Mr. Speaker, is House Joint Resolution 720, the Curtis-Spence amendment, which was introduced both in the House and in the Senate in February of this year. This resolution calls for a self-implementing constitutional amendment which would automatically insure in any given year that the Federal budget be in balance. This proposal, which will be reintroduced in the near future with at least 30 additional co-sponsors, has elicited substantial editorial comment throughout the country, and several State legislatures have memorialized Congress in support of the amendment.

Mr. Speaker, I ask that two of the editorials entitled "A Necessary Amendment" from the Orangeburg Times and Democrat of May 2, 1974, and "Balanced Budgets," from the Indianapolis News, April 5, 1974, be reprinted in the CONGRESSIONAL RECORD at this point:

[From the Orangeburg Times and Democrat, May 2, 1974]

#### A NECESSARY AMENDMENT

While a proposed constitutional amendment introduced in the United States Senate by Sen. Carl T. Curtis, R-Neb., and in the House by our own Congressman Floyd Spence, R-S.C., appears not to be making much headway in Congress, it is being supported elsewhere.

The Curtis-Spence amendment, in a nutshell, provides that whenever the federal budget shows a deficit at the end of a fiscal year, an automatic surtax must be imposed to cover the deficit.

The only condition under which an exception could be made would be if Congress by a three-fourths vote, declares a national emergency, or if there has been a formal declaration of war.

As reported in the May 4 issue of Human Events, already one state legislature has memorialized Congress to enact the Curtis-Spence amendment, and similar resolutions have been introduced in the legislatures of two other states.

Already adopted is a resolution by the Oklahoma state legislature. One of its clauses reads: "Deficit spending by the federal government has been a plague to this nation for over a third of a century and both the legislative and executive branches have repeatedly demonstrated unwillingness to stand against political pressures to spend beyond their means." It was passed in Oklahoma in only a few days.

The other two states in which similar resolutions have been introduced are Nebraska and Florida.

According to Human Events, both Senator Curtis and Congressman Spence hope that the Oklahoma legislature is not a "lone voice crying in the wilderness" but that its action marks the beginning of a grassroots response to an urgently needed effort to control federal spending.

"Congress is not going to enact such a proposal unless the people demand it," Senator Curtis is quoted as saying.

His assessment is supported by Senate action rejecting amendments by Sen. Jesse Helms, R-N.C., and Sen. Harry F. Byrd Jr., Ind.-Va., which would have made a mandatory balanced budget provision part of the budget control bill recently passed by the Senate and now in conference.

Human Events reports that many Washington observers are encouraged, however, that if enough state legislatures enact supportive resolutions, Congress may be forced into action.

"There is good reason for many states to enthusiastically endorse the Curtis-Spence bill," an Oklahoma state senator said. "After all, we in Oklahoma have been living with that kind of provision in our state constitution for years and getting along fine. What's so special about the federal government that it ought to be free to run up bigger and bigger deficits each year while state governments must live within their income?"

Surely the members of the South Carolina General Assembly must realize the importance of the Curtis-Spence amendment to future generations of South Carolinians and Americans. We would like to see it adopted by Congress. In fact, we would go even further in suggesting that provisions be made now for a scheduled year-by-year reduction in this country's out-of-this-world national debt.

[From the Indianapolis News, Apr. 5, 1974]

#### BALANCED BUDGETS

Oklahoma recently became the first state to endorse an amendment to the U.S. Constitution outlawing Federal deficit spending. Similar resolutions are now advancing in the legislatures of Florida and Alaska.

The amendment in question addresses an urgent problem—the proclivity of Congress to spend money without relation to incoming revenues. Deficit Federal budgets are now the rule, rather than the exception. The result, as noted by Jerry P. James, president of Heritage Foundation, is that "approximately one-fourth of our total national debt has been incurred in the last four years."

Sponsored by Sen. Carl Curtis, R-Neb., and Rep. Floyd Spence, R-S.C., the proposed constitutional amendment provides for mandatory budget-balancing. If a president submits an unbalanced budget, the amendment directs Congress to reduce spending, levy a surtax to cover the deficit, or find other ways of financing it.

The amendment is currently languishing in the Senate Judiciary Committee, and only petitions from more state legislatures and expressions of public support will budge it. Such action should be forthcoming. No nation, not even one as wealthy as the United States, can pile up multi-billion-dollar deficits every year without courting financial disaster.

Mr. WALSH. Mr. Speaker, inflation is a complex problem and thus far all attempts to control it have failed. It is my feeling that the Congress now has a unique opportunity to attempt to control it by cleaning our own house.

The Congress controls the purse-strings and in the past that control has been far from coordinated. The Congressional Budget Act is the first time an attempt has been made to bring order out of the chaos. It will give Congress the tools with which to keep an eye on overall spending for the first time in many, many years.

Our approach of haphazard appropriations has, I feel, contributed to inflation. In the past 10 years our national debt has increased \$162 billion. In fiscal year 1973, the Government paid \$24.2 billion in interest on the Federal debt and even more in fiscal year 1974. This amounts to some \$50 billion which the taxpayers must pay without receiving a penny's worth of service in return.

With the power of the purse, Congress must also take on the responsibility to recommend expenditures over the vast spectrum of needs but always keeping in mind the total picture.

There are desperate national needs for additional funds for the environment, energy, our cities, housing, medical care,

and any number of crucial domestic needs.

Congress has the power and responsibility to set priorities in these areas. This responsibility has been shirked. At the same time the agencies in the executive branch have expanded and have filled the vacuum of power vacated by Congress with respect to the budget. We have simply not kept pace and do not now have the tools necessary to accomplish our task in this area.

The Congressional Budget Act, now in conference, will give us these tools. I sincerely join my colleagues in urging the House-Senate conferees to speedily act on this measure so we may begin to set up the necessary mechanism with which to deal with the present budgetary chaos.

#### CAPITAL GAINS TAXES ON RESIDENCES

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New York (Mr. ROBISON) is recognized for 15 minutes.

Mr. ROBISON of New York. Mr. Speaker, many years ago an elderly couple wrote me that they had just gotten a painful education in the capital gains tax. Like so many wage earning families, they had probably never had the opportunity to fill in the capital gains block on their tax form and, for them, the term "capital gains" may well have been an ill-defined business concept which had never affected their lives and never would.

Again, like so many other older persons whose residence was their one, major investment, they had owned their home for many years. Besides the sense of security gained from personal ownership, they also presumed that the proceeds from a sale of their home—which with their children gone was steadily becoming too large for them—might provide a retirement "cushion" after their wage-earning years had ended. And, that was precisely how they proceeded, since after retirement they sought to recapture their investment by selling the house.

Yet, when tax time rolled around, they were jolted by the capital gains tax, which—it seemed to them, at least—robbed them of some of the retirement security they had counted on. Since it was so understandable how this sort of thing could have happened, I began to consider legislation which might save other elderly citizens from such a costly education in tax law, thereby assisting them in making the fullest use of the funds available to them at a time in life when financial security is so very necessary.

I, therefore, introduced legislation which proposed that individuals over age 65 be excused from the capital gains tax on the first \$20,000 of profits from the sale of a residence. In one of those very satisfactory moments for a legislator, the Ways and Means Committee saw fit in 1964 to include my proposal in a larger tax bill. Since enactment of that measure, tax law has permitted any taxpayer over age 65 to take a one-time tax exemption on profits from the sale of a house, if that individual has used the

house as a personal residence for at least 5 of the 8 years prior to the sale.

Well, about 10 years later, which was just a few months ago, I received another letter from an elderly couple who again described how payment of the capital gains tax had added an unexpected note of austerity to their retirement plans. Although in this particular case, the couple did not meet the full requirements for the capital gains exclusion, the letter did get me to thinking about how things have changed since those halcyon days of 1964 when a \$20,000 home in my part of New York State was a solid, roomy dwelling. Those who seek to buy a home these days in the southern tier of New York will quickly find that \$20,000 will get them little more than a roof and four walls.

In other words, as we all know, inflation has hit the cost of housing just like everything else, and the tax savings for elderly people which grew out of my bill have severely diminished in real purchasing power, particularly when it comes to purchasing or renting a new dwelling. I asked the Library of Congress for an appropriate measure of the impact of inflation on housing prices since the capital gains exemption went into effect, and the response was that costs of residential construction are the best measure of the inflationary impact on housing prices. Since 1964, housing construction costs have increased by 69.7 percent, and if this percentage is applied to the \$20,000 figure I first proposed, it would amount to almost \$35,000.

Since I have been privileged to remain in the House for the decade following my first proposal and because we are now in the midst of a wide-ranging discussion of tax reform legislation, I will offer new legislation today which proposes an increase in this capital gains exemption for the elderly to \$35,000. A large part of the incentive for enacting the exemption in 1964 was to allow elderly citizens to make full use of the money invested in their homes; and it seems entirely equitable that citizens who claim this exemption in 1974 receive the same level of financial benefit as those who took the exemption in 1964. Certainly, the principle behind the exemption has never changed; it is only that now an elderly couple is likely to pay almost 70 percent more in follow-on housing costs.

Mr. Speaker, I will take my case to the Ways and Means Committee as it considers a new tax bill, and I encourage my colleagues to join me in doing so.

#### LEGAL SERVICES CORPORATION CONFERENCE REPORT

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Minnesota (Mr. QUIE) is recognized for 50 minutes.

Mr. QUIE. Mr. Speaker, there has been widely circulated in the House a document, anonymously authored, purporting to be a "factsheet" on the Legal Services conference report. In the scope of its misinterpretations, omissions, and mistakes, it is incredible. The total purport of the argument is that the House conferees abandoned the position of the

House, particularly as reflected in the 17 amendments to H.R. 7824 adopted by the House last June. As the author of 11 of those 17 amendments, and as a House conferee, I take absolute exception to that implication. The truth is—and I believe my fellow House conferees will support me in this statement—we maintained the substance of the House position in the great majority of vital issues, including most of the critical issues involved in those 17 amendments.

I can fully appreciate that some Members will vote against the conference report because either they oppose a legal services program or oppose carrying it on in the form proposed by both the House and Senate bills. But I think it would be a tremendous disservice to the public, and to the Members of the House, if any Members voted against the conference report on the basis of a wildly distorted and almost wholly inaccurate account of its provisions.

Accordingly, I shall in these remarks repeat the anonymous factsheet allegations in their entirety together with my comment—which will be labeled "comment"—in order that all Members and the general public will be able to judge the issue fairly:

#### FACTSHEET—LEGAL SERVICES CONFERENCE REPORT INTRODUCTION

In a new attempt to mislead the trusting and prey upon the good faith of the public, the Senate-House legal services conference committee reported to the public on May 10, via pre-arranged stories in the New York Times and the Washington Post, that a legal services corporation plan had been adopted which assertedly represented a yielding by the Senate to the more stringent safeguards against legal services abuse which had been adopted by the House of Representatives last June 21, 1973.

One standard of measurement for gauging whether the safeguards demanded by the House have been honored is adducible by review of the twenty-four amendments which had been voted onto the bill in the House. Seventeen of the twenty-four have been either eliminated, or altered in such a manner as to destroy their original meaning and impact.

#### PARTIAL LIST OF ELIMINATED HOUSE AMENDMENTS

For example, the following amendments have been eliminated entirely:

The Green Amendment which would have liquidated the Corporation in 1978, requiring affirmative Congressional action if it were to be continued beyond June 30 of that year;

Comment: This is typical of the kind of compromise reached in conference. The conference bill limits the authorization of appropriations to 3 years, which means that the authorization expires on June 30, 1977, in short, "an affirmative congressional action" is required if the Corporation is to be continued.

The Green Amendment to prevent the funding of Back-Up Centers for nonresearch activities (amicus briefs, co-counsel work, assistance to activist organizations, issue advocacy publications and travel, law reform non-client-generated test cases, policy lobbying, etc.);

Comment: Many of these activities are specifically prohibited by other sections of the conference bill, and in the statement of managers on page 20 is the statement that the term "research" is under-

stood to mean "the types of research activities currently being conducted under the authority of section 232 of the Economic Opportunity Act of 1964, including the provision of cocounsel, but not to extend to clearinghouse activities such as the Poverty Law Reporter Service." Section 232 is the authority under which so-called backup centers are funded as a research activity. Under section 3 of the conference bill the authority to conduct such research by grant or contract terminates on January 1, 1976, unless Congress by concurrent resolution takes some contrary action with respect to it before that date; if the Congress fails to act at all the authority extends to January 1, 1977, when it expires a full 6 months before all appropriations authority for the act expires. The Corporation is directed to make a study of the issue of how it should conduct its research activity and report back to the Congress with recommendations by June 30, 1975. This is a compromise of the Green amendment—which cannot fairly be described as having been "eliminated entirely."

The "Congressional Accountability" amendment which would have limited the power of the American Bar Association to assume primary responsibility for project employee behavior, performance, and obligations via modifications in the Code of Professional Responsibility and Canons of Ethics;

Comment: This is a very inartful reference to one of my amendments. In section 6(b)(3) of the House-passed bill we had a general prohibition against interfering "with any attorney in carrying out his professional responsibility to his client as established in the Canons of Ethics and Code of Professional Responsibility of the American Bar Association." What my amendment did was to strike another such reference because it was redundant. The Senate bill contained numerous such references, and we insisted that all but one be struck out to conform to the House bill. Thus the fact sheet is completely mistaken.

The two Green Amendments requiring annual appropriations and barring multi-year appropriations without Congressional review.

Comment: There was only one Green amendment of this nature which struck out a requirement of 3-year appropriations, leaving an annual appropriation authorization. In the conference bill we accepted the limitation proposed by Senator Corron and adopted on the Senate floor prohibited appropriations in any year for more than a 2-year period and required that any amount appropriated for a second year not be made available until the beginning of that year. We retained this Senate language, and the thrust of the Green amendment is preserved.

#### PARTIAL LIST OF HOUSE AMENDMENTS WEAKENED

Of at least equal importance, other vital safeguards were completely vitiated by cleverly worded modifications which destroyed the original meanings of House-passed amendments:

The prohibition on aid to "any picketing, boycott, or strike" is wiped out with the phrase "except as permitted by law", since such activities are clearly legal, however undesirable it may be to subsidize them with public funds.

Comment: This is a misreading of the language. The phrase "except or permitted by law" does not modify the entire prohibition. The complete phrase is "except as permitted by law in connection with such employee's own employment situation," which completely changes the meaning alleged by the fact sheet.

The House prohibition against assigning personnel or resources in connection with campaigns to affect the outcome of state ballot issues has been rendered meaningless by the proviso that such ballot campaign activity is permitted when it takes the form of representation for "eligible clients with respect to such client's legal rights". The catch is that every group which alleges to concern itself with poverty issues can be an eligible client under the proposed Act—thus, whether the cause relates to the elderly (National Council of Senior Citizens), or women (National Organization for Women), or the "right" of the poor to abortions (Planned Parenthood), or Cesar Chavez (United Farmworkers), Indians (American Indian Movement), or whatever, the prohibition is without effect.

Comment: I would not interpret this as vitiating the prohibition, because I do not think we intended to prohibit genuine legal advice "by an attorney as an attorney" to an eligible client. Moreover, this must now be read in light of section 1007(a) (5) which bars lobbying activities except under prescribed circumstances and in the course of doing so bars the solicitation of clients or of "a group with respect to matters of general concern to a broad class of persons as distinguished from acting on behalf of any particular client" in order to make such activities possible. This is discussed more fully in a later comment.

The Green Amendment which stated that "(i) if an action is commenced by the corporation or by a recipient and a final judgment is rendered in favor of the defendant and against the corporation's or recipient's plaintiff, the court may, upon proper motion by the defendant award reasonable costs and legal fees . . ." has had its intent altered by a conference proviso that such relief to innocent private parties sued at the discretion of legal aid employees would be available *only* "upon a finding by the court that the action was commenced for the sole purpose of harassment . . . or a recipient's plaintiff maliciously abused legal process". Thus where a guiltless victim of a legal services suit couldn't prove "harassment" or "malicious" abuse, such victim, however poor or aggrieved, would have to sustain the full financial cost of legal services assault.

Comment: We were assured by legal counsel that the Green amendment would be invoked by a court only in those circumstances where the court would exercise its inherent equity power to punish an abuse of process. The conferees actually read Black's Law Dictionary on abuse of process and were satisfied that it had to be "malicious" before it fell into the category where at common law and in equity it is considered an offense. The addition of "sole" before "purpose of harassment" again was made to conform with our understanding of the circumstances under which a judge would be likely to act.

The requirement that "full-time" staff attorneys be subject to Corporation law and regulations at all times and devote full professional attention to their tax-subsidized responsibilities was rendered ineffective by addition of language that such "outside

practice" activities could be fully permissible if not entered into for purposes of financial compensation (A standard legal services defense against evidence of impropriety has been the disclaimer that the incident to which objection had been made occurred on one's "own time", or in connection with "outside practice" or law).

Comment: Again, the fact sheet fails to cite the entire exception to the prohibition against outside practice which is:

(B) any uncompensated outside practice of law *except as authorized in guidelines promulgated by the Corporation.*

Comment: The words omitted are critical. The conference discussion centered on the fact that none of us wanted to prohibit an attorney, for example, from drawing a will for a relative without charge, which the House language literally would have done. We expect that the Corporation will permit such common and reasonable exceptions to the prohibition, but in no event permit the sort of outside practice described in the fact-sheet.

The very important anti-lobbying ban imposed by the House on a 200-181 roll call vote (which had prohibited lobbying on state or Federal issues, except to permit statements or testimony) has been replaced with language authorizing legal services efforts "to influence the passage or defeat of any legislation by the Congress of the United States, or by a State or local legislative bodies" whenever one "member thereof . . . requests personnel of any recipient to make representations thereto". Furthermore, continuation of the practice of having registered legal services lobbyists in state legislatures is fostered by permission of lobbying "representation by an attorney as an attorney for any eligible client". "Eligible clients" would include lobbying organizations concerned with issues as diverse as passage of the Equal Rights Amendment and gun control.

Comment: Again, this is a misreading of the effect of one of my amendments and of the conference action concerning it. The House bill always permitted a Legal Services attorney to testify before a legislative body when requested to do so, even by one member of such body. So did the Senate bill and that issue was not within the scope of the conference. What my amendment did was to include lobbying on Executive orders and similar promulgations at any level and to preclude representation of a client before a legislative body at the State or Federal levels. The conference bill includes executive orders and similar promulgations, a recession to the House position, and permits the representation of an eligible client before a State legislature or the Congress, but only with the added restrictions I have described against the solicitation of a client or of a group to make such representation possible. The whole purpose was to prohibit either an organized lobbying effort or the representation of groups described in the fact-sheet. I think the House position is effectively sustained.

The intention of the House amendment to bar aid to "public interest" law firms is wiped out by another tricky semantic change. Where the House would have denied Corporation aid to any such Nader-style firm which expended 50% or more of its resources and time "litigating issues either in the broad interests of a majority of the public or in the collective interests of the poor, or both," the deceptively-worded Conference bill, by delet-

ing the phrase: "or in the collective interests of the poor, or both" in effect authorizes use of government funds to support any radical cause which claims to be acting for the poor as a class.

Comment: The change described in this provision is not "tricky" or "deceptive"; it is straightforward and it is a retreat from the House position which makes it easier to make a grant to a so-called public interest law firm by defining it only as one which expends 50 percent or more of its resources and time "litigating issues in the broad interests of the public." The effect, however, is totally misstated in that the only legal services which could be rendered would be those provided for under the act for an eligible client, and in no case "for the poor as a class."

The very important House amendment limiting the authority of project attorneys to represent persons under 18 without parental approval has been divested of meaning through a sleazy rewrite job permitting such representation (whether with respect to abortion, school discipline, or similar issues) "where necessary . . . for the purpose of securing, or preventing the loss of services under law, or in other cases not involving the child's parent or guardian as a defendant or respondent."

Comment: Unfortunately, the author of the factsheet apparently saw a copy of the corrected version of the conference bill in which the corrections did not copy. The quoted section actually reads "services under law in cases not involving the child's parent or guardian as a defendant or respondent," so that the exception to the prohibition is far less sweeping than if the language read "or in other cases not involving" and so forth. Moreover, the quoted language omits our addition of "or preventing the loss or imposition of services under law not involving the child's parent" and so forth. The horrible example we had in mind was an actual case in which the parent was the plaintiff suing the child to force her to submit to an abortion. The language we adopted would permit representation of the child in such a case without parental request. One would hope the author of the factsheet would not want to argue with that result.

Also eliminated was the Mizell Amendment relating to institutions of higher education, which many had hoped would serve as a barrier to proquota briefs of the sort filed by legal services projects in the DeFunis case.

Comment: This is an astonishing comment because: First, it fails to state that the conference bill retains the other Mizell amendment which prohibits the use of these funds to provide legal assistance "with respect to any proceeding or litigation relating to the desegregation of any elementary or secondary school or school system"; and second, it completely misstates the nature of the DeFunis case, or of the Mizell amendment barring the use of these funds in cases relating to desegregation of an institution of higher education. Leaving aside the extremely dubious statement that Legal Services project funds were used to file briefs in the DeFunis case, the Mizell amendment did not reach the case because it did not involve the issue of "desegregation"—which is not a

term of art applying to all cases involving alleged racial discrimination.

The "anti-commingling" amendment adopted by the House (to prevent involvement of corporation-subsidized programs in prohibited activities under cover argument that only "local share" funds or "state funds" were involved in the improper activity) is knocked out of the proposed act through a Conference-devised loophole asserting that "this provision shall not be construed . . . to prevent recipients from receiving other public funds . . . and expending them in accordance with the purposes for which they are provided". If tax-exempt Ford Foundation grants were defined to be "public funds" (as a careful reading of the relevant provision seems to imply) the entire section has been rendered meaningless.

Comment: This misstates the effect of the change made in the provision. Without the exemption of "other public funds" and Indian tribal funds, governmental units and many Indian tribes would find it impossible either to participate in or make contributions to legal services activities, a result we felt was both unwise and unintended by the House. The comment that Ford Foundation funds could be defined as "public funds" is almost too preposterous to respond to, except to say that it is totally wrong. Private funds could not be received by most legal services projects—private law firms, and certain other private legal activities are exempted in order that they may participate in the program, as they are in the House bill—and used for a purpose prohibited under the act.

SENATE PROVISIONS KEPT; HOUSE PLAN ALTERED

It is not just in its disregard for 17 House-passed amendments that the conference committee cast down the gauntlet to those who favor limits on the power of free-wheeling attorney activists to determine what is best for the poor and for the court. The conference bill also retains some other very unfortunate aspects of the very liberal Senate-passed bill, while erasing important original parts of the legislation adopted by the House on June 21.

Obnoxious aspects of the Senate version which have been grafted onto the almost totally ignored House plan include:

Making the Corporation part of the Economic Opportunity Act (An ill-disguised effort to promote exclusive control of confirmation of corporation board members by the liberal Senate Committee on Labor and Public Welfare).

Comment: This last reference to the form of the bill is a completely accurate statement in the fact sheet, and a compromise which I voted against.

Adopting a Preamble which affords the statutory presumption of continuation to current grantees and administrative policies of "the present vital legal services program" and which strongly implies that staff attorneys supported by the program should have "full freedom" from accountability to the American people who pay their bills;

Comment: I usually do not care for any statement of purpose in a bill since it cannot change any provision of an act, and thus has none of the results attributed to it by the author of the fact sheet. He might have also cited one of the purposes included, however, "that the program must be kept free from the influence of or use by it of political pressure."

(The Senate bill, to which House conferees receded, has an ominously sweeping provi-

sion allowing the corporation to make "such other grants and contracts as necessary to carry out the purposes of the title" (source—conference report). Given the very broadly defined purposes of the conference plan that means simply: "anything goes"—all not specifically prohibited is consequently allowed. For example, as now written, corporation officials could fund almost any group of their choosing, so long as it was not involved in directly aiding candidates for office.);

Comment: This language in effect replaces House language permitting grants to or contracts with "other appropriate entities—for the purpose of providing legal assistance to eligible clients." In any event all grants and contracts must fall within the scope of carrying out "the purposes and provisions of this title." All of the provisions of the title are controlling and the statements that "anything not specifically prohibited is consequently allowed" and "Corporation officials could fund almost any group of their choosing" are simply not true.

Denying the President authority to designate the chairman of the Corporation's board of directors, except in the first instance;

Comment: A totally fair description would include the fact that in the House bill the appointment is only for 1 year, whereas in the conference bill it is an appointment by the President for 3 years, after which the Board may select its own Chairman.

While downplaying the importance of existing influence of ADA and NLG-oriented values in the present control and management of the legal services program, conferees would prevent future changes in a more moderate or conservative direction by the convenient requirement that hereafter "No political test or political qualification" be taken into account in personnel policies for the \$100 million per year program.

Comment: I do not believe, and apparently the conferees did not believe, that the Corporation should impose any "political test or political qualifications" in choosing its employees; we hope instead that it will choose people on the basis of their competence and good judgment—a practice which should eliminate many complaints about the existing program.

The arrogant assertion that, though Federally-funded, "the Corporation shall not be considered a department, agency, or instrumentality of the Federal government"; (At the same time, however, while denying federal accountability, Corporation employees are given all the benefits of Federal employment, including the right to remain eligible for social security benefits, without paying additional social security or self-employment taxes while building up a Federal retirement nest egg);

Comment: This follows the same form as the Public Broadcasting Corporation, and there is no insidious purpose in placing this Corporation outside the Federal Government for most purposes. It is intended simply to free it from all sorts of laws—such as all the civil service laws and regulations—which might not be appropriate to the independence we sought to achieve here, while applying to it restrictions—such as the Hatch Act—which obviously are appropriate. With respect to accountability, the Corporation is subject under the conference bill to all sorts of accounting and reporting requirements and procedures, including independent audits and audits

by GAO. It was felt with respect to employee benefits that it would be far cheaper and easier to tie them into the existing Federal systems rather than having to set up separate health benefits and retirement plans, et cetera.

Requiring "a special determination by the Board" before program control can be assigned to elected state and local officials, while at the same time permitting the lowest legal services employee with control of grant money to fund private organizations of his choosing;

Comment: Both the House and Senate bills contained a requirement for "a special determination of the Board" with respect to grants to governmental agencies. While I personally oppose the requirement, it was not within the scope of the conference.

While purporting to prevent employees from acts which would "intentionally identify the Corporation" with party or candidate related political activity, Sec. 1006(e) of the conference plan would define project employees themselves as "deemed to be State or local employees for purposes of Chapter 15 of Title 5, United States Code". It is important to note that Title 5, "does not prohibit political activity in connection with . . . (2) a question which is not specifically identified with a National or State political party. For the purpose of this section, questions relating to constitutional amendments (etc.) . . . are deemed not specifically identified with a National or State political party." Thus, while personnel can't "identify" the corporation with partisan (and perhaps even nonpartisan) political activity, they can do virtually as they please in organizing for non-candidate or non-party-related issues like, for example, those concerning taxation or education or socialized medicine.

Comment: This objection is so garbled that I have difficulty in sorting out what the author is complaining about. What the conference bill does is to subject employees of the Corporation to the provisions of the Hatch Act, and to subject staff attorneys—those who receive more than one-half their annual professional income from a recipient organization organized for the provision of legal services under the title—of recipients of grants or contracts to the Hatch Act prohibitions which are applied—unlike in the Hatch Act—to nonpartisan as well as partisan activities. Activities of such individuals with respect to ballot measures and referendums are controlled by another provision of the bill.

Senate language in the conference bill encourages perpetual funding for presently funded projects by compelling the corporation to "insure that every grantee, contractor, or person or entity receiving financial assistance under this title or predecessor authority under this Act which files with the Corporation a timely application for refunding is provided interim funding necessary to maintain its current level of activities until (a) the application for refunding has been approved and funds pursuant thereto received, or (b) the application for refunding has been finally denied in accordance with Section 1011 of this Act." Section 1011 reads: "financial assistance under this title shall not be terminated, an application for refunding shall not be denied, and a suspension of financial assistance shall not be continued for longer than thirty days, unless the procedural requirements defined in the Act and by court precedent have been fully satisfied." In brief, there's almost no way to cut them off.

**Comment:** This is simply intended to provide for an orderly transition, and indeed, the way to cut off a recipient is fully spelled out in the bill and is quite uncomplicated—although, it is designed to meet the requirements of due process of law.

#### DANGERS DISGUISED

The Conference plan also defers to the Senate in its stipulation that the "President may direct that appropriate support functions of the Federal Government may be made available to the Corporation in carrying out its activities under this title to the extent not inconsistent with other applicable law." While less blatant than the original Senate language, this proviso would still make it possible for a President of the United States to give private organizations aided by the corporation the benefit of a full range of government services and equipment free of charge. This could include everything from xerox machines to motor vehicles to long distance phone service. Given the political nature of many groups previously aided and prospectively eligible for aid by legal services, this remains a very dangerous section, which was wisely absent from the more moderate House bill.

**Comment:** The support functions referred to could be made available only to the Corporation, and not to local recipients, so it does not have the effect attributed to it.

Another Senate victory lies in the conferees' implied agreement to transfer present OEO legal services career employees and to perpetuate the radical OEO union agreement, at the corporation.

**Comment:** The Senate language specifically providing for a transfer of OEO legal services employees was eliminated, so it is difficult to see how the implication that they automatically would be transferred could arise. Collective-bargaining agreements of any employees transferred would remain in effect only until their termination date.

Also highlighting the deviousness and unscrupulous deception practiced in drafting the final conference language is a special section which purports to deal with widespread concerns about political manipulation and control of back up centers in behalf of liberal causes.

In an effort to reduce opposition to the bill, the conferees suggest that the centers will not continue beyond 1977, unless there is affirmative action by the Congress for their continuation. The conscious misrepresentation of this section lies in the fact that it deals only with back up center "research" activities, omitting even that mild restraint on more obnoxious back up center activities entirely unrelated to research (e.g. "information clearinghouse", "issue explanation"). These neutral phrases have long served to cover up and excuse many back up activities much more closely related to political causes than poverty representation).

**Comment:** I have discussed this issue at some length, and simply do not agree with the analysis.

*Right to life groups* are particularly outraged by continuation of the back up centers, since several of them (National Health Law Project, Bureau of Social Science Research, National Juvenile Law Center, etc.) have been in the forefront of successful drives for liberalized abortion laws and regulations on both a state and national level.

Even if the bill really did establish restrictions on the back up centers, the gradual conversion by national OEO officials of neighborhood law offices to local law reform units would negate much of its value.

**Comment:** Numerous provisions of this act already cited—as well as a completely new administration of this program by the Corporation—will control the type of activity alleged here. Both the action of the House and the action of the conference committee constitute a clear warning to the Corporation that activities such as those alleged are not to be continued with the assistance of funding under this act.

#### OTHER WEAKNESSES

There are still other weaknesses to be found in the conference plan, when it is compared with the House bill:

The House bill gives Governors a free hand in designating state advisory committee members; the Senate/Conference plan requires Governors to wait for recommendations from the organized bar before acting.

**Comment:** We saw nothing wrong with requiring that recommendations be sought from the State bar associations with respect to the appointment of members to an advisory council where a majority of its members must be attorneys admitted to practice in the State. The author of the factsheet rightly praises Chairman PERKINS for his amendment which would require such consultation at the local level before hiring staff attorneys.

A House provision intended to limit aid to militant prison groups by barring "assistance in civil actions to persons who have been convicted of a criminal charge where the civil action arises out of alleged acts or failures to act connected with the criminal conviction and is brought against an officer of the court or against a law enforcement official" has been materially changed to preclude such cases only where they "challenge the validity of the criminal conviction."

**Comment:** Perhaps the conferees misunderstood the intention of the House language, but we thought that the whole point—in addition to barring assistance in criminal proceedings—was to bar civil actions against law enforcement officers or officers of the court for the purpose of challenging the criminal conviction. For example, a civil action for false arrest obviously would be designed to challenge the criminal conviction.

#### RIGHT TO LIFE CONCERN

While the conference did make a few prearranged changes in the Senate bill, like dropping specific provisions for a National Advisory Council (still permitted, but not structured into the bill) and deleting some of the more frightening Senate language barring "Federal Control" of the new entity, those who take the time to study the final plan, in comparison with the House and Senate versions, will clearly observe an almost total Senate victory over the House. Furthermore, where the House did prevail, it was often because its language was as permissive or more permissive than that of the Senate.

In choosing the House ban on "legal assistance with respect to any proceeding or litigation which seeks to procure a nontherapeutic abortion", as opposed to the Senate version which barred such assistance on abortion "unless the same be necessary to save the life of the mother" conferees were playing into a trap well set by pro-abortion legal services activists.

The April publication of OEO's *National Clearinghouse for Legal Services*, in a cover story by Patricia Butler of the National Health Law Program (a backup center) says "... any abortion which a woman requests is medically necessary, since the very request

for the procedure indicates the importance of terminating the pregnancy to the woman's health, whether physical, mental or emotional".

Thus, there is no such thing as a "non-therapeutic abortion" in the official view of the legal services backup center issue which is prominent in dealing with abortions. Accordingly, the conference prohibition would be without force.

**Comment:** Of course, the view of a legal services backup center as to the definition of "nontherapeutic abortion" would not be controlling. But the author obviously does not understand the conference procedure. The House conferees are charged with attempting to adhere to the House language and, in any event, had no power to prevent the Senate conferees from receding on the issue.

#### ON SOME ISSUES, COMMON LANGUAGE GAVE CONFEREES NO CHOICE

In some cases, as with regard to the ban on aid to Selective Service law violators, the conferees had no choice, since the prohibition was included by both House and Senate. To give credit where due, the one real victory scored by the House was the personal achievement of Kentucky Congressman Carl Perkins who had insisted that local attorneys be given preference in filling project staff vacancies.

Yet all of this explanation does not even begin to remind the reader that the House bill (vastly better than the conference result) was itself weaker in thirteen key respects than the Administration plan announced last May 15. And of course, that plan was also a "compromise".

**Comment:** I think that I have demonstrated that the "conference result" is very close to the House-passed bill. The important fact is that we have a bill which after 3 years of work will provide a framework for an effective legal services program for the poor, free from political involvement and hopefully free from most of the controversy that has previously surrounded the program.

#### STEELMAN URGES RULES COMMITTEE TO BRING HOUSE RESOLUTION 988 TO THE FLOOR

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Texas (Mr. STEELMAN) is recognized for 5 minutes.

Mr. STEELMAN. Mr. Speaker, today I am introducing a resolution to urge the Rules Committee to act on House Resolution 988, the Committee Reform Amendments of 1974.

For 14 months while public confidence in the Congress continued to erode, the Select Committee on Committees diligently prepared the Committee Reform Amendments of 1974 for this body, and now it is not even going to be debated on the floor of the House and brought to a vote. As almost everyone is aware, this is because the work of this bipartisan committee is being buried by a single party's political caucus. This is the very reason the confidence of the people in this body continues to decline.

Almost every media report has described this tactic for what it is—a delaying maneuver designed to kill these much-needed reforms. It seems ironic that, of all pieces of legislation, the bill that would give this House a legislative overhaul of its committee structure after

28 years is being stalled—by a secret vote in a closed caucus.

It is beyond belief that the same body that cries for freedom of information, open meetings, and full disclosure by others will not be on record as to its intent to change at least some of the practices that have led to the decline in confidence by the American people in this body.

Mr. Speaker, this goes well beyond the issue of committee reform. This is a question of reform in general and the openness of the House of Representatives to scrutiny by the public. I call on my colleagues to join me in urging the Rules Committee to bring this very important piece of legislation to the floor so the merits can be debated in public and the position of the Members of the House can be recorded.

#### THE FEDERAL RESPONSE TO DRUG USE AND CONTROL

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Maryland (Mr. HOGAN) is recognized for 30 minutes.

Mr. HOGAN. Mr. Speaker, the Comprehensive Drug Abuse Prevention and Control Act of 1970 was a major advance in bringing some coherence into a highly diffused, patchwork quilt of criminal laws and regulations dealing with Federal response to drug use and control. It was designed to be sufficiently flexible to deal with the ever-changing drug scene as well as the ever-changing social conditions which require Federal intervention. However, as all laws, whatever their original intent, some of the Act's provisions fall short of the mark, either in terms of need or because of lack of sufficient implementation.

I introduced legislation yesterday to amend the Controlled Substances Act to provide for a mandatory life sentence for the illegal distribution of certain narcotic drugs.

Under present Federal law, trafficking in narcotic drugs carries a penalty of up to 15 years imprisonment for a first offense, and twice that for subsequent violations. Trafficking in other psychoactive drugs is subject to lesser penalties; but, except for unauthorized transfer of certain non-prescription controlled substances and casual transfer of small amounts of marihuana, all Federal sale offenses are felonies.

My bill is based on the premise that the more certain and severe the punishment, the more it will serve as a deterrent. Under my proposal, any individual convicted of distributing certain illegal narcotic drugs which involved the distribution of—

(1) an ounce or more of any controlled substance in schedule I or II which is a narcotic drug shall be eligible for parole (or any other form of release) only after serving twenty years of such sentence;

(2) at least one-eighth ounce but less than one ounce of any controlled substance in schedule I or II which is a narcotic drug shall be eligible for parole (or any other form of release) only after serving fifteen years of such sentence; and

(3) less than one-eighth ounce of any controlled substance in schedule I or II which is a narcotic drug shall be eligible for parole

(or any other form of release) only after serving five years of such sentence.

Drug abuse continues to be a serious problem in our society and I am convinced it can be suppressed most effectively by the application of vigorous criminal enforcement and tough penal sanctions.

There were mandatory sentences and no possibilities of parole for all pushers until the passage of the Controlled Substance Act in 1970. They were then omitted in order to prevent excessive penalties for the addict pusher. However, in my opinion, harsher penalties are still needed for the nonaddict pusher, an individual who profits from addicting young people and does not even have the excuse of addiction and the need to support his habit for selling heroin.

Professional drug enforcement officers have become increasingly concerned with a problem which may be defined as "postarrest drug trafficking." This involves a multiplicity of situations in which persons apprehended for trafficking in narcotic and dangerous drugs have obtained release pending trial and continue to engage in illicit trafficking activities. Although existence of the problem has been suspected for some years, it has become of more crucial interest because of the current drug crisis.

In a report issued by the Bureau of Narcotics and Dangerous Drugs, evidence of previous criminality of those arrested for drug offenses are evident: 64 percent have previous felony arrests; 40 percent have previous drug arrests; and 20 percent have prior drug convictions. This evidence tends to suggest that their arrest for narcotics trafficking is more often than not merely a further episode in a continuing career.

Mr. Speaker, everyone acknowledges that the drug problem in America is a serious one. While no one knows how many drug addicts there really are in this country, the Drug Enforcement Administration of the Department of Justice reported, as of June 30, 1973, there were some 95,897 active narcotic addicts. As of December 31, 1973, this figure had reached 98,988 recorded addicts. While this represents those addicts who are actually recorded, it is estimated that there are, in reality, over 600,000 addicts in this country.

There is a direct correlation between addiction and crime. An addict may need from \$50 to \$150 a day to buy heroin to support his habit. Consequently, 98 percent of the addicts in New York City resort to crime to support their habit. In the District of Columbia, 60 percent of funds obtained to support addiction are obtained through burglary, robbery and larceny; 15 percent through prostitution, and 10 percent from other illegal activities. In addition, at least 20 percent of all addicts obtain heroin by pushing drugs.

It is well established that drug addicts are crime-prone persons, but addiction itself is not a crime. It never has been under Federal law, and a State law making it one was struck down as unconstitutional by the 1962 decision of the Supreme Court in *Robinson against California*. It does not follow, however, that a state of addiction can be maintained

without running afoul of the criminal law. On the contrary, the involvement of an addict with the police is almost inevitable. By definition, an addict has a constant need for drugs, which obviously must be purchased and possessed before they can be consumed. Purchase and possession, with certain exceptions not relevant in the case of an addict, are criminal offenses under both Federal and State law. So is sale, to which many addicts turn in order to provide financial support for their habits.

There are those who argue that the proper approach to dealing with drug offenders in our legal system is to give a large enough discretion to the courts and correctional authorities to enable them to deal flexibly with violators, taking account of the nature and seriousness of the offense, the prior record of the offender and other relevant circumstances. The view held by the Bureau of Narcotics and Dangerous Drugs in favor of long-term imprisonment of major drug violators is more in line with our actual needs in helping to prevent drug abuse. We must have strong and effective penalties to serve as deterrents.

In addition to the costs of crime incurred by drug dependent persons, the community must assume the cost of investigating, identifying, arresting, detaining, trying, sentencing, treating, and rehabilitating the drug dependent offender.

A 1972 study of heroin use in Washington, D.C., showed the daily cost per user for incarceration was set at \$14, compared with an approximate cost of \$5.50 per patient for outpatient care. The Corrections Department listed the daily cost per offender on parole at \$97, a figure somewhat lower than that realized for New York City a few years before.

If the cost of arrest, trial, incarceration, treatment, and so forth, are multiplied by the alleged number of heroin dependent persons in this country today, society is faced with another potentially astronomical expense directly related to drugs. To this figure must be added additional amounts which reflect the rate of recidivism among drug offenders and the costs incurred from crimes committed to support their habits. Yet another adjustment must be made for those who, during the course of their drug dependence, will probably be arrested several times on a variety of charges and be processed through the criminal justice system many times over.

The issue of criminal sanctions for those dealing in hard narcotic drugs is an issue that has been explored by each administration since drugs were first realized as a serious threat to our society. The President's 1963 Advisory Commission recommended that the smuggling or sale of large quantities for sale should subject the offender to a mandatory minimum sentence. This is the precise intent of my bill. Those convicted of pushing hard narcotic drugs would be subject to a mandatory minimum sentence with the possibility of parole after serving their mandatory minimum sentence. Suspension of sentence would not be available under any circumstances.

Mr. Speaker, there can be no simple solution to the problem of drug abuse

and I do not intend to imply that my bill will be such a solution. Obviously, if we could prevent the inflow of hard narcotic drugs at our ports, the problem would be virtually eliminated, yet, it is inconceivable to believe that drugs could ever be completely blocked. The measures necessary to achieve this goal, routine body searches being one example, would be so strict and would involve such a burden on the movement of innocent persons and goods that this would never be tolerated. Moreover, the demand and the profits being what they are in the drug traffic, there will always be people willing to take whatever risks are necessary to pass the customs barriers.

I believe that the enactment of my proposal is a necessary weapon for our drug enforcement personnel to pursue their fight to combat drug abuse in this country successfully. For as long as illicit demand remains substantial and controls of lawful production and distribution of these drugs remain strict, elimination seems an unreal strategy.

I include the text of my bill in the RECORD at this point:

H.R. 14771

A bill to amend the Controlled Substances Act to provide for a mandatory life sentence for the illegal distribution of certain narcotic drugs, to permit parole only after a certain number of years of the sentence, to provide for research into the effectiveness of this life sentence, and for other purposes

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That part D of the Controlled Substances Act is amended—

(1) by inserting after section 405 (21 U.S.C. 845) the following new section:

"DISTRIBUTION OF NARCOTIC DRUGS

"Sec. 405A. (a) Any individual at least eighteen years of age who violates section 401(a)(1) by distributing to any other individual any controlled substance in schedule I or II which is a narcotic drug shall be sentenced to a term of life imprisonment. Any individual sentenced under this subsection shall not have the imposition or execution of his sentence suspended, and he shall not be eligible for probation.

"(b) Any individual sentenced under subsection (a) for a violation of section 401(a)(1) which involved the distribution of—

"(1) an ounce or more of any controlled substance in schedule I or II which is a narcotic drug shall be eligible for parole (or for any other form of release) only after serving twenty years of such sentence;

"(2) at least one-eighth ounce but less than one ounce of any controlled substance in schedule I or II which is a narcotic drug shall be eligible for parole (or for any other form of release) only after serving fifteen years of such sentence; and

"(3) less than one-eighth ounce of any controlled substance in schedule I or II which is a narcotic drug shall be eligible for parole (or for any other form of release) only after serving five years of such sentence.

"(c) The Attorney General, acting through the Institute of Criminal Justice of the Law Enforcement Assistance Administration, shall conduct research on a continuing basis relating to the effect of imposing life imprisonment under subsection (a) for unlawful distributions of narcotic drugs in schedule I or II upon the incidence of such distributions."

(2) by striking out "section 405" in section 401(b) and inserting "sections 405 and 405A" in lieu thereof; and

(3) by striking out "Any person" at the

beginning of subsections (a) and (b) of section 405 and inserting in lieu thereof in each such subsection the following: "Except as otherwise provided in section 405A of this Act, any person".

Sec. 2. Research and other information developed pursuant to section 405A(c) of the Controlled Substances Act shall be incorporated into the report of the Law Enforcement Assistance Administration authorized under section 519 of the Crime Control Act of 1973.

Sec. 3. The amendments made by this Act shall only apply with respect to any violation of section 401(a)(1) of the Controlled Substances Act which occurs on or after the day after the date of enactment of this Act.

ROUND TWO IN THE FIGHT FOR PERSONAL PRIVACY

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from California (Mr. GOLDWATER) is recognized for 10 minutes.

Mr. GOLDWATER. Mr. Speaker, Americans have won another battle in their fight to reestablish their right to personal privacy. The congressional commitment to personal privacy has had a welcome challenge placed before it by the Vice President of the United States, GERALD R. FORD, and his Committee on the Right of Privacy. His example is of two parts and both deserve the attention and praise of the Congress.

In the first instance, the Vice President's committee joined and led the effort to quash the "fed-net" proposal of the Government Services Administration. "Fed-net," a proposal somewhat obscured in a larger proposal to make more cost effective the computer operations of the USDA and the GSA, sought to link several of the major Federal agencies to a computer network that would have enabled GSA to have access to all of the personal information contained in the files of these agencies. In effect, it would have been the beginning of a national, Federal data bank. The project did not have the specific approval of the Congress and was formulated without any information safeguards and without the use of the social security number as a universal numeric identifier being prohibited. Further, the project involved the outright purchase of the hardware and the exclusion of private enterprise from participation in the communications system. Involved in protesting the proposal were Senator Moss, myself, the Office of Telecommunications Policy and the Office of Management and Budget.

It is sobering to realize that it took such substantial congressional and executive involvement to defeat such a potentially dangerous and ill-conceived proposal. The efforts of the Committee on the Right of Privacy were essential to a successful quashing of the proposal, and are clearly a boost to the congressional commitment to personal privacy. Until the Congress acts in a definitive manner these kinds of concurrent and compatible efforts are essential. They set a high example for the Congress and the Nation.

The Vice President carried his message to Chicago and the National Computer Conference. His speech was refreshingly direct. It delineates several policy con-

siderations that are worthy of serious consideration by the Congress as it prepares legislation concerning Federal information practices and personal information safeguards. The time has come for the Congress to restore the right of personal privacy and to make its protection a matter of law. At an executive level, Mr. FORD's policy statement and recommendations will make some headway. However, they must be made concrete by definitive congressional action. For the benefit of all the Members of Congress and especially for those Members charged with the development of specific legislation, I include the remarks of the Vice President:

REMARKS BY VICE PRESIDENT GERALD R. FORD

I thank you for this opportunity to address the 1974 National Computer Conference and Exposition.

The invitation extended by the American Federation of Information Processing Societies was timely. I am learning about computer technology and data processing from the viewpoint of my new responsibilities as Chairman of the Domestic Council Committee on the Right of Privacy.

I am aware that the notion of leaving the protection of individual privacy to Government officials has been compared to asking the fox to protect the chicken coop. But five months ago—when the most intense investigation ever focused on a nominee for the Vice Presidency was directed at me—I awakened to the privacy issue in a very real and personal sense. I was one of the chickens.

On a previous visit to Chicago, I had occasion to refer to some foxes who passed themselves off as elephants in the 1972 election. I am speaking of some characters in the CREEP organization and CREEP's invasion of the privacy of political opponents. This made me more aware of what could happen to our sacred right to privacy. I deplore such violations of traditional standards of honesty and decency in our political life.

I told President Nixon of my concerns, and he appointed me chairman of the Committee on the Right of Privacy. I welcome the challenge.

I know that there have been previous commitments, previous studies, and previous recommendations to deal by legislation with privacy problems. It is too early to forecast the outcome. I realize that too many findings have been ignored and too little actually done. The time has come for action. I will do all in my power to get results.

My first act as chairman involved complaints about an Executive Order of the President that permitted the Department of Agriculture to review the income tax returns of farmers to obtain data for statistical purposes. The President asked me to look into the matter. I immediately discussed the Executive Order with Secretary Butz and recommended that it be withdrawn. The President accepted my recommendation.

Let me tell you about the development of the Committee that I head. I wanted to chair this Committee with a staff of our own selection. I ask my former law partner, Philip Buchen—a distinguished advocate of personal freedom—to come to Washington as the Committee's Executive Director.

Interagency task forces were formed to make recommendations. Contributions have come also from the Congress, State governments, industry, citizens' groups, private individuals, academic experts, and some Federal agencies not represented on the Committee. We wish to invite our hosts, the American Federation of Information Processing Societies, and all constituent groups to become involved.

Today I would like to cite an example of a development that concerns our committee. The Government's General Services Administration has distributed specifications

for bids on centers throughout the country for a massive new computer network. It would have the potential to store comprehensive data on individuals and institutions.

The contemplated system, known as FEDNET, would link Federal agencies in a network that would allow GSA to obtain personal information from the files of many Federal departments. It is portrayed as the largest single governmental purchase of civilian data communication equipment in history.

I am concerned that Federal protection of individual privacy is not yet developed to the degree necessary to prevent FEDNET from being used to probe into the lives of individuals.

Before building a nuclear reactor, we design the safeguards for its use. We also require environmental impact statements specifying the anticipated effect of the reactor's operation on the environment. Prior to approving a vast computer network affecting personal lives, we need a comparable privacy impact statement. We must also consider the fall-out hazards of FEDNET to traditional freedoms.

I can today make known that the Privacy Committee staff is proceeding with a project to develop recommendations for assuring that personal privacy rights are given systematic and careful consideration in the planning, coordination, and procurement of Federal data processing and data communications systems.

Our objective is to formulate an action plan by June 30. An interagency task force has been given the assignment.

Assignments have also been made for other task forces to work on problems involving Social security numbers; Protection of personal privacy interests of consumers;

Preserving confidentiality of personal records used for statistical and research purposes;

Ways of notifying people of their rights with respect to various types of information they are asked to provide to Federal agencies; Mailing list practices of the Federal government; and

Legislative proposals aimed at protecting the personal privacy interests of individuals on whom Federal records are maintained.

In addition, staff work and outside research are under way or planned on problems such as:

Development of basic legal concepts for articulating privacy rights;

Confidentiality of personal tax returns submitted to the I.R.S.;

Personal privacy rights of Federal employees;

Types of personal information that should not be collected;

Administrative procedures that would enable individuals to know about, and to correct errors in personal data files maintained by Federal agencies; and

Means for limiting the range and volume of personal data collected by the Federal Government.

In dealing with troublesome privacy problems, let us not, however, scapegoat the computer itself as a Frankenstein's monster. But let us be aware of the implications posed to freedom and privacy emerging from the ways we use computers to collect and disseminate personal information.

A concerned involvement by all who use computers is the only way to produce standards and policies that will do the job. It is up to us to assure that information is not fed into the computer unless it is relevant.

Even if it is relevant, there is still a need for discretion. A determination must be made if the social harm done from some data outweighs its usefulness. The decision-making process is activated by demands of people on the Government and business for instant credit and instant services. How can

we offer service to people without doing disservice to their privacy?

Computer technology has made privacy an issue of urgent national significance. It is not the technology that concerns me but its abuse. I am also confident that technology capable of designing such intricate systems can also design measures to assure security.

There is no mention of the "right of personal privacy," as such, in the United States Constitution. But, as far back as 1928, Justice Brandeis expressed the idea that the right of individual privacy is broadly protected by the Constitution. For example, illegal searches and seizures are explicitly forbidden in the Constitution. Moreover, the general right to privacy certainly can be regarded as one of the unenumerated rights that the Tenth Amendment reserves to the people.

There will evolve a more comprehensive body of law on privacy from issues to come before the courts. But much can be done through executive and administrative actions—both in government and in business—to meet the growing public desire for protection of each individual's right of privacy.

Sensitivity was shown by planners of this conference to the right of privacy as affected by personal data collection and processing. I am pleased that five of your scheduled work sessions concentrated on privacy problems. I wish my time had permitted me to attend three sessions, including the meeting on Humanization of Information Systems.

The need to humanize information systems best expresses how we should approach the privacy issue.

People feel threatened by big information systems just as they are troubled by the growth of big government, big business, big unions, and by big institutions generally. Anxiety is experienced because big systems and big organizations seem inhuman in that they appear not to respect a person as an individual but treat him as just another unit in broad category of persons.

As one processor of mail for a large organization said: "The saddest thing of all is reading letters that begin, 'Dear Computer, I know there are no humans there.'"

For 25 years I served in the Congress and watched the social planners. One huge program after another was enacted. Rigid categorical standards were applied to people with a sweeping brush. We began the programming of people before computers were invented.

It is my conviction that the time has come to show greater respect for individual differences and to cease programming people as though they were objects.

We are approaching the celebration of this country's bicentennial. A major commitment we should all make for America's third century is to work together to humanize the operations of our computers, our institutions, and our government. As Theodore Roosevelt put it very simply 70 years ago: "The government is us; we are the government, you and I."

FIFTH DISTRICT KANSANS RESPOND TO SKUBITZ POLL

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Kansas (Mr. SKUBITZ) is recognized for 5 minutes.

Mr. SKUBITZ. Mr. Speaker, returns from my 1974 opinion poll are now coming into my Washington office in great bundles. I have already received nearly 9,000 responses.

I thought perhaps my colleagues would be interested in the question I asked with respect to impeachment. The results are as follows:

	Actual count	Percent
The following statements are views held by constituents who have written me in the past 6 months about Watergate. Which best represents your position.		
A. President Nixon is guilty of illegal acts and should be removed from office	1,803	20.6
B. The President is innocent of all charges and should not be impeached	1,522	17.4
C. The President's actions do not warrant removal from office, but Congress should pass a resolution censuring the President for actions which it deems unbecoming the Presidency, whether such acts were committed by him or by his employees	2,174	24.8
D. The President may or may not be guilty of illegal acts, but should resign anyway to avoid weakening the country and the Presidency	751	8.6
E. I cannot form an opinion until the House Judiciary Committee has completed its investigation and the charges are subject to legal process	1,951	22.3
Undecided	557	6.3
Total	8,757	100.0

I realize this is an incomplete return. If the annual results hold true to par, I can expect another 15,000 to 20,000 returns.

Mr. Speaker, even with these partial returns, I believe I have a more accurate view of the opinions of Fifth District Kansas than might be gleaned from a Harris, Roper or Gallup poll. I cannot help but question the accuracy of these so-called nationwide polls which we are deluged with weekly. I understand that the Harris and Gallup poll takers telephone less than 2,000 persons to obtain their nationwide sample. That is only one-thousandth of 1 percent. It would mean only 1 in every 100,000 persons were asked to respond.

According to the Gallup or Harris formula I might expect to ask only four persons in my district what their opinion might be of the impeachment issue. It is simply ridiculous to assume that any four persons, no matter how "scientifically selected," could accurately reflect the views of 430,000 people in my district.

According to these returns approximately 42 percent of those reporting do not favor impeachment and of those who favor resignation are added to those who favor impeachment and conviction, the total is 29 percent.

GEN. ROBERT E. LEE

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Virginia, Mr. BUTLER, is recognized for 10 minutes.

Mr. BUTLER. Mr. Speaker, I have today introduced legislation to restore full rights of citizenship to Gen. Robert E. Lee, a beloved Virginian and distinguished American.

On June 13, 1865, 2 months after General Lee surrendered to the forces of Gen. Ulysses S. Grant at Appomattox Courthouse, he applied to President Johnson for amnesty and restoration of his rights as a citizen, pursuant to the President's Amnesty Proclamation of May 29, 1865. The request was endorsed

and forwarded to the President by General Grant.

Unknown to General Lee at the time that he submitted the request was the requirement that it be accompanied by an oath of allegiance to the Constitution and the Union. On October 2, 1865, the day he assumed the presidency of Washington University, in Lexington, Va.—later changed to Washington & Lee University—Lee learned of the requirement and appeared before a notary public for the County of Rockbridge, Va., to whom he gave the oath.

Mr. Speaker, it is known that this oath never reached the President of the United States, reportedly because it came into the possession of the Secretary of State, who passed it along to a friend as a souvenir, and that General Lee died without restoration of citizenship. In 1970, it was reported that the oath was discovered among the State Department's records in the National Archives.

With the discovery of the oath, with the dismissal on February 15, 1869, of treason indictments against Lee, his sons, and 14 general officers, the only remaining bar to citizenship is the third section of the 14th amendment to the Constitution. That holds that no person who has previously taken an oath as an officer of the United States and is subsequently engaged in a rebellion against the United States, can hold office. The amendment provides further, however, that Congress by a two-thirds vote of each House, can remove such a disability.

Mr. Speaker, I feel the Congress has a responsibility to act on the long overdue petition of General Lee. I am pleased that in the other body, Senators BYRD and SCOTT of Virginia, and Senator HUMPHREY of Minnesota, have sponsored similar legislation. I urge my colleagues, members from all sections of the country, to honor General Lee who through both word and deed served as an example to those interested in the binding of our country's wounds.

Mr. Speaker, I ask unanimous consent to include at the conclusion of my remarks, several pertinent pieces of correspondence between General Lee and General Grant and President Johnson.

RICHMOND, Va., June 13, 1865.

His Excellency ANDREW JOHNSON

DEAR SIR: Being excluded from the provisions of the amnesty and pardon in the proclamation of the 29th ult., I hereby apply for the benefits and full restoration of all rights and privileges extended to those enclosed in its terms. I graduated at the Military Academy at West Point in June 1829; resigned from the United States Army, April, 1861; was a general in the Confederate Army, and included in the surrender of the Army of Northern Virginia, April 9, 1865. I have the honor to be, very respectfully,

Your obedient servant,

R. E. LEE.

RICHMOND, Va., June 13, 1865.

Lieut. Gen. U. S. GRANT,

Commanding Armies of the United States:

GENERAL: Upon reading the President's proclamation of the 29th ultimo, I came to Richmond to ascertain what was proper or required of me to do, when I learned that with others I was to be indicted for treason by the grand jury at Norfolk. I had supposed that the officers and men of the Army of Northern Virginia were, by the terms of their surrender, protected by the United States

Government from molestation so long as they conformed to its conditions. I am ready to meet any charges that may be preferred against me. I do not wish to avoid trial, but if I am correct as to the protection granted by my parole, and am not to be prosecuted, I desire to comply with the provisions of the President's proclamation, and therefore inclose the required application, which I request in that event may be acted on.

I am, with great respect, your obedient servant.

R. E. LEE.

[Indorsement]

HEADQUARTERS ARMIES  
OF THE UNITED STATES,

June 16, 1865.

In my opinion the officers and men paroled at Appomatox Court House, and since, upon the same terms given to Lee, cannot be tried for treason so long as they observe the terms of their parole. This is my understanding. Good faith, as well as true policy, dictates that we should observe the conditions of that convention. Bad faith on the part of the Government, or a construction of that convention subjecting officers to trial for treason, would produce a feeling of insecurity in the minds of all the paroled officers and men. If so disposed they might even regard such an infraction of terms by the Government as an entire release from all obligations on their part. I will state further that the terms granted by me met with the hearty approval of the President at the time, and of the country generally. The action of Judge Underwood, in Norfolk, has already had an injurious effect, and I would ask that he be ordered to quash all indictments found against paroled prisoners of war, and to desist from further prosecution of them.

U. S. GRANT,

Lieutenant-General.

HEADQUARTERS ARMIES  
OF THE UNITED STATES,

Washington, D.C., June 20, 1865.

General R. E. LEE,  
Richmond, Va.:

Your communication of date of the 13th instant, stating the steps you had taken after reading the President's proclamation of the 29th ultimo, with a view to complying with its provisions when you learned that, with others, you were to be indicted for treason by the grand jury at Norfolk; that you had supposed the officers and men of the Army of Northern Virginia were by the terms of their surrender protected by the United States Government from molestation so long as they conformed to its conditions; that you were ready to meet any charges that might be preferred against you, and did not wish to avoid trial, but that if you were correct as to the protection granted by your parole, and were not to be prosecuted, you desired to avail yourself of the President's amnesty proclamation, and enclosing an application therefor, with the request that in that event it be acted on, has been received and forwarded to the Secretary of War, with the following opinion endorsed thereon by me:

"In my opinion that officers and men paroled at Appomatox Court-House, and since, upon the same terms given to Lee, cannot be tried for treason so long as they observe the terms of their parole. This is my understanding. Good faith, as well as true policy dictates that we should observe the conditions of that convention. Bad faith on the part of the Government, or a contraction of that convention subjecting the officers to trial for treason, would produce a feeling of insecurity in the minds of all the paroled officers and men. If so disposed they might even regard such an infraction of terms by the Government as an entire release from all obligations on their part. I will state further that the terms granted by me met with

the hearty approval of the President at the time, and of the country generally. The action of Judge Underwood, in Norfolk, has already had an injurious effect, and I would ask that he be ordered to quash all indictments found against paroled prisoners of war, and to desist from the further prosecution of them."

This opinion, I am informed, is substantially the same as that entertained by the Government. I have forwarded your application for amnesty and pardon to the President, with the following endorsement there-to:

"Respectfully forwarded through the Secretary of War to the President, with the earnest recommendation that this application of General R. E. Lee for amnesty and pardon may be granted him. The oath of allegiance required by recent order of the President to accompany applications does not accompany this for the reason, as I am informed by General Ord, the order requiring it had not reached Richmond when this was forwarded.

U. S. GRANT,

Lieutenant-General.

OFFICE OF NOTARY PUBLIC,  
Rockbridge County, Va., October 2, 1865.

AMNESTY OATH

I, Robert E. Lee, of Lexington, Virginia, do solemnly swear, in the presence of Almighty God, that I will henceforth faithfully support, protect and defend the Constitution of the United States, and the Union of the States thereunder, and that I will, in like manner, abide by and faithfully support all laws and proclamations which have been made during the existing rebellion with reference to the emancipation of slaves, so help me God.

R. E. LEE.

Sworn to and subscribed before me, this 2nd day of October 1865.

CHAS. A. DAVIDSON,

Notary Public.

#### LEGAL SERVICES AND WELFARE RIGHTS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Georgia (Mr. BLACKBURN) is recognized for 60 minutes.

Mr. BLACKBURN. Mr. Speaker, many of us have expressed grave concern about the close, mutually supportive relationship played by the legal services programs in many locations on behalf of the National Welfare Rights Organization and its local subsidiaries. This relationship has accorded NWRO such benefits as: free use of office space and facilities, "house counsel" services, organizing assistance, drafting and preparation of model legislation, aid for demonstrations—help both in kind and personnel and resources. I pass over the hundreds of court cases undertaken by legal services seeking liberalized welfare benefits.

Our concern is accentuated by the very radical nature and character of NWRO. I am disturbed, but not too surprised, unfortunately, that so few members of the press seem to understand this problem for what it is. I have seen an excellent compilation of news clippings, NWRO newsletter clippings, and other documents relative to the NWRO, put together by a concerned citizen formerly employed by the Office of Economic Opportunity. Unfortunately, this compendium total 76 pages, beyond what could comfortably be included in the CONGRESSIONAL RECORD. There is, how-

ever, a summary of the book, which I am submitting for inclusion following my remarks. The whole report is referred to as "bound appendix," and if any of my colleagues care to examine it further, I will be happy to show it to them.

In conclusion, let me state that I regard with disapproval close relationships between legal services attorneys and the National Welfare Rights Organization, as I regard with disapproval any close relationships with any other self-proclaimed, militant lobby organization dedicated to radical, new concepts of society and government, in opposition to traditional American understanding.

The material follows:

#### SUMMARY OF BOUND APPENDIX

1. The NWRO is radically opposed to the anti-poverty policies and objectives of the Administration and the Congress, and is actively seeking to undercut the programs based on these policies.

A major part of the Administration's anti-poverty policy is incorporated in P.L. 92-223 and H.R. 1. P.L. 92-223 contains among other items, legislation sponsored by Senator Talmadge to improve the work incentive (WIN) program for welfare recipients. The Talmadge proposal, in the form of an amendment to the act amending Title II of the Social Security Act, was passed by the Senate on December 4, 1971 with no dissenting votes. On December 14, both the Senate and the House agreed to the conference report. On December 28, the bill was signed into law by President Nixon, who commented: "These amendments parallel my workfare recommendations embodied in H.R. 1. In my judgment, they reflect the national interest."

The President seized the occasion to give his views on the principle of training and work requirements for welfare recipients, a principle widely accepted in Congress and perfectly compatible with the Economic Opportunity Act's repeated emphasis on the goal of self-sufficiency. Said the President: "To those who deride the 'work ethic,' Americans must respond that any job for an able bodied man is preferable to life on the public dole. No task, no labor, no work is without dignity or meaning that enable an individual to feed and clothe and shelter himself, and provide for his family. We are a nation that pays tribute to the workingman and rightly scorns the freeloader who voluntarily opts to be a ward of the state. . . . With passage of these amendments, the principle of work requirements is in place." There can be no doubt, then that the work incentive legislation in P.L. 92-223 reflects Administration policy.

Both H.R. 1 and P.L. 92-223, and the principle of work requirements for welfare recipients, have been repeatedly, and, at time, demagogically attacked by NWRO.

Item: In the September 27, 1970 issue of *The New York Times Magazine*, the NWRO is quoted as calling the work incentives "slave labor" and The Administration's Family Assistance Plan (FAP) "brutal . . . an act of political repression" (Appendix, p. 71).

Item: In the July 31, 1971 issue of the Communist Party's *Daily World*, George Wiley, Executive Director of NWRO, was reported to have labeled the work rules of Nixon's FAP in H.R. 1 as "mid-twentieth century slavery" (Appendix, p. 14).

Item: On August 3, 1971 the same newspaper reported that a "campaign of political action and grass-roots organizing to defeat the Nixon-Mills Family Assistance Plan was launched by the NWRO" with George Wiley planning massive demonstrations "to protest the slave nature of the work FAP will have poor people doing, as underscored by Nixon's remarks in Williamsburg, Virginia last April, calling scrubbing floors and emptying bedpans work with 'as much dignity

. . . as any other done in this country'" (Appendix, p. 54).

Item: On August 6, 1971, the same newspaper reported that Mrs. Annie Smart, Southern Regional Director for NWRO called FAP "Nixon's southern strategy to get re-elected and a tactic to keep us divided, South and North, black and white" (Appendix, p. 52).

Item: On August 27, 1971 the same paper reported George Wiley as stating: "We will increase demonstrations. Nixon's welfare program will be our national target . . ." (Appendix, p. 55).

Item: The December 1971 issue of the NWRO's newspaper *The Welfare Fighter* reported that the NWRO Executive Committee gave Wiley a mandate . . . to organize resistance to the repressive experimental programs being initiated in New York as part of a preview of Nixon's Family Assistance Plan." The same article described an NWRO attack on HEW Secretary Elliot Richardson during ceremonies honoring Richardson at the Albert Einstein College of Medicine. "We decided to show Richardson up as a fraud. About 100 welfare righters led by Mrs. Ware and Wiley rushed to the stage to present their 'degree' to Richardson. Mrs. Ware read the citation: ' . . . We hereby confer on you the Doctor of Laws in Social Oppression . . . for your tireless efforts in working to secure passage of President Nixon's Family Destruction Plan'" (Appendix, p. 3).

Item: In the January 1972 issue of *The Welfare Fighter*, in a comment on the planned "Childrens March," is the statement that "children will be the benefactors (sic) of the hideous FAP and its guaranteed poverty" (Appendix, p. 2).

Item: In the January-February 1972 issue of *The Welfare Fighter*, Dr. George Wiley, NWRO's Executive Director, is quoted as follows: "We condemn the Administration's refusal to spend money on child feeding programs and the punitive restrictive changes in federal food programs made by the Congress and the Administration. We condemn the Administration's waivers on sections of the Social Security Act for large scale tests of forced work programs whose net impact is to depress wages for poor workers and reduce grants to welfare families . . . We condemn the Talmadge amendment, railroaded through the Congress in two days and enthusiastically signed by President Nixon. This amendment seeks to create a permanent class of poor people required to do menial work for welfare wages. Most of all we condemn and challenge H.R. 1 which embodies all these repressive principles in Nixon's Family Assistance Plan" (Appendix, p. 5).

Item: On March 26, 1972, a rally was staged in Washington, the so-called "Childrens March for Survival," to protest Nixon's welfare policies. According to the Washington Post, one of the principal sponsors of the "avowedly anti-Nixon rally" was the NWRO. Post correspondent Valentine wrote: "D. C. School Superintendent Hugh Scott was introduced at the rally by George Wiley, NWRO Executive Director . . . Rally organizers are specifically opposed to the version of President Nixon's proposed Family Assistance Plan . . . NWRO contends it is impossible to live on \$2,400 . . ." (Appendix, p. 7). According to a N.Y. Times account of the rally, Wiley's group "helped organize the demonstration . . . Among those joining the demonstration were Beulah Sanders, Chairman of the NWRO" (Appendix, p. 9).

Item: In the same issue of *The Welfare Fighter*, there was another reference to the Talmadge amendment in P.L. 92-223 as "repressive legislation." The article went on: "WIN has been an absolute failure. Now, Talmadge is forcing more welfare recipients into this dead end program" (Appendix, p. 38). (See under 2 below for further evidence of opposition to laws enacted by Congress).

2. In the judgment of the U.S. Congress,

the National Self-Help Corporation (NaSHCo), a subsidiary of NWRO, performed unsatisfactorily while under contract to the Department of Labor. NaSHCo used Federal funds to sabotage a Federal program.

In the latter part of the Johnson Administration (December 24, 1968 to be exact), the National Self-Help Corporation (NaSHCo), a subsidiary of the NWRO, was awarded a \$435,000 contract by the Department of Labor. Under the contract, NaSHCo (whose board of directors included nine elected officers of NWRO and NWRO's Executive Director, George Wiley) was to train welfare clients to disseminate information about the Work Incentive (WIN) Program to welfare recipients.

The contract raised some eyebrows since NWRO had been known to be extremely hostile to the WIN program. As Secretary Schultz later explained in a letter to Senator Long, "NWRO had previously gone on record as being strongly opposed to the legislation which created the WIN program. Up to the time of the execution of this contract in December of last year, much of their effort in regard to WIN had taken the form of demonstration and protest. It was anticipated that this contract would provide alternative types of action on their part" (Appendix, p. 29). A staff assistant to the Senate Finance Committee put it more bluntly: "The contract was hush money."

In any event, the Department of Labor windfall caused no change of heart in Wiley. According to an article in the June 2, 1969 issue of the *Washington Post* (6 months after the contract had been let), Wiley, during a television appearance, "denounced the U.S. Labor Department's Work Incentive Program, which trains welfare clients for jobs, as a brutal project 'designed to force mothers to leave their children and accept work' without guarantees of adequate training or pay" (Appendix, p. 28).

At an NWRO conference held in Washington three months earlier, participants, according to the *Post*, "got a two-hour course on how they could avoid job training or work under the city's new Work Incentive Program if they wished to stay home with their children. Stephen Wexler, an NWRO lawyer, told them how they could exhaust appeal after appeal to stay out of the work program, designed to train and place welfare clients in jobs. 'You can stay out of the program until Hell freezes over, if you know how to do it,' he said" (Appendix, p. 28).

Several informational pieces developed by NWRO confirm that the welfare organization, under the guise of disseminating information about WIN, was in fact subverting the program. One brochure, for example, in answer to the question "Can I get out of WIN once I am enrolled?" states: "If you have a good reason, you can refuse to go for a job or to training. Even after you start in a WIN program, you can refuse to continue if you have a good reason. Among the good reasons listed, along with the time-honored ones of being sick, unable to work etc., is the following: "The job or training is not in keeping with your abilities and interests" (Appendix, p. 34). Another pamphlet advises: "You should learn your rights in order to protect yourself in case you are referred to WIN when you don't want to go" (Appendix, p. 35). According to another NWRO leaflet: "There should be no requirement making work or job training a requisite to receiving aid" (Appendix, p. 36).

It would appear, by the way, that anyone following NWRO advice of the sort just quoted would be rendered ineligible for any benefits under the Economic Opportunity Act. According to OEO Instruction 6004-2, under Section 611 of the EOA, "an individual should not be treated as meeting poverty criteria for project benefits if he is fully capable of supporting himself but deliberately chooses not to do so." Section 611 of the Act and the cited OEO Instruction on

"Limitation of Benefits to Those Voluntarily Poor" would seem to be clearly inconsistent with NWRO's position on the WIN program.

NWRO's use of DOL funds to undermine the WIN program finally came to the attention of the Senate Finance Committee. On February 5, 1970, at Committee hearings on unemployment compensation, Senator Long, taking advantage of the presence of Secretary Schultz, brought up the matter of the DOL-NaHSCO contract. Long declared that Wiley's organization was established "for the purpose of demanding ever and ever greater welfare payments and preventing anybody from ever going to work for any of that money." "I was just amazed" said Long, "to see that this Department made a grant of \$435,000 to George Wiley and his group . . . to go out and destroy the very program that was supposed to put these very people to work" (See Appendix, p. 16-17). Long referred to a letter he had written to DOL some months previous in which he had made the following statement: "The (DOL) grant . . . reflects a failure by your Department to comprehend the forces seeking to discredit the efforts of Congress to help welfare recipients to help themselves out of the quagmire of dependency in which they are caught. It is an unconscionable and massive act of maladministration" (Appendix, p. 28).

Long returned again and again to NWRO's subversion of WIN. "Up there in New York where Mr. Wiley is operating," he said, "we had a program that said that in appropriate cases these welfare clients would be referred to the work program . . . And what Mr. Wiley and his group have succeeded in doing is arriving at the conclusion that there is no such thing as an appropriate case" (Appendix, p. 19).

At a later point in the hearings, Senator Williams referred to a \$38,000 contract HEW had negotiated with NaHSCO in April, 1969, four months after the DOL contract. "I am wondering" commented the Senator "what kind of liaison we have between the departments, if you are carrying out what you think is an ill-advised contract with a group that is not functioning properly, and another agency is letting another contract with the same people . . . the National Self-Help Corporation, which as the chairman has pointed out, is trying to educate their membership how to avoid complying with the law (Appendix, p. 22) . . . I request you consult with HEW because I know I am not alone nor is the Chairman alone in the committee, and we are very much concerned at the manner in which these grants and contracts are being made with this group, which obviously have but one intent, and that is to thwart the intents of Congress and to get this welfare—determined to get it—without working. To be frank with you, I cannot understand this continuous—with taxpayer's money—underwriting of this group" (Appendix, p. 32).

Senator Williams' point that his feelings of outrage over the DOLNWRO relationship were shared by many other Committee members was confirmed by a staff member of the Committee, Michael Stern. A few days ago, Stern commented: "Through its dealings with NWRO, DOL ruined what had been a very fine relation with Senator Long and the Finance Committee as a whole." The hearings reveal that some members of the Committee wanted a strip DOL of the WIN program and give it to HEW. That this feeling of outrage persisted for a long time is shown by the fact that almost two years later, in December 1971, Senator Talmadge, in the amendment he sponsored strengthening WIN requirements included the following passage:

"(9) Section 441 of such Act is amended . . . by adding immediately after the last sentence thereof the following sentence: 'Nothing in this section shall be construed as authorizing the Secretary (of Labor) to enter into any contract with any organization after

June 1, 1970<sup>1</sup>, for the dissemination by such organization of information about programs authorized to be carried on under this part' "

The above provision was aimed directly at NWRO, according to Charles Hawkins of the House Ways and Means Committee staff, and Michael Stern of the Senate Finance Committee staff. Merwin Hans, a DOL official whom Senator Long wanted fired for his role in negotiations with NaHSCO, made the following observation a few days ago: "The Talmadge amendment was a direct order to DOL not to do any more business with NWRO. It's the only instance I know of where Congress legislated against the use of a contractor by a Government agency."

The Talmadge amendment, including the section aimed at NWRO, was passed, as noted above, by voice vote in the Senate, which is to say, without significant opposition. The newspaper reported it passed "unanimously." No voice was raised in defense of NWRO in the Senate or in the House).

How do Labor and HEW feel about NWRO? In an article in the *New York Times Magazine* in September, 1970, there is a reference to the DOL contract as follows: "NWRO did receive a \$434,930 grant from the Labor Department at the end of the Johnson Administration to monitor the Department's work incentive (WIN) project from the point of view of involved recipients. Wiley called WIN a 'horror show.' A Labor Department spokesman says 'Baloney' and counters that NWRO's contribution was not useful" (Appendix, p. 73).

The same article describes a takeover of former Secretary Finch's office by NWRO's chairman Beulah Sanders who sat in Finch's "liberated" leather chair for seven hours. According to the *Times*, "Finch called the affair 'counterproductive.' Dr. Wiley, who was there, says Finch pretended to be NWRO's friend, but would then 'knife us in the back'" (Appendix, p. 73). The attack on Secretary Richardson has already been mentioned. Just a few weeks ago, the Administration's second highest welfare official, John Veneman, Undersecretary of HEW, said the Washington "Childrens March" was sponsored by a group of individuals who were "the Pied Pipers of poverty." He called the march "the special interest of a few men whose private ambitions seem to depend on the continuation of poverty in America" (Appendix, p. 9). Prominent among those who organized the march were George Wiley and Beulah Sanders of NWRO.

NaHSCO is no longer listed in the telephone directory, but an NWRO official advises that NaHSCO is "still one of our corporations, though inactive." NaHSCO's incorporated standing in D.C. was revoked September 14, 1970 for failing to file a report for two successive years.

Note: Past and current OEO dealings with NWRO. The following item appeared in the *N.Y. Times* of September 7, 1970: "For the time being the NWRO is pushing for higher benefits and more humane treatment and is moving aggressively into other areas such as improving the quality of education and health care for the poor. With the aid of an OEO grant of nearly \$260,000 to the Childrens Foundation, it plans to extend its litigation (following earlier legal successes that won more equitable distribution of food stamps, surplus commodities and free and reduced-price school lunches)" (Appendix, p. 73).

According to Mark Israel of OEO's Office of Health Affairs, OEO made a grant to the Children's Foundation in 1970 for \$245,000 and the same proposal was refunded under a current grant in the amount of \$545,000. The grant is of the technical assistance type (No. CG-3813). No formal evaluation was ever made of the results of the first grant. "None

<sup>1</sup> May 31, 1970, was the date of expiration of NaHSCO's contract with DOL.

of the Children's Foundation money went to NWRO" says Israel, "hence the implication of the *Times* article is inaccurate. The Children's Foundation serves as a conduit for the Food Research and Action Council (FRAC) in New York City, so OEO, in effect, funds FRAC through the Children's Foundation, since most of the work under the grant is done by FRAC. The *Times* is also inaccurate when it refers to litigation. Litigation is carried on by the Center for Social Policy and Law at Columbia University. No OEO money is used to support this litigation. The Center cooperates with FRAC, but FRAC does not get involved in litigation. They're very careful to keep their programs separate."

It does appear that FRAC, NWRO and the Center work closely together. A brochure prepared by FRAC entitled "The New Food Stamp Bill of Rights" carries on its back cover the NWRO emblem (a chain link) surrounded by the names and addresses of three organizations: NWRO, FRAC and the Center on Social Welfare Policy and Law. Readers of the FRAC brochure are urged to approach NWRO for "information and assistance."

The same brochure contains the following advice for welfare recipients: "Use pressure tactics on local officials (e.g. welfare officials and members of the county board of supervisors) and state officials (e.g. State Welfare Director, State legislators, the Governor) to make them remedy the failures of the Food Stamp Program . . . Demonstrations against State and local officials can also be helpful" (Appendix, p. 59).

It is questionable whether an organization recommending such tactics is eligible for OEO project funds.

Footnote: OEO does have a current funding relationship with NWRO, but it is an indirect one, according to Mark Israel. Food for all, an OEO grantee, received \$15,000 for an emergency food program in Las Vegas, Nevada. Food for all shifted the money, by means of a contract, to the Missiduc Foundation, an educational research organization which is an affiliate of NWRO. (Missiduc's address and telephone number in Washington are the same as those of NWRO). Missiduc in turn granted the money to an NWRO group in Nevada.

3. NWRO, from its inception to the present time, has habitually employed disruptive forms of direct action to achieve its goals.

An article on NWRO which appeared in the *N.Y. Times Magazine* in 1970 (Appendix, pp. 68-78) traces the tactics employed by Wiley et. al. to a theory developed by one of Wiley's former colleagues at CORE, Richard Cloward. Cloward, regarded as the guru of the welfare rights movement, published a paper in May, 1966 entitled "The Weight of the Poor: A Strategy to End Poverty." 30,000 reprints were requested. "The strategy" says the *Times*, "was to get all the poor on the welfare roles, overloading the system, while at the same time carrying out a militant campaign for full entitlements . . . If the grants were denied, a costly logjam of departmental fair hearings was threatened . . . The consequence of all this would be threefold: disruption in the public welfare bureaucracy, fiscal disruption in local and state governments, and finally a political crisis leading to national welfare reform and a guaranteed adequate income for the poor." "Our strategy always was grab what you can and run like hell . . . a guerrilla strategy. Hit the centers, drive up the Rolls . . ." There is no question but that the Cloward strategy is totally incompatible with the strategy embodied in the Economic Opportunity Act, and in Administration politics. The NWRO record gives every indication the Cloward strategy is being carried out.

Item: In June 1968, NWRO conducted a vituperative campaign of harassment against Rep. Wilbur Mills and his "anti-welfare law." As an NWRO brochure describes it, "on the eve of Solidarity Day, NWRO led its

fourth march on the home of Wilbur Mills . . . Over 500 welfare participants . . . Over 100 policemen barricaded the street and forced the marchers onto the sidewalk . . . The marchers proceeded along to Mills home some two miles away . . . and passed out 'Wanted' posters exposing Mills for his crimes against poor people . . . At Mills' residence, police formed a shoulder-to-shoulder wall across the wide entrance . . . Through a bullhorn George Wiley called Mills 'a ruthless fighter against Negroes . . . a man responsible for many ghetto fires.' The 'Wanted' poster, calling Mills 'Public Enemy No. 1' carried the following message: 'Wanted for Conspiracy to starve children, destroy families, force women into slavery and exploit poor people.' Another NWRO bulletin shows a picture of a rat, presumably representing Mills who is described as 'back in his rat hole busy at his dirty work' (Appendix, pp. 42-48).

*Item:* At a rally at the Capitol in 1968, Beulah Sanders of NWRO told the crowd (according to the *Post*) that 'its money had paid for the Capitol and the group should go in there and tear it down if they don't listen to you.'

Wiley told the rally: 'If this country does not listen to the poor after what happened in Detroit and Newark, you haven't seen nothing yet' (Appendix, p. 6).

*Item:* The August 17, 1968 issue of the *Christian Science Monitor* quoted Wiley as saying 'Asking us not to be hostile and not to attack (welfare officials) is like asking the Jews in Germany not to be hostile to the people who run the concentration camps' (Appendix, p. 5).

*Item:* At an NWRO rally in Central Park in April 1969, at which screaming crowds were dispersed by scores of mounted policemen, Wiley, according to the *N.Y. Times*, shouted: 'When the poor people want money, they are going to get it by people power, or there's going to be—to pay in New York City' (Appendix, p. 56).

*Item:* The *Washington Post* of June 1, 1969, described the disruption by NWRO of the National Conference on Social Welfare attended by 5000 Welfare leaders. The article began ". . . or get off the pot" and continued: "The full obscene demand was shouted over a seized microphone last Sunday. . . . In stunned silence those who had devoted decades to helping the poor heard themselves called 'racist pigs' and 'fat cats' and 'members of the white, imperialistic, oppressive society.'" Delaying the opening session for 3 hours, Wiley and a group of welfare mothers blocked the exits after he had vowed that no one would be permitted to leave until \$35,000 had been collected to enable the poor to attend conventions. *The New York Daily News* called these tactics "the outrage of the year to date." At another meeting, Wiley seized control of the speaker's microphone from the conference president, Arthur Flemming (Appendix, p. 56).

*Item:* Beulah Sanders, NWRO Chairman, organized a demonstration against Sears, Roebuck and Company in New York City, in July 1969. *The New York Daily News* of July 4 described the demonstration: "The demonstrators . . . occupied the store for nearly two hours, strewing trash on the floors, defacing price tags, operating washing machines and dumping wet rags across the sales floor. . . . Leaving the store in a mess, Mrs. Sanders announced 'We'll be back next week.'" The NWRO's demands of Sears were: (1) At least \$150 credit to any NWRO member, based on a letter of reference from NWRO, with no credit investigation, and (2) a formal written agreement to this effect between NWRO and Sears, binding on all local Sears stores (Appendix, p. 57).

*Item:* In Philadelphia, a petition signed by more than 500 caseworkers charged that the Philadelphia Welfare Rights Organization was "attempting to wreck the system

which we are trying to administer according to law." Their petition to the Governor cited "abusive and intimidating practices of certain representatives of NWRO. . . ." (Appendix, p. 57).

*Item:* In August 1969, a NWRO officer was quoted as saying: "If (our demands) are turned down, we will demonstrate, sit-in, picket city halls and state legislatures until we have won."

*Item:* In the February 5, 1970 hearings of the Senate Finance Committee, Senator Long alluded to NWRO attempts to disrupt earlier hearings on WIN. "They pulled a sit-in strike on this committee and raised all the confusion that they could here in Washington. . . . George Wiley showed you (Sec. Shultz) his appreciation, I might say, for your continuing that contract and the President calling that meeting and talking about what can be done for the poor and the President went in there and made a nice speech. I was not there but I saw it on TV, the next thing I knew Wiley had his mob shouting and the whole thing was an outrage. . . . About the same way they conducted themselves in this very hearing room when we were writing the WIN program" (Appendix, p. 18). The *Washington News* headlined the event: "50 Welfare Mothers Have Anger-in." According to the *News*, Mrs. Beulah Sanders "stormed at Senator Long that the government had no right to 'force' AFDC mothers to take job training. . . . The mothers staged an impromptu sit-in in an effort to force all 17 members of the Senate Finance Committee to hear their complaints. After Senator Harris left, 50 Capitol policemen were rushed to the hearing room. . . . An hour later, Senator Long returned, red-faced and grim, slammed down his gavel so hard it snapped in half and adjourned the hearing. Still the women refused to leave. Finally the Capitol police threatened the mothers with arrest and fines for unlawful entry" (Appendix, p. 33).

*Item:* NWRO delegates were reported as agreeing at a conference in August 1971 that "legislative lobbying and political action cannot replace in-the-street demonstrations to protest the Nixon-Mills Family Assistance Plan" (Appendix, p. 52).

*Item:* In the January-February 1972 issue of the *Welfare Fighter*, whose motto is "\$6,500 or Fight!", there is an exhortation to poor people to develop their political muscle, "along with direct action" to advance their cause (Appendix, p. 2).

NWRO publications are replete with countless other examples of NWRO sit-ins, demonstrations and invasions of welfare offices and state legislatures. The aforementioned *N.Y. Times* article (Appendix, p. 72) sums it up: "There have been sit-ins in legislative chambers, including a United States Senate Committee hearing, mass demonstrations of several thousand welfare recipients, school boycotts, picket lines, mounted police, tear gas, arrests—and, on occasion, rock throwing, smashed glass doors, overturned desks, scattered papers and ripped-out phones."

The NWRO record, noted Congressman Ashbrook in 1969, is one "marked with bullying agitational tactics, irresponsible demands and charges, and the alienation of sincere, concerned welfare workers and officials who have had to labor under an impossible welfare system." The Congressman concludes: "This much is certain: Congress will not look kindly on the Federal funds to finance irresponsible organizations or individuals, with the experience of some ill-advised OEO projects fresh in memory" (Appendix, p. 57).

It is also certain that the NWRO has not altered its strategy or tactics, and by its own admission, will push even harder in this election year.

4. NWRO's record, as reflected in activities of the sort described under 1, 2 and 3 above, indicates that NWRO places ideological and

political considerations above the interests of the poor.

The above judgment is shared by many observers of NWRO. John Veneman, HEW Undersecretary, has already been quoted as remarking, in reference to the Children's March, that the march was "the special interest of a few men whose private ambitions seem to depend on the continuation of poverty in America." An editorial on the march in the *Washington Star* called the whole affair "outrageous," "stupid" and "highly political," supporting "one side of a political debate as controversial as the national welfare reforms fight." The *Washington Post* echoed these views in its editorial as did the *N.Y. Times*. Mayor Washington said he was "concerned that children, specifically those too young to decide for themselves, not be subjected to indoctrination in partisan causes, or to adult manipulation for political purposes." This is not the first time Wiley has manipulated children. He had some very young children brought to the Senate Finance Committee hearings to testify in person against the WIN program. Wiley promises more of the same. "This will be the year of the children" he is reported to have said at the march.

Wiley's group has declared a no-holds barred war against the whole Administration welfare program and against the reelection of Nixon, and he is employing all the resources of his formidable membership toward this political end. According to the January-February 1972 issue of the *Welfare Fighter*, the NWRO's National Coordinating Committee, "in the first meeting of 1972 set political action in the primaries, the party conventions and the November elections as high priorities" (Appendix, p. 2).

The NWRO has also begun to play a more active role in the anti-war movement. One of NWRO's most powerful figures, Beulah Sanders, was the NWRO delegate to the recent World Assembly for Peace and Independence of the peoples of Indochina held at Versailles, France (Appendix, p. 61). The Assembly plans massive demonstrations at the Republican convention in San Diego, in order to "shatter the illusion of domestic tranquility." The same Assembly called for resistance to pay payments earmarked for the war, and acts of disobedience against Federal buildings and companies with defense contracts. An Expo 72 near the Convention site is also projected, featuring exhibits from China, Cuba, and Vietnam, continuous showing of such anti-Nixon films as *Milhouse*, a People's Panel of Inquiry on the Nixon Administration and live broadcasts from Vietnamese in Paris (Appendix, pp. 63-66). The NWRO hopes to take a leading part in these activities.

Mr. GOLDWATER. Mr. Speaker, who would think that patients in nursing homes are interested in organizing themselves into disciplined, politically active units? I, for one, would not imagine it, since it is my impression that people in nursing homes are generally there because of their age or general incapacity. And I would be correct: inmates of nursing homes are not organizing themselves into political units; they are being organized. It is an important distinction, because it represents the gap between voluntariness and being used.

Our old people are being used by Legal Services attorneys for political purposes. That is a strong charge, but I do not say it carelessly. The August-September 1972 issue of *Clearinghouse Review*, an OEO Legal Services-funded publication from Northwestern University School of Law, published a lengthy article on the organizing of nursing home occupants, explaining "why and how nursing home

patients should be organized into self-governing groups." It explained how to approach the patients, "an organizer simply assumes the role of a friendly visitor." Problems may arise like administrators or proprietors will oppose organization. The article went on to tell organizers how to defend themselves against administrators seeking to save their clients from this latest invasion of their peace and quiet.

Somehow, Mr. Speaker, it seems unnatural and unkind to try to turn old people into political pawns. That our federally supported Legal Services attorneys and think-tankers engage in and encourage such activities indicates a rather low level of respect. A confidential memo of October 1972, from within OEO, discusses some other problems with nursing home organizing, from a frankly political point of view. I think my colleagues should read that:

OCTOBER 3, 1972.

#### ORGANIZING NURSING HOME OCCUPANTS

The current issue of the Clearinghouse Review (published by our grantee at Northwestern University and disseminated to legal service programs across the nation) includes an article entitled *Legal Problems Inherent in Organizing Nursing Home Occupants*. Prepared by the Health Law Project at the University of Pennsylvania Law School, the article urges that legal service attorneys play a role in organizing nursing home patients into "self-governing groups." The article suggests that Patients' Rights Committees be established within nursing homes, reinforced by alliances with such groups as welfare rights organizations.

I have two principal concerns about the thrust of this article, one broadly philosophical and the other very practical. Both of these concerns relate to fundamental policy issues in the Legal Services Program concerning group representation, community education, and community organization.

My philosophical concern is the belief that it is unwise to politicize essentially non-political institutions, be they nursing homes, schools, drug programs, or prisons. That kind of politicization which became widespread in Germany during the 1920's produces social conflict, loss of community, disruption, and instability. It tends to de-emphasize the individual and focus on the mass. It results in people being accorded a collective rather than an individual identity and makes it easier for demagogues to manipulate.

The practical concern to which I referred has to do with votes and elections. As a former campaign manager, I can tell you that the best way to build up a strong lead for one's candidate is to visit every nursing home in the district, register the patients as voters, and see that absentee ballots are cast. In many Congressional Districts, this process can produce literally thousands of votes for a preferred candidate.

Although legal service attorneys are technically prescribed from registering voters during official duty hours, it is clear that an organizing thrust of the sort proposed would enable groups created by legal service attorneys to register and round up the votes of nursing home patients, just as has been done in the community at large by KWRO and similar organizations.

If you agree that this matter merits remedial action such as modification of grant conditions or changes in legal services regulations, my office would be pleased to work with the Office of General Counsel and the Office of Legal Services in developing the necessary changes.

Thank you for your consideration.

#### LEGAL PROBLEMS INHERENT IN ORGANIZING NURSING HOME OCCUPANTS

(By the Health Law Project, OEO, University of Pennsylvania Law School, Philadelphia)

##### I. INTRODUCTION

The growing sense of relief felt by a visitor upon leaving a nursing home is inversely proportional to the resident's increasing feeling of despair. The Health Law Project has been searching for ways to reverse both the despair and the desperate conditions of the nation's elderly in nursing homes. The following article is a proposal describing why and how nursing home patients should be organized into self-governing groups. Part of the organizing process raises difficult legal problems, a few of which are discussed below from the patients' perspective.

##### II. WHY ORGANIZE?

Without question, nursing home patients need a high degree of protectional service because the quality of health service they receive is deplorable. Physical conditions do not meet standards, and the trained staff is inadequate when measured against the criteria of state licensure, Medicaid, Medicare, and the Joint Commission on Accreditation of Hospitals, etc. Even assuming minimal care, there is nevertheless an inherent conflict between patients' interests and the home's proprietary interests. The home maximizes efficiency by sacrificing the basic personal privileges most people take for granted. The home decides when all patients will rise, take their meals and retire. Who visits a patient, what mail he receives, and even whether he shall stay or leave are decisions unilaterally made by the home. Paternalistic social attitudes toward sickness and old age reinforce the incentive toward institutional efficiency and result in an imbalanced relationship in which the home exercises plenary de facto power over the patients. The average patient is overprotected and underserved.

If patients hope to offset the institutional dominance of the home, they must aggregate power in an environment where friendly strength and energy are at a premium. To be effective, that countervailing power must be available at all times. It is unlikely that the friendly visitor or concerned caseworker can fulfill the role. Ultimately, the patients must draw on their own resources with some outside support to meet their needs. Some collective form, group or committee of patients is the only reasonable response to the patients' needs.

##### III. HOW TO ORGANIZE A PATIENTS' RIGHTS COMMITTEE

Organizing nursing home patient starts at an almost atomistic level. An organizer simply assumes the role of the friendly visitor and walks into a home. Contacts and personal confidences must be established. Often, communication will not even exist between the patients themselves. The organizer's first goal must be to establish this communication. During the initial contact period, patients' opinions and problems should be gradually elicited and a pattern of common concerns identified.

At an appropriate time, a meeting of patients must take place. This may be accomplished under the ambiance of some social setting, such as a bingo party. The meetings must then be continued on a regular basis and a patients' advocacy mechanism established.

Throughout the early organizing effort within the home, a parallel effort should be conducted outside the home. Alliances must be formed with useful and needed resources. A welfare rights organization will often volunteer its services. Welfare Rights Organization groups have developed particular skills in explaining to vulnerable people the effects of bureaucracies on their lives. Senior citizens groups offer a source of manpower and

understanding of problems of the aged. Contact should be made with legal resources since the relationships between the patients and the home will almost inevitably raise legal disputes.

A vigorous, proven patients' rights committee has not yet been developed to the point where all its problems have been examined and resolved. Those which exist are in their nascent stages dealing with threshold problems. Certain difficulties have been identified and can be anticipated. They are the problems concerning access to nursing homes, availability of information on their operations, and protection against retaliatory discharges. In responding to these problems with their particular skills, legal resource people can contribute a determinative service to the success of the organizing effort.

##### IV. ACCESS TO NURSING HOMES

Organizing patients' rights committees has serious potential for reforming the power structures of a nursing home. Administrators or proprietors will oppose organization, and their first defense will be their property rights. Most nursing homes consider themselves purely private institutions in relation to outside organizers. Thus when an organizer becomes a threat, a home may simply deny him access to the patients.

Faced with a denial of access to the patients, there are few affirmative steps which may be taken to open the doors of an uncooperative home. However, there is much to indicate that a nursing home is not a private institution, and denial of access based on that assumption may be ill-founded. Two arguments might be made which reject the home's assumption. The first looks at the character of the property rights of the proprietor and the first amendment rights of the patients, balances them, and characterizes the home as quasi-public. The second argument examines the inter-dependency between the state and the home, looks for state action, and, relying on the fourteenth amendment, prohibits state encroachment on first amendment rights.

Mr. HUNT. Mr. Speaker, I rise today to express the unhappiness of my colleagues with the legal services bill which is going to be offered to us for a vote this week. I am opposed to this bill; I am opposed to the manner in which it has been concocted and presented to us; I am opposed to the deceitfulness which has plagued it every step of the way, from its drafting through its lobbying.

This bill abuses and misuses a noble principle—that of enabling all citizens to participate equally in the judicial process—through subsidizing legal representation for the needy when absolutely necessary. Invoking altruistic sentiments under this cloak of legitimate assistance, the proponents of this legislation in fact advocate a different concept; namely, the concept as developed by Edgar and Jean Cahn and later expanded and enlarged by the OEO Legal Services Office. This concept does not view legal services as assistance to the poor in their everyday mundane needs, but instead regards legal services as the ideal means for bypassing legislatures and electors in an ambitious scheme to remake society by changing the meaning of its laws. Insofar as this conference report would allow these social engineers free rein on American society, I oppose H.R. 6748. I do not oppose legal aid to the needy poor, I only oppose allowing aid intended for the poor to be used for highfalutin social schemes, as this bill would allow.

Last June we passed a legal services

bill that was meritorious in certain key respects. But last December the Senate Committee on Labor and Public Welfare, aided and abetted by outside interested parties, drafted an entirely new bill, totally devoid of our safeguards and protective clauses. This bill, passed and sent to conference, has now proved a disproportionately influential in the drafting of the conference report. Once again I fear, we have a situation of staff doing the Members' work. Ideological staff personnel, in conjunction with active, organized outside interest groups, makes an effective combination when it comes to getting something accomplished.

What interest groups am I referring to? I am referring primarily to those who stand to lose if a liberal, unrestricted legal services bill does not get out of Congress—the leftwingers, the staff attorneys, the legal services project personnel. I am not saying this pressure is unique to this issue—every piece of legislation which has spawned a bureaucracy, be it educational, health, welfare, agricultural, or whatever, has spawned a corresponding pressure body whose sole purpose is to insure the continuation of that bureaucracy. What irritates me most is the hypocrisy which accompanies this rather clear-cut self-interest. These lobbyists do not say, "We want to preserve our jobs," which would be understandable and honest. Instead, they wear the mask of magnanimity and expound at great length about the unfortunate poor who will be harmed if we cut off these services. They will feel alienated, they will feel cut off from middle-class society, their attitudes will become negative, they will resort to violence, and so on. In fact, the Senate bill, S. 2686, even stated in its first section that one of the purposes of this bill was to prevent the further alienation of the poor from the processes of middle-class society, lest they become violent. That sounds suspiciously like a sophisticated blackmail to me.

That argument is entirely fallacious. A study just completed, which was funded by none other than OEO itself, has concluded that—

There is little or no evidence that people's attitudes or behavior patterns have much to do with what happens to their well-being.

Also, that study found that there is considerable movement in and out of the category "poverty family"—of a sample of 5,000, which is a pretty large sample of families, only 9 percent stayed in the same income level during all 5 years of the study from the Washington Post of Wednesday, May 8. Just these two points alone serve as strong indictments of the "antipoverty" mentality of which legal services is being sold as a part and parcel. The time has come to strip off this false face from the legal services lobbies and eliminate the deceitfulness which has cloaked the issue for too long.

There are some specific issues I would like to call attention to in opposing this bill. These are all points that were amended last June to our satisfaction, more or less. The amendments were adopted through working with colleagues of similar persuasion, regardless of which side of the aisle we came from, and

putting away petty divisiveness for the sake of this more important issue. We stood our ground last June; I trust we will do the same this May.

Involvement in nontherapeutic abortion cases and school desegregation cases, participation in legislative and policy advocacy, attorney participation in outside practice of law, juvenile representation without explicit parental request, representation of the voluntary poor, and backup centers are some of the crucial issues. There are others, too. I would be hard pressed to say which was most important, or which five or which six were most important. They are all equally significant, and we will not relent on any one of them. A legal services bill which does not concern itself with the real, down-to-earth needs of the real poor but instead creates a huge mechanism for furtherance of social reform and engineering policies does not deserve our support and will not receive it.

The Washington Post article of May 8, 1974, follows:

#### ATTITUDE, POVERTY UNRELATED

(By William Chapman)

For the short run at least, a person's mental attitude has virtually no effect on his chances of getting ahead or falling behind economically.

Whether he is alienated and discouraged or is confident and success-oriented makes very little difference in the person's economic status and his family's well-being. His family may rise out of poverty or sink back in, but his own hopes and sense of competence are irrelevant to that change.

This conclusion, which contradicts some assumptions that produced the 1960s war on poverty, emerges from a major 5-year survey conducted for the government by the University of Michigan's Institute for Social Research.

More than 5,000 families were interviewed in each of the five years to determine the changes in their economic status and to define what caused those changes.

A second conclusion of the survey is that the poverty population changes considerably from year to year with a large number of families either falling below or rising above the line each year.

Both findings undermine some of the original tenets of the war on poverty that was launched by the Johnson administration in the mid-1960s.

An important assumption then was that a "culture of poverty" existed which inexorably trapped millions below a certain level of income and that the same families and their offspring would continue to be trapped unless the cycle was broken.

Part of the strategy for breaking it lay in the idea that the attitudes common to those in poverty—low personal aspirations and feelings of powerlessness—could be changed.

Thus, Job Corps enlistees were brought to remote camps so they would be removed from ghettos where feelings of hopelessness supposedly were pervasive. Community action programs were designed partly to give the poor a sense of connection with institutions with a feeling of participating in power.

Neither assumption finds support in the Michigan surveys, which were initially launched in 1968 under a contract from the anti-poverty agency, the Office of Economic Opportunity.

First, the surveys disclosed that there is considerable movement in and out of poverty. Only nine per cent of the 5000 families were in the bottom fifth of the income distribution in each of the five years.

On the other hand, 35 per cent of the families were in the bottom fifth during at least one of the five years. The findings indicate that although there is a small number of families consistently in poverty a much larger number will drop into poverty or rise out of it over a period of years.

The findings also indicate that poverty is a threat to a much larger share of the population than previously indicated. The Census Bureau most recently found 25 million Americans living below the official poverty threshold (about \$4300 a year for a family of four). But a statistical projection from the Michigan surveys shows that twice that number were in poverty during one of the five years of the survey. About 50 million Americans—one fourth of the population—are likely to fall below the poverty line at some time over a period of a few years, this analysis concludes.

Attitudinal and behavior tests were administered to all 5,000 families annually in the survey to determine what effect these attributes had in changing economic status. The tests were designed to measure such things as a person's aspirations, his motivation for achievement, his personal confidence, and his sense of "efficacy"—how strongly did he feel he could control the events of his life.

When compared with actual changes in the families' incomes, these mental attitudes were found to have no effect whatsoever.

"... There is little or no evidence that people's attitudes or behavior patterns have much to do with what happens to their well-being," the authors report. Whether the breadwinner was strongly or weakly motivated toward success, his rating explained virtually nothing about the family's movement up or down on the economic ladder.

The family's economic movement also was not affected by certain patterns of behavior, such as the families' ability to plan ahead for the future, its willingness to economize, and its decisions on avoiding economic risks.

Only one of the several behavioral characteristics seemed to be associated significantly with a change in income. Those whose status improved over the years tended to be connected with certain institutions that could help or inform them—a labor union, church, even friends in a tavern. The authors concluded, "Perhaps it pays for the poor to have friends."

Even the level of education, supposedly one of the key factors determining success or failure, had little effect over the course of the five years. Those with higher education were generally more successful economically at the start of the experiment. But having more education did not play any part in the movement of incomes during the five years in which the survey was conducted.

James N. Morgan, who directed the surveys for the Institute for Social Research, said the results were surprising in that they showed that not even a small sub-group of the 5000 families seemed to be affected economically by their mental attitudes and behavior.

"Usually you can always find some small segment of a large population that is affected by such things as attitudes and behavior patterns," he said, "but in this one they simply all disappear."

The factors that did explain changes of economic status during the five years were the obvious ones—changes in the composition of the family and participation in the labor force. The decision of a wife to go to work naturally increased income; the abandonment of a family by the father naturally reduced its income.

Mr. LOTT. Mr. Speaker, I am pleased to join my colleagues in discussing the OEO/Legal Services question.

As we vote on the conference report on Legal Services, it should be made clear that I, for one, am not opposed to Legal Services assistance for the truly needy.

However, I believe there is a much better way to go about it than by supporting the conference report.

My preference, over all, is for an alternative to the staff attorney system which would be perpetuated by the Legal Services Corporation bill as drafted. Such an alternative is known as *judicare*. It would permit attorneys full freedom of action, while allowing clients freedom of choice of attorneys. With some effective guidelines regarding political activities, and outside activities, a system like this could conceivably satisfy most major criticism of Legal Services. It would do that by eliminating the poverty law offices, the Legal Services offices, whose only purpose is to seek out business to keep themselves justified in the eyes of their funding source. With a system of *judicare*, those unable to afford legal attention would receive it, and would be able to choose their attorneys from among the regular, practicing lawyers in the community.

There are other alternatives besides *judicare*, but since *judicare* has been around the longest, it has been tested already and seems the best bet at this point. John Satterfield, a former chairman of the American Bar Association, circulated a letter earlier this year expressing his preference for the *judicare* system. Some of his remarks are not appropriate at this time, since they urge support of S. 1990, a bill which failed to receive action in the Senate. In submitting Mr. Satterfield's remarks to the RECORD, I have deleted those parts:

SATTERFIELD, SHELL, WILLIAMS  
AND BUFORD,  
Attorneys at Law,  
Jackson, Miss., January 22, 1974.

Few members of the bar question the value of assuring all Americans equal access to our system of justice. For this reason, attorneys throughout the nation have endorsed the concept of legal assistance to the poor.

Because each of us in the profession values his independence from interference, there has also been strong support for the idea that attorneys for the poor should have full freedom of action. Many have concluded that this freedom of action should be institutionalized through a national legal services corporation.

Some, having reached these conclusions, have assumed that no other issues with respect to legal services merit their further consideration. I ask your indulgence for this exception to that judgment. The issue is not so clearcut as it may at first appear.

A better way is to assign resources to open panel *judicare* programs wherein eligible clients could seek assistance. Established in each state with resources based on the number of eligible poor and in cooperation with bar associations, such programs would enhance equal access to justice for needy individuals. They would also limit any potential for lawyer-politicking with public support, on the one hand, or government interference with the client relationship, on the other.

Under the kind of "staff attorney" system which has almost exclusively predominated in the OEO legal services program, purchase power is vested not with the potential client for assistance, but with the provider of counsel. For this reason, the economic need for client-responsiveness, as well as the market constraints on one's time, which imposes a discipline on the activities of private attor-

neys, are absent when there is exclusive reliance on the staff system.

This not only means that the client lacks the power to choose whether and how he shall be represented. It also results in a situation according to which the staff lawyer is relatively free to look for a test case, devote time to an appeal, or organize a reputation-building class action. This brings to mind the old term "solicitation of business."

Furthermore, when the lawyer acts for a poor client, without cost restraint on his activities, the party against whom the poverty lawyer's skills may be arrayed, whether rich or poor, usually must pay for his own representation, often at unbearable cost. Is this equal justice? Is it even a system in which we can be sure the client's interest, personal and immediate, will transcend those of the lawyer, if the lawyer feels obliged to more "efficiently" allocate his energies to achieving generally applicable changes in public policy?

Let us also remember that there is some proper difference in ground rules for the tax-subsidized attorney as compared with the client-supported attorney.

On this basis, there is understandable concern when subsidized staff attorneys involve themselves in lobbying or organizing on behalf of controversial issues and groups. It seems to be politics beyond the reach of systemic safeguards, rather than a simple effort to represent needy individuals in court.

Sincerely,

JOHN SATTERFIELD.

Mr. ROUSSELOT. Mr. Speaker, in the overlong and drawn-out debate on legal services that Congress has been in for the past several years, the charge of misuse of Federal funds for political purposes has been leveled many times. Defenders of the OEO Legal Services projects, and of OEO Legal Services in principle and in practice, have brushed aside such charges. I do not think they can be brushed aside.

Recently I came into possession of what I regard as pretty conclusive evidence of improper activity by a Legal Services grantee, in this case, the National Employment Law project, at Columbia University. This is a memo sent to a dozen Legal Services activists from various Legal Services projects, giving details on final arrangements for a Washington, D.C., conference on welfare reform. The conference was held March 7, 1972, a time when welfare reform was a high priority in Congress. The fact that this conference was held indicates something, but more indicting material is found within the memo.

Paragraph 2 of the memo mentions that the National Legal Aid and Defender Association Technical Assistance project has agreed to provide "the usual Government travel reimbursement." I wonder, did NLADA have permission to grant such reimbursement? If so, had they informed the authorizing source that their purpose was political, insofar as they were trying to find out about legislation in order to influence its adoption or failure?

Mr. Speaker, I submit this memorandum, dated February 29, 1972, for my colleagues' attention:

#### MEMORANDUM

Final arrangements have now been made for the conference on WIN and compulsory work programs in Washington on March 7. In view of the great deal of work we have to

do, I have changed the time of the conference to 9:00 a.m. WIN on the 7th. We will meet in Room 207 of Caldwell Hall, on the campus of Catholic University. I am enclosing a map of the campus to make your search for that room a little easier.

John Joyce and the NLADA Technical Assistance Project have generously agreed to provide the usual Government travel reimbursement (travel expenses plus \$25 per diem) for the conference. Because we are short of time, you should each make your own travel reservations and secure advances from your local offices, which will be reimbursed later. John has asked that we try to keep expenses to a minimum. Since NLADA has gone out of its way to sponsor the conference, I am sure you will accommodate him in this.

Dick Carter has suggested four motels in the general area of the University where you may wish to stay:

Holiday Inn, 730 Monroe St., N.W., 529-8100. This is the closest to the campus.

The following are within a short taxi ride: Tabbard Inn, 1739 N St., N.W., 785-1277. (Dick Carter says this is a comparatively less expensive place, a favorite haunt of legal services types).

Gramercy Inn, 347-9550, 1660 Rhode Island Ave., N.W. Executive House, 232-7000, 1515 Rhode Island Ave., N.W.

Enclosed, in addition to the map of the campus, are the following materials for your examination before the conference:

1. Final Order, *Thorn v. Richardson*.
  2. Plaintiffs' Memorandum of Law, *Dublino v. N.Y. State Dept. of Soc. Serv.*
  3. Plaintiffs' Interrogatories, *Dublino*.
  4. Stipulations of Fact, *Dublino*.
  5. 1971 Amendments to WIN (Congressional Record).
  6. 1971 N.Y. compulsory work amendments.
  7. 1972 Ohio compulsory work amendments.
- We are attempting, in addition, to secure copies of the Reggie materials on compulsory work programs.

I look forward to seeing you on the 7th.

#### GENERAL LEAVE

Mr. HANRAHAN. Mr. Speaker, I ask unanimous consent that all Members may revise and extend their remarks on the special order of the gentleman from Georgia (Mr. BLACKBURN) today.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Illinois?

There was no objection.

#### LEGAL SERVICES INTERFERENCE WITH ELECTION PROCESS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Ohio (Mr. DEVINE) is recognized for 5 minutes.

Mr. DEVINE. Mr. Speaker, every time a legal services bill comes before us for our decision as is the case now with the pending conference report, new information is uncovered which once again demonstrates to me the destructiveness of our democratic system that we have unleashed upon the country in the form of legal services.

The latest scandalous information I have personally come across concerns the involvement, or, more correctly, the interference, of legal services attorneys with the electoral process in this country. Yes, there may well be inequities in the electoral process as it is currently conducted some places in the land. I will

say with certainty that whatever those inequities are, they are a good sight less than they were a few years ago. It is the job of the people, at the local, grassroots level, and their community leaders, to straighten out problems with registration, voting qualifications apportionment, and so on, as was reaffirmed by this House last week in the matter of post card registration. At a pace natural to the community, encouraged by the most sensitive and progressive of the citizens, reforms are progressing well. Practically every election that comes along, reapportionment has taken place in a number of areas, for example.

There are some customs related to voting that are traditional, for good reason. Things like the ability to read or speak English as a prerequisite to voting. Or the restriction against felons and convicts voting. How can somebody who does not even speak or read the common language be expected to make a properly informed decision? Why should those in prison because of criminal offenses against society be entitled to the same rights as any law-abiding citizen? To give convicts the right and ability to vote surely cheapens the value of the vote they cast—if anybody at all can vote, then a vote must not be worth much. It used to be that the right to vote was an honor for an American citizen, something to be proud of, to work to merit.

Now, apparently, the vote is like welfare: Something the Government is required to give because you will threaten violence if you do not get it. At least, that seems to be the legal services attorney's understanding of the franchise. I make that conclusion from reading through several articles selected from the pages of the Clearinghouse Review, dealing specifically with legal services activities in connection with voting.

I will attach these brief articles at the conclusion of my remarks, but let me summarize by mentioning the topics with which they are concerned: Aliens demanding they be allowed to vote, even though they do not speak or read English, defended in their suit by the Western Center on Law and Poverty, an OEO-funded office; voting rights in the 1972 elections obtained for inmates of prisons in Connecticut, a project of an attorney at Civil Legal Assistance to Prisoners, a legal services project; another case of prisoners demanding they vote, this time defended by Pine Tree Legal Assistance, an OEO grantee; California Rural Legal Assistance, again an OEO operation, filing suit for ex-felons to be registered to vote; Seattle Legal Services getting a court order for paroled convicts to be allowed to vote; the Atlanta Legal Aid filing a suit that the location of polling places is racially discriminatory; reapportionment challenges here and there, with OEO legal services offices in the forefront; and so on.

The State of Arizona not too long ago adopted a statute requiring preregistration of voters every 10 years, intended to cut down on possible voting by dead people. The Maricopa County Legal Aid Society was not interested in reducing vote fraud, apparently, for they filed suit challenging the constitutionality of that

statute. When the district court upheld the State of Arizona, the legal aid office began procedures to take it to the U.S. Supreme Court. All this, mind you, instead of helping a poor person write a will or settle his dispute with the credit bureau—and all of this with Federal money. If the U.S. Government went into Arizona and challenged their State laws, you would hear complaints loud and clear. Sending in legal services attorneys is the same thing in effect.

To my mind, it is more of an outrage for these attorneys to engage in controversial actions with Federal support when they are acting irresponsibly and in fact in directly the opposite way from the Federal official position on an issue. That the Federal Government is uninvolved with some things is to its credit—there are many of us who think the Federal Government, as the Federal Government, is involved with too many things already. The legal services empire is trying to involve the Government with every little detail, and whether or not that is the intention of their supporters, that is the effect of their actions, and the Government is going to be held responsible for them.

The citizenry is waking up to the outrages being perpetrated in the name of Federal concern for the poor. Widespread disaffection is growing. Unless measures are taken to bring legal services attorneys under control of the law, and compel them to act responsibly and seriously with the interest of their clients foremost, this disaffection is going to become bitter.

I submit for the RECORD, selected articles from Clearinghouse Review, to demonstrate to my colleagues the unwarranted interference of legal services project attorneys in the electoral process at the local level in our States.

I urge my colleagues to vote against the conference report.

The articles follow:

#### ALIENS APPEAL DENIAL OF RIGHT TO WORK

4896. Padilla v. Allison, formerly Martinez v. Sullivan, No 2 Civ. 41657 (Cal. Ct. App. filed February 1973). Plaintiffs represented by Terry J. Hatter, Jr., Peter D. Roos, Phillip L. Goar and Joel I. Edelman, Western Center on Law and Poverty, 1709 West Eighth St., Los Angeles, Cal. 90017, (213) 483-1491; Ronald L. Sievers, Legal Aid Foundation of Long Beach, 236 East Third St., Long Beach, Cal. 90812, (213) 437-0901. [Here reported: 4896F Appellants' Opening Brief (33 pp.). Previously reported: 4896A Complaint (7 pp.), 4 Clearinghouse Rev. 620 (April 1971).]

Appellants in this action are permanent resident aliens of the United States, victims of two conflicting provisions as to the right to vote. Appellants are eligible to become naturalized United States citizens but for their inability to meet the English literacy requirement. Applicants are eligible to vote in California (because they are literate in Spanish, see *Castro v. California*, Clearinghouse No. 563) but for their lack of United States citizenship.

Appellants point first to the historical fact that United States citizenship is a recent addition to the prerequisites for voting. Appellants next argue that where the right to vote and a classification based on alienage are involved the strict standard of review must be applied in determining whether the citizenship requirement, as applied to them, denies them the equal protection of the law. Finally, appellants argue that neither the state's interest in loyalty to the government;

intelligent exercise of the franchise; promotion of naturalization; prevention of election frauds nor administrative convenience are sufficiently compelling or so narrowly prescribed as to satisfy the strict scrutiny test.

#### PRISONERS CHALLENGE DENIAL OF VOTING RIGHTS

9046. *White v. Edgar* (D. Me., filed Oct. 3, 1972). Plaintiffs represented by Neville Woodruff and Donald F. Fontaine, Pine Tree Legal Assistance, Inc., 565 Congress St., Portland, Me. 04101, (207) 774-8211. [Here reported: 9046A Complaint (7 pp.).]

Five inmates of the Maine State Prison seek declaratory and injunctive relief challenging a denial of voting rights under a state statute which prohibits inmates from receiving absentee ballots. Plaintiffs seek to secure the inmates' right to vote in all elections—local, state, and federal.

Plaintiffs allege that they fulfill the voting qualifications and have registered to vote in Maine, but that defendants, the Secretary of State and the Commissioner of Mental Health and Corrections, have conspired and acted in such a manner as to deprive them of their right to vote by refusing to provide absentee ballots, except for presidential and vice-presidential elections, and by refusing to establish a polling place at the Maine State Prison.

Plaintiffs assert that they have been deprived of their constitutional right to vote. They allege violations of the privileges and immunities clause of the fourteenth amendment, article I, Sections 2 and 4 of the Constitution, the equal protection and the process clauses of the fourteenth amendment and the eighth amendment. Finally plaintiffs allege the defendants have deprived them of their right to vote as secured by article II, Section 1 of the Maine Constitution.

Plaintiffs seek the convening of a three-judge court to hear and determine the controversy, and to declare unconstitutional and enjoin enforcement of Maine's absentee ballot statute. Pending such determination they ask that the defendants be ordered to establish a polling place at the Maine State Prison on November 7, 1972, or that defendants be ordered to release and transport plaintiffs to their polling places. The plaintiffs ask further that the defendants be ordered to provide absentee voting ballots for all federal offices.

Plaintiffs' counsel has advised us that the court denied the request for a temporary restraining order. Prisoners were allowed to vote on November 7, 1972, by absentee ballot for the offices of President and Vice-President only. Plaintiffs still seek a hearing before a three-judge court.

#### COURT ORDERS EXTENSIVE BILINGUAL PROCEDURES IN NEW YORK CITY ELECTIONS

11,357. *Torres v. Sachs*, No. 73 Civ. 3921 (S.D.N.Y., Sept. 26, 1973). Plaintiffs represented by Cesar Perales, Herbert Teitelbaum and Jose Rivera, Puerto Rican Legal Defense & Education Fund, 815 Second Ave., Room 900, New York, N.Y. 10017, (212) 687-6644. [Here reported: 11,357A Class Action Complaint (10 pp.); 11,357B Preliminary Injunction (35 pp.); 11,357C Memo in Support of Motion for Preliminary Injunction (35 pp.); 11,357D Findings of Fact and Conclusions of Law (3 pp.).]

The court issued a preliminary injunction ordering the New York City Board of Elections (1) to print all city election materials in both Spanish and English; (2) to place inside the voting booth a translation of all amendments and propositions appearing on the ballot; (3) to provide bilingual translators at all polling places situated in election districts falling, in whole or in part, within any 1970 census tract containing five percent or more persons of Puerto Rican birth or parentage; and (4) to publicize the election in both Spanish and English.

Plaintiffs had made repeated requests of

the city election officials to take the steps granted by the court in its injunction. The officials resolved to comply by providing bilingual ballots wherever required but resolved that with respect to the November 6, 1973 election, the physical nature of the ballot, containing ten amendments to the New York Constitution, rendered compliance with the Voting Rights Act of 1970 impossible.

Plaintiffs argued that this procedure would deny them the right to vote and would create a classification based on ethnic and national origin characteristics which discriminate against them by depriving them of an opportunity to cast an effective ballot, in violation of due process and equal protection.

#### THREE-JUDGE COURT TO HEAR DENIAL OF VOTING RIGHTS TO PAROLED FELONS

9318. *Dillenburg v. Kramer*, No. 71-2647 (9th Cir., Nov. 16, 1972). Plaintiff represented by Peter Greenfield, Legal Services Center, 3230 Rainer Ave. South, Seattle, Wash. 98144, (206) 725-2600; Robert T. Czeisler, American Civil Liberties Union of Washington, 2101 Smith Tower, Seattle, Wash. 98104, (206) 624-2180. [Here reported: 9318D Order (9 pp.). Also available: 9318A Complaint (5 pp.); 9318B Appellant's Brief (22 pp.); 9318C Appellant's Reply Brief (10 pp.).]

The Ninth Circuit has reversed a district court's refusal to convene a three-judge court in the plaintiff's challenge to a Washington law denying the right to vote to paroled felons, an alleged contravention of the equal protection clause of the fourteenth amendment. The Governor had denied the plaintiff, a paroled felon, a request for restoration of civil rights, and the plaintiff's attempt to vote was thwarted solely because he was disenfranchised under the challenged Washington laws.

In remanding to the district court, the court stated that since the right to vote is fundamental, the state classification could not survive the equal protection challenge simply through the finding that it bore some rational connection to a legitimate governmental end. To hold the classification valid, the court would have to find that the exclusions from voting rights were necessary to promote a compelling state interest.

#### AMICUS BRIEF FILED IN FELON VOTING RIGHTS CASE

8241. *Ramirez v. Brown*, No. 22916 (Cal. Sup. Ct.). Amicus represented by Philip L. Goar, Loyola University School of Law, 1709 West Eighth St., Los Angeles, Cal. 90017, (213) 483-1937; Fred Okrand, 323 West Fifth St., Los Angeles, Cal. 90013, (213) 626-5156. [Here reported: 8241C Amicus Brief (16 pp.). Previously reported: 8241A Petition for Writ of Mandate (24 pp.); 8241B Memo of Points and Authorities (60 pp.), 6 Clearinghouse Rev. 365 (October 1972).]

An amicus brief has been filed in this suit which seeks to compel the registrars of 58 California counties to register ex-felons. Amicus cites evidence that a significant percentage of adult Americans will commit serious crimes during their lives and points out that there is no evidence that allowing ex-felons to vote will affect the integrity of the ballot box. Amicus also argues that voting has the salutary effect of aiding ex-felons in their attempt to rejoin society.

Finally, amicus argues that Section 2 of the fourteenth amendment does not allow disenfranchisement of felons where such disenfranchisement conflicts with Section 1 of the amendment. Amicus points out that Section 2 was intended only for political purposes, i.e., to maintain a Republican-dominated Congress.

#### PRELIMINARY INJUNCTION REQUIRES VOTING ASSISTANCE IN SPANISH FOR NON-ENGLISH SPEAKING CITIZENS OF PUERTO RICAN DESCENT

9183. *Puerto Rican Organization for Political Action v. Kusper*, No. 72C 2312 (N.D. Ill. Oct. 30, 1972) Plaintiffs represented by Wallace Winter and Roy Rodriguez, Northwest Legal Services, 2029 W. North Ave., Chicago, Ill. 60647, (312) 489-6800; Donald Bertucci, DePaul Law Clinic, 23 E. Jackson Blvd., Chicago, Ill. 60604, (312) 939-5370. Amicus Curiae, George Pontikes and Richard Kuhlman, 11 S. LaSalle St., Chicago, Ill. (312) 782-2610. [Here reported: 9183A Complaint (9 pp.); 9183B Plaintiff's Memo (43 pp.); 9183C Decision (13 pp.); 9183D Preliminary Injunction Order (6 pp.).]

Plaintiffs have filed this class action representing those United States citizens of Puerto Rican birth or descent who reside in Chicago and are eligible and registered to vote but unable to use the English language. Plaintiffs alleged that they were not proficient enough in English to exercise their right to vote effectively unless given assistance in Spanish. They sought to compel defendants, members of the Chicago Board of Election Commissioners, to provide voting assistance in the Spanish language.

The court recognized that persons born in Puerto Rico are citizens from birth and are not required to learn English. The court stated that the effect of the Voting Rights Amendments of 1970 when coupled with the Voting Rights Act of 1965 was to prohibit the denial of the right to vote to any person educated in Puerto Rico because of an inability to understand English. It stated that the right to vote meant the right to vote effectively. Prerequisites to the effective exercise of that right in this case are voting instructions and ballots or ballot labels on voting machines printed in Spanish. The court issued a preliminary injunction requiring defendants to prepare and distribute the requisite material to the polling places at which they are needed to make all reasonable efforts to appoint bilingual election judges in those polling places.

#### FILING FEES FOR CANDIDATES FOR MUNICIPAL OFFICES INVALIDATED

8507. *Reed v. Sebesta*, No. 71-365 Civ. T-K (M.D. Fla., Oct. 27, 1972). Plaintiffs represented by Malory B. Frier and Richard P. Condon, Law, Inc. of Hillsborough County, 1809 N. Howard Ave., Tampa, Fla. 33607, (813) 253-0087. [Here reported: 8507G Memorandum Opinion and Order (4 pp.).]

The court enjoined the enforcement, application and use of certain Florida election statutes governing filing fees in Tampa and held that their enforcement was an unconstitutional infringement of the equal protection rights guaranteed under the fourteenth amendment. Plaintiffs, candidates for Tampa municipal office, had brought a class action challenging the state act, applicable only in Tampa, which required the payment of a filing fee equal to five percent of the annual salary of the office sought.

The court held that the state act violated *Bullock v. Carter*, 405 U.S. 134 (1972), in which the Supreme Court held that any system for qualifying candidates for electoral office which charges a qualifying fee that tends to classify candidates and their supporters on a basis of wealth, must provide an alternative method of qualification which does not so classify prospective candidates. The court reasoned that the five percent filing fee system was not reasonably necessary to accomplish legitimate state objectives. Moreover, it found that the filing fee system was unreasonable in amount since the five percent figure was arbitrary and resulted in prohibitive filing fees of up to \$1,450.

The court held that Tampa did not provide an alternative method of qualification for electoral office that was nondiscriminatory. It reasoned that had such an alternative method of qualification existed it would have been an adequate and reasonable means of satisfying legitimate state objectives, without sacrificing the guarantees of the equal protection clause.

#### CLASS ACTION DAMAGES SOUGHT FOR WILLFUL MISREPRESENTATION OF REFERENDUM ISSUES

9093. *Lucha v. Alan Blanchard & Associates*, No. 651-951 (Cal. Super. Ct., San Francisco County, filed Oct. 17, 1972). Plaintiffs represented by Armando M. Menocal III and Robert Gonzales, San Francisco Neighborhood Legal Assistance Foundation, 2701 Folsom St., San Francisco, Cal. 94110, (415) 648-7580; Paul Harris and Stan Zaks, 3698 18th St., San Francisco, Cal., (415) 863-1530. [Here reported: 9093A Complaint (13 pp.).]

Plaintiffs, the class of persons in San Francisco and Alameda counties who were allegedly deceived into signing the initiative measure Proposition 22 by the defendant public relations agency and its employees, have brought an action to recover compensatory and punitive damages for injury to their character and reputation, abuse of their franchise and initiative rights, and false advertising and unfair business practices. Defendants solicited signatures from plaintiffs by intentionally misrepresenting that the measure would benefit the farmworkers and that it had received full support from the United Farm Workers Union. In fact, the measure provided restrictions on the rights of farmworkers to negotiate, bargain through a union representative, receive minimum wage protection, and boycott or strike. The measure was strongly opposed by the union.

Plaintiffs allege first, that defendants' knowingly false representations violated provisions of the California elections code. Second, plaintiffs allege that the defendants have damaged plaintiffs' initiative and franchise rights, as reserved to them by the California Constitution. Third, plaintiffs assert that defendants violated provisions of the California business and professions code by inducing plaintiff to go on record publicly and permanently as supporters of a measure they strongly oppose.

#### LOCATION OF POLLING PLACES HELD RACIALLY DISCRIMINATORY

8647. *Davis v. Graham*, No. 16891 (N.D. Ga., Oct. 2, 1972). Plaintiffs represented by Alden C. Harrington, David A. Webster and Michael H. Terry, Atlanta Legal Aid Society, Inc., 153 Pryor St., SW, Atlanta, Ga. 30303, (404) 524-5811; N. Gerald Cohen and Prentiss Q. Yancey, First National Bank Tower, Atlanta, Ga.; G. Kimbrough Taylor, Jr., Hurt Bldg., Atlanta, Ga.; George Howell, Citizens Trust Bldg., Atlanta, Ga.; Bernard Parks, 40 Marietta St., NW, Atlanta, Ga. [Here reported: 8647A Complaint (10 pp.); 8647B Brief in Support of Restraining Order (7 pp.); 8647C Brief in Support of Injunctive Relief (15 pp.); 8647D Order (11 pp.).]

A Georgia federal district court has ordered county election officials to relocate existing polling places and establish additional ones in many black precincts of Atlanta. In this class action on behalf of all black registered voters of Fulton County, the court found the existing polls to be inaccessible due to their distant location and geographical separation, by railroad tracks and expressways, from population centers. A low proportion of cars and lack of convenient rapid transit in the affected precincts further complicated the situation. This inaccessibility was held to violate Section 2 of the Voting Rights Act of 1965, as a prac-

tice or procedure abridging the right to vote on account of race or color.

#### SUPPLEMENTAL SECURITY INCOME PROGRAM

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New York (Ms. HOLTZMAN) is recognized for 15 minutes.

Ms. HOLTZMAN. Mr. Speaker, yesterday I introduced a bill to remedy a number of problems that have arisen under the new supplemental security income program, SSI.

SSI, like any new program, has a number of serious flaws, and these flaws have created severe hardship for some of the most helpless people in our society: The impoverished elderly, disabled, and blind.

The most serious problem with SSI is its failure to guarantee senior citizens an adequate living allowance in this time of crippling inflation. I am sure that many of my colleagues have received, as I have, desperate appeals from elderly or disabled constituents who simply do not have enough money to pay for food and shelter. Whereas in the past, such individuals could seek additional living allowances from local welfare agencies, under SSI these agencies no longer provide financial assistance. SSI has no flexibility to meet increasing costs—no matter how severe.

As the cost of living rises, the number of people in such straits will undoubtedly increase. I believe it is essential, therefore, that a cost-of-living escalator be built into SSI. The bill I have introduced today provides for cost-of-living increases in SSI benefits in the same percentage and manner as such increases are granted to social security recipients. This provision will assure that SSI recipients can meet their rising living costs without having to depend upon annual congressional action.

In recognition of the particular difficulty faced by the elderly because of skyrocketing food costs, the bill restores food stamps to all persons who have lost them because of SSI. It also guarantees that all SSI recipients will be eligible for food stamps and that States will not have to lower their benefit levels in order to provide the stamps. Finally, this provision prevents a bureaucratic nightmare that would occur on July 1 of the year, as States attempt to put into effect new eligibility standards under the current law.

The bill provides a third means of protection against inflation by insuring that persons receiving both SSI and social security do not lose the benefit of social security increases. Under the current system, persons whose social security benefits are relatively high received a 7-percent increase in their April checks and will receive another 4-percent increase in July. Persons whose benefits were so low that they were eligible for SSI, however, received no increase because their SSI checks were reduced by the exact amount of the increase in social security payments. My bill would prevent this cruel and senseless result.

The bill contains a number of admin-

istrative changes, including a provision for the emergency replacement of undelivered, lost or stolen SSI checks or cash. In January, some 7,000 New Yorkers did not receive their SSI checks, and because of this, many of them had no money for food or rent. Social Security and Treasury regulations would have prevented these persons from receiving replacement checks for at least 2 weeks.

As a result of the efforts of myself and my colleagues from New York, emergency procedures were established that allowed such checks to be issued and received within 24 hours. Inexplicably these procedures were canceled at the end of January. The provision in my bill requires that such procedures be available to SSI recipients everywhere, not only New York, so that no elderly, blind, or disabled person need go without food or face eviction because of someone else's error or crime.

Other sections of the bill will provide for speedy action on SSI applications, judicial review of eligibility determinations and greater Federal-State cooperation in providing aid to the disabled prior to a final determination of disability.

I would like to stress, Mr. Speaker, that the bill I have introduced today is built on earlier important efforts made by others in the New York congressional delegation. Many of the provisions included in the bill appeared first in bills introduced by Representatives BINGHAM, ABZUG, and WOLFF, and cosponsored by most of the Members from New York. We are all deeply concerned with the inexcusable hardship that SSI has caused to so many persons, and I know that many other Members of Congress share our concern. I am hopeful, therefore, that this very necessary corrective legislation will receive prompt and favorable consideration.

#### ON INTEGRITY

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Texas (Mr. GONZALEZ) is recognized for 5 minutes.

Mr. GONZALEZ. Mr. Speaker, there has perhaps been no time in our history when the esteem and public confidence in our Government has been lower than it is today. The people sense that the Nation is adrift; they rightfully feel that they have been lied to and cheated. Our Government has made promises that it has not met. There is no evidence of a leader or group of leaders who can restore a sense of decision, integrity, and morality to the conduct of our national affairs.

In these last few years we have seen a Vice President revealed as a plain criminal. We have seen a President rebuked and chastised for what amounts to tax evasion. We have seen hosts of the President's aides and advisers accused of crimes of one sort or another, and there are many who feel that the President himself has been less than honest in his dealings in these affairs. The public has been misled time and again, and no one can say where all the sad revelations will end.

We have never before seen an impeachment proceeding started on the question of a President's honesty and integrity, but that is what has happened this year.

Our most urgent assignment is to restore some sense of public confidence in our Government. That cannot be done unless our Government has integrity. That means that Congress cannot afford the luxury of avoiding hard issues; it means that we cannot avoid carrying out our duty. Among other things, this means that we have to be willing to vote one way or another on impeachment, and not seek some easy way out by hoping for the President to resign. What he does is his business; we have the duty of carrying out the procedure specified by the Constitution if he seems unfit to continue in office.

Senator MANSFIELD understands this. There are not many in Washington who are as brave as Senator MANSFIELD. No one questions his honesty or integrity. And so it is especially comforting in these rudderless times to hear him counseling that the best way is the straightforward way: place your trust in the system provided in the Constitution. It was, we all know now, the President's distrust of the people and the constitutional system that led him to cavil and dissemble in the face of growing scandals. We dare not make that same mistake, as Senator MANSFIELD has so wisely and timely pointed out.

Mr. Speaker, I append to my remarks an article in today's Washington Star that is pertinent to these times, and which explains in clear terms the importance of the integrity shown by Senator MANSFIELD:

[From the Washington Star-News, May 15, 1974]

#### THE INFLUENCE OF INTEGRITY

(By James Reston)

Sen. Mike Mansfield of Montana is a reminder that there are still a lot of steady, decent folk around here watching the store. Everybody in Washington is not crazy; it just seems that way.

Room S-208 in the Capitol Building, Mike's hideaway, is as plain and calm as a country lawyer's office. The door is always open. Inside, no fancy elegant people or heroic portraits of the majority leader. Some old amiable cartoons, and a big picture of Jack Kennedy throwing out the first pitch on opening day, with Mike in the background, as usual. An atmosphere of cheerful and relaxed efficiency, coffee perking on the shelf and cookies on the table.

Mike is sad but not pessimistic about the present mess in Washington. He thinks it is wrong to press President Nixon to resign, but he understands why the Republican leader in the Senate, Hugh Scott of Pennsylvania, condemned Nixon's private Watergate conversations, and why the House Republican leader John Rhodes suggests that resignation has to be considered. Mike tries to understand everybody's problems.

But pressuring the President to resign, he insists, would be unfair, evading rather than resolving the moral and legal issues. Give the President not only the presumption of innocence, he says, but every opportunity to have his lawyers in the House and Senate to argue his case, to cross-examine witnesses, and to appear on the floor of the House and Senate, if he chooses, to defend himself personally.

Let the system work, says Mike. It is not only the President, but the Congress and the Constitution that are on trial. But—and here he is very tough—let it work all the way—not halfway.

Mansfield has a sense of pity about human folly and is very generous about the personal aspects of this tragedy—and he sees it not in partisan terms. He is beyond all personal ambition now, even beyond his own party's battles.

So there must be something right about a system that puts a decent man like Mansfield at the head of a party, and something consoling in the thought that people in the House and the Senate, worried about what to do in this crisis, come to Room S-208 to talk out their anxieties, and seek Mike's quiet counsel.

Mansfield, if I hear him right, is looking beyond the present turmoil here. He is afraid that the nation would be deeply divided for a long time if President Nixon were forced to resign by political or newspaper pressure.

He thinks the whole Watergate scandal could have been avoided if the President had been open and trusted the system, and had wondered about what was right or wrong and had said "yes" or "no" at the right time. But he is not worrying about the past now. The Constitution, the courts, the House and Senate must decide and nothing else.

Put it all to test, he says, and bring the people into it. He wants televised hearings in the House and Senate. He wants not merely the evidence the President wants to give, but the best evidence, including the tapes, and if necessary, he wants them played, when relevant, in the chambers of the Congress and on radio and television.

There are many arguments against this procedure, argued in this space before, but Mansfield thinks we've had enough secrecy, and enough deception.

This simple approach carries great weight here, for the importance of Mansfield is that his colleagues in both parties and in both houses believe in him. They watch him in S-208 and on the floor of the Senate, arguing for the thing he thinks is right, even if this means opposing his own party.

He may be right or wrong on this procedure, but he has the influence of integrity, and in the end, that may be what the controversy is all about.

#### MEETING THE NEEDS OF OLDER AMERICANS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Indiana (Mr. HAMILTON) is recognized for 15 minutes.

Mr. HAMILTON. Mr. Speaker, the concerns of older Americans deserve the highest priority and our continuing attention.

More than 21 million elderly citizens form the most rapidly growing minority in the Nation. It is a minority of people with diverse backgrounds, wide-ranging problems, and a common bond of age.

There are seven times as many older citizens in America today as there were in 1900. Over half live in the 10 largest States; only 10 percent live in the smallest 21 States; and over half a million live in Indiana alone.

Older Americans will become an even larger and more important minority in our society in the future.

Four thousand Americans celebrate their 65th birthday each day, and those who do can expect to live longer than any preceding generation in our history.

Between 1960 and 1970 the number of citizens over 75 years of age grew an

astounding 37 percent, and today, over 1½ million people have passed the three-quarter century mark.

By the year 2000, the number of older Americans is expected to be 29 million or 10.6 percent of the population, a 46-percent increase.

Despite their growing numbers as a group and their importance as individuals, too often the elderly and their problems have escaped our notice. The elderly have been shunted aside, and their concerns have been given insufficient attention.

Only in the last years has the Nation begun to recognize what older Americans have always known: that they are an important resource, that they are individuals who deserve the opportunity to live their lives as fully as possible.

Older Americans are skilled and experienced.

They are resourceful and adaptable; the elderly have lived through a period of greater and more rapid change than any previous generation.

They are remarkably independent. One in six maintains a household.

They are important consumers, with a combined income of over \$60 billion a year which has a significant economic impact, especially on the food, housing, clothing, and service industries.

They are good citizens. Older Americans, constituting 15 percent of the voting age population, vote more often than other younger groups.

Individually, older Americans make tremendous contributions to their families, their communities, and their Nation.

Older Americans have special needs, to be sure, but basically, their needs and wants are the same as those of all of us. Elderly Americans seek a dignified, meaningful life.

There is evidence that they are making some progress toward that goal.

Private groups and the news media have given increased attention to older Americans and their concerns. Fortunately, government has become more responsive and aware, as well.

Today elderly citizens benefit from a number of Federal programs that were unheard of just a few decades ago, but most of the programs that are available need to be updated and improved regularly, and there is a clear need for new approaches and additional resources.

In attacking the problems, we should give top priority to what older Americans generally consider their overriding concerns: income, health, housing, and transportation.

They are the key to the well-being of older Americans in this society.

Without adequate income, effective health care, decent housing, and accessible and inexpensive transportation, older Americans will not enjoy the essentials for a meaningful and minimally comfortable life.

There are other concerns, of course, but the following problem areas are the important ones for most older Americans.

#### INCOME

Income is central to the concerns of the elderly.

Older Americans have on the average

less than half the income of younger people.

One older person in four living alone or with nonrelatives has an income of under \$1,500, and over 20 percent of all elderly Americans live in households with incomes below the poverty line.

There is no substitute for income if people are to be free to exercise choice in their style of living and if they are to lead decent lives.

The following sections describe what is being done and what needs to be done concerning the problems of income for older Americans:

#### INFLATION

Inflation is one of the older American's greatest foes, and the impact of inflation is felt with special severity by older Americans.

Prices are rising faster than the relatively fixed incomes which most elderly people live on.

In 1973, food prices rose a staggering 20 percent, and in the last 4 years, the elderly have suffered more than most from rents that rose 18 percent, food prices that jumped 40 percent, and health care costs that increased 22.5 percent.

As a result, too many older Americans are cutting back on necessities such as clothing, transportation, and food as the actual buying power of their incomes is eaten away by inflation.

As one elderly woman said:

It's like I'm standing still and everything else is moving forward in such a hurry.

Inflation cannot be allowed to exact a toll of hardship, sacrifice, and despair from the elderly.

As prices go up, an elderly person's income should rise automatically with cost of living increases.

Because inflation is so difficult to control, it is important that we have firm leadership on the economic front to slow prices from their dizzy upward pace.

Economic policy must be given higher priority by the Government. The goal of a balanced economy with reasonable price stability, moderate economic growth, and full employment has been and can be achieved.

The major obstacle to such achievement is not a lack of knowledge, or a lack of tools, but a lack of political will and leadership to take the right action at the right time. The Government should encourage increased production and vigorous competition, educate and protect the consumer, and use an appropriate mix of fiscal and monetary policies to control demand and get its own spending under control.

To help achieve that goal, Congress should adopt immediately the improved budgetary procedures now under consideration, in order to strengthen its tools to hold down inflationary spending and to free inefficiently used funds for programs benefiting the elderly.

#### SOCIAL SECURITY

Social security is the basic source of income for most retired workers and their families.

Older Americans who are covered by social security will receive improved

benefits as a result of a number of major recent changes:

First, Congress passed a two-step 11 percent increase in social security benefits that has already taken effect. Beginning in April 1974, benefits increased by 7 percent with an additional 4 percent increase to be paid as of July 1974.

Although individual increases may vary, all beneficiaries receive greater amounts. On the average, monthly benefits for single retirees increase from \$162 to \$173 in April and \$181 in July 1974. The average benefits check for a couple increases from \$277 a month to \$296 in April and to \$310 in July of 1974.

Second, Older individuals under age 72 can now earn \$2,400 a year instead of \$2,100 and still receive the full social security benefits to which they are entitled.

Third, Beginning in June 1975, social security benefits will increase automatically to reflect increases in the cost of living.

Social security has been improved significantly by these and other changes, yet more improvements are needed.

Social security benefits should reflect the country's rising standard of living, as well as the cost of living.

Social security recipients under age 72 should be able to earn at least \$3,000 a year without forfeiting any of the benefits to which they are entitled.

The social security system should be equitable with the tax schedule made more progressive, and insured men and women workers treated equally.

#### SUPPLEMENTAL SECURITY INCOME

Aged, as well as blind and disabled individuals, who are in financial need, became eligible for cash payments under the new supplemental security income program at the beginning of 1974.

This new income security program replaces and improves upon previous Federal-State programs for the aged, the blind, and disabled, by establishing a uniform program nationwide financed with Federal treasury funds.

In order to qualify for supplemental security income benefits, an older American must be at least 65 years of age and hold assets of less than \$1,500—\$2,500 for a couple. The value of a home, household goods, certain personal effects, and some property, are excluded from the determination of assets.

Individuals with no other income who qualify can receive \$140 per month—\$146 after June 1974. Couples are eligible for \$210 a month until June, when the maximum rises to \$219.

The first \$20 from additional sources of income, including social security benefits, and the first \$65 a month of earned income will not reduce supplemental security income benefits.

This new program is a welcome step toward addressing the needs of millions of older Americans. More and more of the eligible individuals who need financial help are being located, and some are also finding out for the first time about other Federal programs from which they can benefit.

We must learn from the initial experience with the supplemental security income program and continue to make

adjustments and improvements as they become necessary.

#### VETERANS' BENEFITS

Veterans' retirement and disability benefits provide an important source of income for older veterans and their families.

Over 2.4 million Americans receive veterans' compensation or pensions each year, and many receive assistance through a number of other VA programs.

Congress passed veterans' pension legislation near the end of 1973 that means a significant increase in income for veterans and their families. The law increases non-service-connected disability pensions by 10 percent of eligible veterans, their widows, and their children. Dependent parents of veterans whose deaths were service-connected will also receive the 10-percent increase in dependency and indemnity payments.

In addition, Congress should act to: Grant increases in compensation rates and DIC rates for widows and children comparable to the recent increase received by those receiving pension benefits;

Raise the income limitations for VA benefits;

Prevent increases in social security or railroad retirement benefits from lowering veterans' pension benefits;

Prevent military retirees from losing length-of-service pay when they receive disability compensation; and

Insure that the Veterans' Administration is responsive to the needs of older veterans.

#### RAILROAD RETIREMENT

Beginning July 1, 1974, railroad employees with 30 years of service may retire at age 60 with full benefits.

The same law extends previous retirement benefit increases through the end of 1974. If social security benefits are increased further in 1974, railroad retirees will receive an automatic equivalent increase.

A joint labor-management committee appointed to recommend structural improvements in the railroad retirement system was scheduled to issue its report April 1, 1974. Congressional action on the recommendations contained in the report must occur no later than December 31, 1974.

We must insure that workers covered by railroad retirement are in no way disadvantaged in comparison with fellow retired workers who are covered by social security.

#### PRIVATE PENSIONS

Retired Americans are relying increasingly on private pensions to augment social security or other retirement benefits or, in some cases, to provide their sole source of income.

However, because of the great variation in private pension plan availability, coverage, flexibility, and reliability, there have been a number of problems, many of them with catastrophic consequences for retired Americans.

Companies going out of business, employees losing pension benefits by changing jobs, and ineligibility for benefits because of early retirement are examples of the problems employees have been facing with private pension plans.

After years of study, Congress is making steady progress on landmark legislation to improve private pension practices.

Once enacted, pension reform will protect the rights and retirement security of both working and retired Americans in the following ways:

By setting standards for employees' "vesting" rights to share in pension plan benefits under an equitable formula based on age and years of service;

By requiring that all pension plans be run on a sound financial basis;

By insuring pension plans against losses that participating employees would otherwise be forced to absorb;

And by allowing self-employed individuals without pension plan coverage to receive special tax deductions in order to set up their own retirement account.

Pension reform deserves top priority as one of the most important legislative initiatives for retired employees since the enactment of the Social Security Act.

#### G. EMPLOYMENT

Older Americans who want to work and are capable of working confront a number of employment barriers that result in an excessively high rate of unemployment among the elderly.

The basic difficulties elderly people have in seeking employment stem from myth rather than fact or necessity.

Too many prospective employers make the false assumption that younger employees are more desirable than older ones. The employers think older employees are less productive, unreliable, or a burden to them; the facts prove just the opposite. Elderly workers have wide experience and skills that can be of great benefit to their employers, their communities, and themselves.

Hundreds of capable, productive employees are forced from their jobs each day simply because they have reached a certain age and in spite of their desire to work.

Elderly individuals without jobs who are looking for employment have trouble finding work that is meaningful and pay that is adequate.

Congress has passed manpower and training legislation that authorizes training, development, and public service employment programs to elderly citizens and others needing employment assistance, in areas with 6.5 percent unemployment or more.

For older Americans holding jobs, the minimum hourly wage was recently raised to \$2 as of May 1, 1974; \$2.10 as of January 1, 1975, and \$2.30 as of January 1, 1976—1978 for farmworkers—and minimum wage coverage was extended to 6.7 million additional individuals.

States in which the insured unemployment rate exceeds 4 percent are eligible for Federal matching of extended unemployment benefits for a 90-day period as a result of changes in the social security law.

A number of Federal programs provide older Americans with useful jobs on a wage or volunteer basis. Programs such as Operation Green Thumb, Operation Mainstream, Retired Senior Volunteer Program—RSVP—Service Corps of Re-

tired Executives—SCORE—Volunteers in Service to America—VISTA—Foster Grandparents, and the Peace Corps have shown the beneficial potential of special work and activity programs for the elderly.

Programs such as these need to be continued and expanded.

All forms of age discrimination in employment must be stopped so that elderly workers are judged on their true abilities, not on the length of their lives.

Older Americans should have maximum freedom of choice in determining whether and where to work.

We must develop employment opportunities that are meaningful for older Americans and for the entire economy.

#### TAXATION

Taxes have a tremendous impact on the income of elderly Americans. Federal taxes, in particular, create unwarranted problems for elderly taxpayers.

Not only are taxes too high for many older Americans, but, in many cases, elderly taxpayers overpay because tax forms and tax laws are too complicated.

Some estimates indicate that one-half of all elderly individuals—especially those with low and moderate incomes—pay more taxes than they should. Many citizens 65 and over are simply overwhelmed by the tax statements and calculations they must complete in order to claim deductions that they are entitled to by law.

In order to maximize their income, elderly citizens should contact their local Internal Revenue Service Office for information or assistance with their tax returns.

Federal tax laws and forms should be simplified to enable older Americans to claim all deductions they should receive.

Special tax counseling assistance should be made available to taxpayers age 65 and older.

The retirement income credit limitation under Federal income tax regulations should be increased to the maximum social security benefit level.

Older Americans are also in need of relief from property taxes and other taxes, as I have proposed in H.R. 6027. The tax burden on the elderly, at all levels of government, should reflect the older American's ability to pay.

#### HEALTH

Health problems are a burden for senior citizens.

Although older Americans have less than half the income of younger Americans, they pay almost three and a half times as much for their greater health care needs.

Eighty-five percent of older people not in health-care institutions have one or more chronic health conditions.

Elderly people have a 1-in-4 chance of being hospitalized during a year, and their hospital stays are more expensive and twice as long as those of younger people.

The elderly visit a physician 50 percent less than the under-65, and although older Americans have special dental problems, half of them have not been to a dentist in 5 years.

Twice as many older Americans wear glasses than younger people, and 13 times as many wear hearing aids.

#### MEDICARE

The medicare system was established to help elderly Americans meet their particularly burdensome medical needs; however, despite the major assistance medicare provides, coverage is inadequate and too costly for all too many older Americans.

Supplementary medical insurance, the part B premium under medicare, has risen from \$36 to \$75, while the part A hospital deductible has jumped from \$40 to \$84 since medicare began in 1966.

There are also great gaps in medicare coverage, which does not include dental costs, out-of-hospital drugs, or adequate catastrophic coverage for long-term health care for the elderly.

While the medicare system continues to be the primary source of health care assistance for older Americans, it must be expanded and improved to meet the unfulfilled needs, the rapidly rising costs, and the growing complexity of adequate health care.

The monthly premium for supplementary medical insurance should be eliminated.

Costs for prescription drugs and related professional services should be included under medicare coverage.

Health care coverage under medicare should be comprehensive, including dental, hearing, and vision needs.

#### NUTRITION

Proper nutrition is basic to the health of all older Americans.

Unfortunately, many elderly Americans do not have the food they need.

As food costs skyrocket, it is important that supplemental sources of food be made available to older consumers whose incomes are overwhelmed by rising food prices.

Congress has recently extended the food stamp program and authorized semiannual cost-of-living adjustments to the \$2.5 billion program that reaches 12 million Americans.

Nutrition programs for the elderly are being extended under the provisions of the Older Americans Act that provide low-cost meals to elderly citizens.

We must see to it that every elderly American enjoys a nutritious diet at an affordable cost.

#### COMPREHENSIVE HEALTH CARE

Although older Americans receive better health care than many younger Americans, it will be inadequate until health care is put on a comprehensive basis.

There is increasing debate in Congress concerning proposed plans to establish health insurance on a national basis, and the adequacy of health care older Americans may receive in the future could depend upon what approach to national health insurance Congress chooses.

Some bills under discussion would replace medicare entirely with a comprehensive plan for all Americans, some would hardly affect medicare coverage for the elderly at all, and others would expand it.

Until a new and improved system is adopted, it is important that health care for older Americans be improved at all levels.

Some progress is already being made: A \$1.27 billion authorization was enacted by Congress for 12 health programs, including hospital construction, comprehensive health services, community mental health centers, regional medical centers, and other programs.

Congress created a 5-year \$240 million program to encourage the development of Health Maintenance Organizations which deliver complete health care to participants for a fixed, prepaid fee.

Congress also authorized \$185 million over 3 years to assist communities in developing emergency medical services, including ambulance services, emergency rooms, and trained personnel.

Another new law authorizes insured loans to nursing homes to provide better fire protection for their residents.

An improvement in veterans' legislation establishes a National Cemeteries System in the Veterans' Administration and authorizes a special \$150 veterans' burial plot allowance, in addition to the previous \$250 allowance, in cases where veterans are not buried in a Federal cemetery.

Other veterans' legislation widens the scope of treatment VA hospitals may provide and expands medical services to veterans' dependents.

And further legislation increased Government contributions to Federal employee health plans.

Such changes are helpful but are not enough.

The health concerns of elderly Americans deserve far greater attention, and those concerns do not end with the availability of regular medical treatment. Special emphasis should be given to research into the prevention and treatment of strokes, heart disease, cancer, and other diseases that hit the elderly particularly hard.

We also need a much greater understanding of the very process of aging.

But of course, money, commitment, and effort, not just scientific breakthroughs, are needed in order to deliver proper health care to older Americans.

One elderly gentleman remarked:

We can send a man to the moon, a President to Peking, but we can't send an old man to the doctor.

His comment was uncomfortably accurate—our priorities on health care have clearly been in error.

We need to insure an adequate supply of well-trained doctors and health personnel in both urban and rural America.

Fragmented, piecemeal health care should be streamlined, made efficient and effective, through coordinated planning at all levels.

Existing health care facilities should be improved, where necessary, and new facilities, including Health Maintenance Organizations and other health care delivery innovations which prove their worth, should be developed.

Most importantly, we must recognize the basic right of all Americans to comprehensive health care regardless of their age or their ability to pay.

#### HOUSING

Housing is the third principal concern of older Americans.

Many elderly Americans do not have a

safe, decent place to live at a cost they can afford. Approximately 6 million Americans live in unsatisfactory housing, and efforts to overcome this housing deficit for the elderly continue to fall short.

One third of the Nation's elderly live in our deteriorating central cities and must face poor housing, blighted living environments, and crime. In rural America, as well, many of the elderly, especially those with low incomes, live in inadequate housing.

Little or no choice in housing is another problem for older Americans. Available housing is often limited, inconvenient, and unsuitable for the special transportation, recreation, and health needs of elderly Americans.

All too often, living environments discourage, rather than encourage, an open community atmosphere for elderly Americans, including educational, cultural, and recreational facilities they can enjoy and from which they can benefit.

Unfortunately, the recent record on housing is not encouraging.

High mortgage interest rates and building materials shortages have contributed to a general housing slump.

It is distressing that the Administration has undercut most progress on housing for the elderly both before and since its January 1973, declared "moratorium" on housing.

As a result, the goal of 120,000 new housing units to be built for elderly Americans each year has not been achieved. Multifamily housing unit construction for the elderly, already too low, has fallen precipitously.

The Congress is continuing to work for better housing for the elderly, although most of its efforts have been opposed by the administration.

The Older Americans Act was amended to provide for, among other things, housing demonstration programs for the elderly. In addition, other existing housing programs have been extended.

This is hardly enough.

It is highly important that we get housing moving at the Federal level and at all levels throughout the economy.

Legislation to improve housing for the elderly should be emerging soon from Congress that would include Federal block grants for community development, Federal loans and loan interest subsidy programs for the construction of multifamily rental housing for older Americans with low and moderate incomes, and home ownership programs.

Above all, a revitalized national commitment to meeting the housing needs of the elderly is necessary.

We must make available the resources needed to improve housing for the elderly:

We must enable older Americans to remain in their own homes, if they choose, by helping them with housing rehabilitation, by lowering property taxes, and by making energy and fuel for their homes available at reasonable cost.

We must make it easier for elderly Americans to buy homes, by removing age discrimination and making mortgage loans available on an equal basis.

We must provide multiunit housing for older Americans, designed not to isolate them but to enrich and improve their lives with food, health care, and recreational facilities in a social setting.

We must increase production of federally assisted housing for the elderly to at least 120,000 units per year.

We must see that older Americans are protected against fraudulent and exploitative housing practices.

We must secure housing and neighborhoods for the elderly against crime and accidental loss through fire and catastrophe.

We must adapt both rural and urban housing to the needs of older Americans.

In sum, we must make sure that every older American has a decent place to live.

#### TRANSPORTATION

Along with income, health, and housing, transportation is one of the most important concerns of older Americans.

Inadequate or inaccessible transportation deprives millions of elderly citizens of mobility, so crucial a factor to leading a full life in this society.

The ability to get from place to place for older Americans means the ability to acquire basic necessities such as food, clothing, employment, and medical care. It is also the ability to participate in the social, spiritual, and cultural life of one's community.

Transportation is access to opportunities.

All too often, transportation is restricted to those who can drive and afford the high cost of maintaining an automobile. In many areas, older Americans have no alternative; they go by car or they do not go at all.

For those who drive, operator's license difficulties, auto insurance problems, and the increasing cost of gasoline can present awesome barriers to their freedom.

When and where it is available, public transportation is often unsuited to the special needs of the elderly who may have trouble climbing stairs, opening doors, standing, seeing, or hearing.

Those elderly Americans without transportation are in effect restricted to their homes or immediate neighborhoods. Everything else, perhaps even a movie theater just a few blocks away, is out of bounds.

Immobile older Americans often suffer side effects such as: poor nutrition, because food outlets are inaccessible; poor health, because doctors and medical facilities are out of reach; and withdrawal, loneliness, and despair because friends, relatives, and group activities are in another world.

Some progress is being made on the transportation problems of the elderly.

As well as authorizing funds for better highways, the Federal Aid Highway Act stimulates mass transit and requires that buses and transit vehicles receiving Federal funds be designed for use by elderly and handicapped passengers.

The 1973 Older Americans Comprehensive Services Amendments authorize a wide-ranging study of the transportation problems of the elderly by the Commissioner on Aging.

With respect to rail travel, \$154 million was authorized to operate and improve Amtrak rail passenger service.

In addition, we may be seeing transportation legislation emerge from the Congress to tighten air travel security and combat hijacking, to develop a coordinated national transportation system, to improve mass transit, and to reduce travel fares for the elderly.

New approaches to transportation for the elderly should be developed such as dial-a-ride alongside improvements in existing public transportation and new rapid transit systems.

Transportation for the elderly should be designed to take into account their special needs.

Auto insurance and driver's license discrimination on the basis of age should be eliminated.

It is imperative, above all, that the world's most mobile society provide elderly citizens with inexpensive, accessible, and safe transportation.

#### A NEW ATTITUDE

In order to make real progress toward a good life for older Americans, we must view elderly individuals from a fundamentally different perspective.

We must see them as people, important people, people with ability, people with needs and aspirations, and people with human dignity and great worth.

Above all else, we need to get away from the callous notion that older Americans are "nice," that they have done their part, and that they should now be put on a shelf, or sent to Florida, or stashed away and forgotten in an old age home.

We must reject the idea that retirement is a separate status category reserved for those who turn 62 or 65 overnight, and view retirement, instead, as a gradual process, prepared for over a period of time.

We must also acknowledge, appreciate, and make use of the important contributions the elderly can make.

We must learn to appreciate that older Americans face difficult problems in an increasingly complex society that caters to the working and to the young.

We need a new attitude, an approach that: places human needs at the top of our priorities; places both young and old in the decisionmaking process of this Nation and makes their opinions and their energy felt at all levels; avoids pain and poverty for all and allows dignity in dying as well as in living; and offers safe, enriching, and hospitable environments for young and old alike.

We must realize that older Americans, through the years of dedication and hard work, have earned a right to our respect and a continuing share of the great abundance of this Nation.

We must respond to the challenge posed by the many needs of older Americans, and we must get on with the job of meeting those needs with vigor, with dedication, and with the attitude that we do so because it is right.

NYC COMMISSION ON HUMAN RIGHTS HOLD WEEK OF HEARINGS OF PROGRESS UNDER 1964 CIVIL RIGHTS ACT AND PLANS FOR FUTURE

The SPEAKER pro tempore. Under a previous order of the House, the gentle-

woman from New York (Ms. ABZUG) is recognized for 20 minutes.

Ms. ABZUG. Mr. Speaker, all this week the New York City Commission on Human Rights under the conscientious and able leadership of its chairperson, Eleanor Holmes Norton, will be holding hearings on where we have come since the passage of the 1964 Civil Rights Act and where we will go in the future. Under the title "Dismantling Discrimination: Problems and Possibilities for Northern Urban Integration" the commission has heard from public officials, experts in the field, legal opinion, and activists in the field. It was also my privilege to testify on Monday, May 13.

I would like to take this opportunity to insert some of the opening remarks of Commissioner Norton and my own testimony.

Commissioner Norton said:

I am pleased to open what may be the most important hearings ever held by the Commission on Human Rights. They are certainly the most important to be held in the last 4 years. For they will subject to scrutiny and analysis perhaps the least analyzed of the major social problems in the North—the failure of integration mechanisms to work in the Northern environment. The result of this failure is the actual rigidifying of institutions along racial lines in the supposedly more progressive North at a time when Southern institutions are showing increasing adaptability to the needs of integration.

This is a problem of ominous proportions, made even more serious by the failure to come to grips with the inevitable implications of the trend. It is commonly believed that problems such as drug abuse, high crime levels, poor schools, and urban decay are the chief plagues of the Northern cities. We believe these hearings will show that in many cases, these are symptoms of deeper and more complicated phenomena. We believe these hearings will show that the urban condition today is deeply rooted in the failure to intervene into the process by which the cities and their institutions absorb people largely in monolithic racial clusters. Schools, neighborhoods, and finally cities themselves cannot survive the current rate of influx of minorities and outflux of whites because such segregated institutions will be fatally encumbered by disproportionate poverty and demand for services, while the tax base on which the necessary services depend—middle income people and businesses—have separated themselves out or fled to outlying territory.

TESTIMONY OF REPRESENTATIVE BELLA ABZUG BEFORE NYC COMMISSION ON HUMAN RIGHTS

I am pleased to be with you at these important hearings to assess the progress we have made as a nation in the 10 years since passage of the Civil Rights Act of 1964. Even more important than that assessment is our evaluation of the struggle that lies ahead in our continuing search for equality for all, regardless of sex, sexual orientation, race, religion or ethnic origin.

I would like to pay particular attention to discrimination in employment because it is this discrimination that has the most direct and in many ways the most devastating effect on minorities and women in this city and in the country. Only if Black and Puerto Rican men and women in New York can get jobs and earn decent wages, can they ever hope to take advantage of the opportunities opened by our other civil rights advances.

We have made the greatest progress in the fight against employment discrimination by clearly establishing the illegality of such discrimination. It is shocking to recall that only 10 years ago, before the enactment of

the 1964 Civil Rights Act, no general federal law and very few state or local laws prohibited discrimination by private employers. To our credit, New York State and New York City were among the first of these few. While the 14th Amendment then, in principle, prohibited employment discrimination by state and local governments, there were no effective mechanisms for enforcing this prohibition. Similarly, no laws or orders ensured compliance with the due process clause requirement of nondiscrimination in Federal Employment.

Now the arsenal of laws prohibiting discrimination in employment because of race, color, religion, sex or national origin is nearly complete, with the exception of additional guarantees that are needed. Earlier today I announced that I was introducing a bill to extend Civil Rights Act protections to all, regardless of sex, sexual orientation or marital status.

The most important element of our arsenal is, of course, Title VII of the 1964 Act, which prohibited such discrimination by private employers, labor unions and employment agencies and which established the Equal Employment Opportunity Commission to receive and attempt to conciliate disputes.

Recently, Title VII has been greatly strengthened by the Equal Employment Opportunity Act of 1972—for the first time authorizing the EEOC to go to court to enforce its decisions and extending its jurisdiction to include state and local government employment. The other important elements of the arsenal include the Equal Pay Act of 1963, Executive Orders 11246 and 11375 which prohibit discrimination by federal contractors, Executive Order 11473 covering federal employment, and the Age Discrimination in Employment Act of 1967.

But while our legal protections have grown stronger, we have been greatly remiss in using them. Our failure is reflected in the continuing disproportionate economic status of minorities. For example, the median income of Black families has remained in the range of 55 to 60% of the white family median income since World War II. In fact, from 1970 to 1972 the Black median family income dropped from 61 to 59% of that of whites. (Data from Library of Congress.)

Recently, Andrew F. Brimmer of the Federal Reserve Board reported that 39,253 businesses with 15 or more employees—this represents 26.9% of all businesses of that size—had no Black employees whatsoever.

The consequences of our failure to eradicate employment discrimination are staggering. The economic cost is enormous. The President's Council of Economic Advisors has estimated that the elimination of all employment discrimination would increase the Gross National Product by \$19 billion. Furthermore, it is estimated that more than one-third of the present income differential between Blacks and whites could be wiped out by ending job discrimination. This could be accomplished with absolutely no expenditure of public funds for adult education or manpower training or other such programs.

The human costs of our failure to end employment discrimination are incalculable. There is no statistical measure for the frustration and anger or loss of self-esteem suffered by those of our citizens who know they have been denied a fair and equal chance to support themselves and their families.

The burden of employment discrimination is heaviest on women, particularly minority women who bear the double weight of racism and sexism. Yet, in spite of this, sex discrimination in employment has often been slighted. In fact, the prohibition of discrimination based on sex was not added to Title VII until a few days before its passage in the House of Representatives. Even then, it was added at the instigation of opponents of the Civil Rights Act in an effort to delay and defeat it. (I would add that the prohibition of sex discrimination is still glaringly absent from other titles of the 1964 Act such as Title VI which prohibits discrimination in federally-assisted programs. I have introduced legislation to remedy this omission.)

From this inauspicious beginning, however, sex discrimination has become one of the foremost concerns of the EEOC and of commissions such as this in New York City. About 25% of the approximately 12,000 charges of discrimination that the EEOC receives each year concern sex discrimination.

This large number of sex discrimination cases is not surprising for women are increasingly playing a major role in the American work force. When this century began, there were only some five million women workers, who made up 18% of the total labor force. By 1970, 31.2 million women workers constituted 38% of the total U.S. labor force. And today, 35 million women are in the U.S. labor force, 45% of our female population of age 16 and over. Yet, four out of five of these women are confined to the bottom rungs of the job and pay ladders.

Although women have increasingly participated in the work force, they have received the least of its economic rewards. In 1970, women's median earnings were 59.4% of men's male median earnings. Of all women workers, 73.9% earned less than \$7,000 per year, while only 30% of all male workers earned less than this amount. In 1970, only 1.1% of white women earned more than \$15,000 a year, while 13.5% of men in the work force earned more than this amount. White males held 95% of all jobs paying more than \$15,000 a year.

Women also remain highly concentrated in traditionally female jobs. From 1900 to 1970, the proportion of women working in occupations in which 70% or more of the workers are women has declined only slightly from 55% to 52%. One quarter of all employed women work in only five jobs: secretary-stenographer, household worker, bookkeeper, elementary school teacher, and waitress.

Minority women are at the bottom of the occupational ladder. Twenty-five percent of all non-white women are in the lowest paying occupation as private household workers. Non-white women make up half of all women in this occupation. On the other hand, in 1971, only 31% of non-white women held white collar jobs while 60.5% of all women workers held such jobs.

Minority women also earn considerably less and suffer higher unemployment than any other workers. In 1970, median annual incomes for fulltime workers were as follows: white males, \$9,373; black males, \$6,598; white women, \$5,490, and black women, \$4,674. (I have no figures for Spanish-speaking women, but limited data I have seen show that in New York their earnings are even below those of black women.) The unemployment rate for men in 1972 was 4.9% compared with 6.6% for all women and 8.7% for minority women. Black teenage women had an unemployment rate of 36%.

In 1970, the President's Task Force on Women's Rights and Responsibilities unequivocally declared: "Sex bias takes a greater economic toll than racial bias." The combined toll of both these discriminations on minority women is appalling.

I must take issue at this point with a recent article in the New York Times (May 6, 1974) by Dr. Alvin F. Poussaint, associate professor of psychiatry at the Harvard Medical School, in which he reports that some black leaders "feel their cause threatened by the women's liberation movement." He notes that "blacks see women taking jobs and opportunities that might otherwise belong to them."

Dr. Poussaint urges the women's movement and minority groups to put aside their conflicts and work together, a recommendation with which I agree, but not once does

Dr. Poussaint mention that at least half the black population consists of women or that black women are doubly oppressed. In fact, I believe the women's movement is greatly concerned with the status of black women. Although in its early stages the women's liberation movement was led by middle-class, well-educated women, it has now gone far beyond that. I would cite, for example, the recent formation of the black women's caucus, the organization of the Household Workers Union under the leadership of Carolyn Reed, and the organization of the Coalition of Labor Union Women, which includes black women in its leadership. I believe the data I have presented show that minority women have a stake in the developing strength of the women's movement, which is one of the main hopes we have that legal protections will be utilized and enforced.

Incidentally, Dr. Poussaint's blind spot with regard to black women is duplicated in many of the arguments I have seen attacking so-called "quota" hiring in the universities as a threat to Jewish employment. In none of these arguments is it considered that women are also Jewish and that Jewish women as well as black women, white women of other religious and ethnic groups, and Puerto Rican women have been victims of discrimination in education along with minority men.

As I have indicated, we have, at least for the time being, the legal arsenal to wipe out employment discrimination. But if we are to accomplish this goal, we must continue to move quickly and decisively as we have begun to in the last few years. Our progress stands in danger, however.

First, there is the continuing threat of inertia and inefficiency. The backlog of cases which the EEOC has yet to resolve continues to grow, and it has been exceedingly slow in effectively using its new authority to go to court. In this regard, the New York Commission on Human Rights can play a vital role by setting an example for the federal government through the efficiency of your operations and the completeness of your remedial orders.

There is an even greater danger, however, that we will lose our will and that we will not persevere. This danger is seen most clearly in the controversy over affirmative action, a controversy which in the *DeFuntis* case threatened to take this crucial weapon away from the arsenal of federal, state, and local law.

Just as the opposition to busing has sprung up as the requirements for school desegregation have reached the North and its suburbs, so, too, the clamour over "quotas" has become respectable to some as affirmative action programs intended to remedy employment discrimination have touched the middle class and elite institutions.

We should not condone double standards. We must not have one legal principle governing admission to the law schools, for example, and another governing admission to our law schools. The requirements of affirmative action to overcome the continuing effects of past discrimination in our universities must be the same as the requirements to overcome these effects in our factories.

Since the passage of the Civil Rights Act of 1964, the struggle to eliminate discrimination has come home to the North. We now know that our practices have been little different from those of any other region. We must take the same cure.

President Johnson stated just weeks before his death: "To be black in a white society is not to stand on level and equal ground. While the races may stand side by side, whites stand on history's mountain and blacks in history's hollow. Until we over-

come unequal history, we cannot overcome unequal opportunity."

I would only add that women—both white and minority women—also stand in history's hollow and share equally the need for our affirmative efforts in the years ahead.

#### SULFUR CONTENT OF WESTERN COAL

(Mrs. MINK asked and was given permission to extend her remarks at this point in the RECORD and to include extraneous matter.)

Mrs. MINK. Mr. Speaker, coping with the sulfur contained in our coal reserves is one of the most vexing issues we face today, with regard to the maintenance of environmental quality in America. The Environmental Protection Agency has required States to establish stringent air quality standards governing the amount of sulfur oxides which a given power generating plant may legally discharge into the air. As a result, many utilities find themselves caught between the EPA and the Federal Energy Office, which has been insisting that conversion from residual fuel oil to coal is necessary in order to conserve our vulnerable oil supplies. In searching for sources of low-sulfur coal which would meet the requirements of both Federal agencies, many electric utilities are looking to the vast strippable reserves of sub-bituminous coal and lignite which are located in the northern Great Plains region.

The American Electric Power System, for example, is already pouring millions of dollars into a transportation network designed to bring Wyoming coal by train and barge to its powerplants on the Ohio River, including parts of West Virginia. If this trend continues, we are likely to see Appalachian coal driven from its traditional utility markets. Appalachian underground coal mines which normally serve the utility market are then likely to close in large numbers, and many more Appalachian miners will be out of work.

In light of this I feel it is highly significant that Dr. Thomas V. Falkie, Director of the Bureau of Mines and Chairman of the Interagency Coal Task Force, which is currently attempting to define an overall coal strategy for the Nation stated in a speech delivered to the American Association of Petroleum Geologists in Pittsburgh, Pa., on April 18, 1974:

What is not known generally is the fact that the air quality control regulations are based on sulfur dioxide emissions per million Btu's of energy input and that, because of their relatively low Btu value, a large part of the Western low-sulfur reserve cannot meet established or proposed air-quality standards.

Mr. Speaker, we need to examine very carefully the rush to bring western coal into the Appalachian and Midwestern markets. We need to determine whether it is in the long-term national interest to bypass the underground mines of Appalachia, or whether we would do better to find ways of utilizing the large low-sulfur coal reserves in Appalachia and the know-how that has been developed over the years.

I wish to share with my colleagues the text of this speech by Dr. Falkie, for the illumination he casts upon the great energy potential of the Appalachian region and its implications for the rest of the Nation:

#### THE ENERGY RESERVES OF APPALACHIA (By Dr. Thomas V. Falkie)

A lot of jokes are making the rounds these days with punch lines that begin "I have some good news and some bad news." That's how I feel today, talking about the energy reserves of Appalachia. The reserves themselves are no joking matter, although many people are totally unaware of their significance. For such people, and for the people of Appalachia, I have good news: Appalachia, so long a major source of energy for America's industrial growth, is still rich in fuels. Contrary to widespread belief, the energy reserves of this region are not depleted. The bad news is that the reserves are not just there for the taking, either. We're going to have to work at it, like never before.

Before we go any further, some definitions. I'm using the term "reserves" as newly defined in an agreement on resource terminology just reached between the Interior Department's Bureau of Mines and its Geological Survey. According to that agreement, reserves are: "That portion of the identified resource from which a usable mineral or energy commodity can be economically and legally extracted at the time of determination." This definition aims at making it clear that any reserve figure is a dependent variable—dependent on many things, including prices and legal restraints of all kinds. In fact, it is so hard to assign fixed values to these controlling variables that any given reserve figure is understood to include a 20 percent margin of uncertainty.

By the term "Appalachia," I mean most of southern New York; most of Pennsylvania; all of West Virginia; western Maryland and southeastern Ohio; eastern Tennessee and eastern Kentucky; the western Carolinas; plus northern Georgia and northern Alabama. Not everything I say applies to all of those areas, of course, but together they are Appalachia.

The Appalachian region is richly endowed with energy resources. Most of it is in the form of coal, but the region also has important deposits of other fuels, particularly natural gas.

Natural gas is among the region's most important mineral commodities, ranking second only to coal in production value. Appalachian gas was worth \$162 million in 1973. Currently, however, Appalachia's output represents only two percent of the Nation's total production of natural gas. Appalachia's share has declined from five percent of the U.S. total in 1972, and nine percent in 1948, but the quantities of gas produced have remained relatively constant, with Appalachian output in 1972 at virtually the same level as in 1948.

Fields of natural gas occur in almost every part of Appalachia, but the largest and most productive fields are in Kentucky, Ohio, Pennsylvania, and West Virginia. These four States currently produce 98 percent of the natural gas from Appalachia, with West Virginia, alone, accounting for 50 percent of the volume.

Appalachian gas reserves currently total 6.3 trillion cubic feet, and over the past twenty years they have increased 34 percent, which is about the same increase recorded for total U.S. reserves. The numbers are misleading, however, because 28 percent of the Appalachian reserve in 1972 consisted of gas in underground storage. The industry moves gas from large supply areas to underground reservoirs—depleted gasfields—close to major

market areas. This gas is stored until needed for load balancing and peak shaving operations. At the end of 1972, approximately 37 percent of the gas stored underground in the United States was stored in the Appalachian region.

The average gas well in Appalachia was drilled to a depth of about 3,100 feet, compared to the national average of 5,975 feet. Shallow exploration and production is characteristic of the Appalachian area and continuation of this type of exploration in the known oil and gas areas is expected to result in the discovery of new reserves. But enough is known of the region from density drilling to estimate that new large shallow fields will probably not be found. On the other hand, deep drilling, little of which has been done, offers brighter possibilities for the discovery of additional large reserves.

Another bright possibility for Appalachia is the extraction of methane in commercial quantities from coalbeds. Methane is a major hazard to underground coal miners, and conventional practice is to sweep it out of the mines with ventilating air. To enhance safety in underground mining, the Bureau of Mines began experiments in the degasification of virgin coalbeds, before mining, through special boreholes. Right now, as a direct result of those experiments, a West Virginia borehole is producing gas faster than most Appalachia gas wells, and the gas is being fed into a commercial pipeline near Morgantown at rates of about three-quarters of a million cubic feet per day.

Strictly speaking, there are no "reserves" of this gas on the books yet, except for the gas we are now producing, because of the uncertainties in determining how much of it can be made available. Such considerations as the proximity of a given coalbed to a natural gas pipeline, and the willingness of coal operators to adopt the technique, must be taken into account. It is obvious, however, that the potential is great, especially in Appalachia, with its rich reserves of "gassy" coal and its strategic location on the natural gas pipeline route between Southwestern producers and Eastern consumers. The Bureau will be doing its best to advance this process of borehole degasification in the coming years.

Although petroleum is an important mineral commodity in a few areas, production in Appalachia in 1973 amounted to only 7 million barrels, two-tenths of a percent of the total United States output. Of the Appalachian output, Pennsylvania produced about 50 percent and West Virginia produced most of the remainder.

Appalachian petroleum and natural gas liquid reserves are estimated at 556 million barrels, 1.2 percent of the U.S. total, but progress in secondary and tertiary recovery should raise this figure substantially. Of the current reserve, about half occurs in Ohio and West Virginia with the remainder about evenly distributed in Alabama, Kentucky, and Pennsylvania.

This brings us to coal. Appalachia's future in energy resource development lies with coal.

The Appalachian States have long been major suppliers of coal. Bureau of Mines records show that approximately 41 billion tons of coal was produced in the United States from 1890 through 1972 and, of this quantity, nearly 70 percent came from the Appalachian States. In recent years, production patterns have changed somewhat, but the Appalachian region still accounts for nearly two-thirds of the Nation's coal production.

Preliminary data show that the Appalachian States produced 425 million tons of coal in 1973 and accounted for an estimated 14 percent of the Nation's total energy output. Most of this coal went for electric-power generation, but the region also sup-

plied 90 percent of the premium-quality bituminous coals required for the production of metallurgical coke, 9 percent of the coals shipped to other industrial plants, and virtually all of the coals exported. And, significantly, the Appalachian region supplied an estimated 80 percent of the low-sulfur coals produced in the United States in 1973.

Recent Bureau of Mines estimates show that the Appalachian region has a demonstrated recoverable coal reserve of 56 billion tons, roughly one-third of the United States total on a tonnage basis. West Virginia has nearly half of this reserve, while Pennsylvania has about one-fourth, Ohio has 12 percent, and East Kentucky has 8 percent. The remaining 5 percent occurs in Alabama, Maryland, Tennessee, and Virginia.

Appalachian deposits contain an estimated 28 percent of the United States demonstrated reserve of low-sulfur coal. Nearly one-fourth of this coal occurs in West Virginia, but East Kentucky and Pennsylvania also have sizable deposits. The Appalachian region also has the bulk of the coking coal reserve of the United States.

We have no reliable information on the portion of the demonstrated reserve in Appalachia that is recoverable by various mining methods. However, preliminary information developed in a study on underground reserves now being conducted by the Bureau of Mines indicates that in contrast with Western coal reserves, only a relatively small percent of the total Appalachian reserve is amenable to surface mining.

The United States currently has a 15 percent shortfall between energy supply and demand. Recent evaluations indicate that we will continue to have an energy deficiency until at least 1980. It is most probable, therefore, that the Nation will look to Appalachian coals for additional energy supplies, at least during this short-term period. The reserves are abundant, and they are located close to the major consumers.

I wish I could leave it at that. But there are formidable problems that must be resolved before we can expect an expansion of coal development, particularly in Appalachia. First, the Federal Government must provide a national energy policy that will give industry realistic planning criteria. That policy must address itself to the resolution of other problems, principally environmental restrictions, capital shortages, transportation deficiencies, and technologic constraints.

I am heading an Interagency Coal Task Force that has been charged with a responsibility for recommending some of the solutions to Problem Number One. Our job is to propose ways in which coal's contribution to our energy needs can be greatly increased. We will be dealing, of course, with the other problems I have named, and until our recommendations are published, it would be inappropriate for me to speculate on what they might be. I can, however, sketch the dimensions of those problems as we see them.

The environmental problems concerned with the production and use of coal are multiple, but two are of major importance. One is the air-quality standards imposed by the Clean Air Act Amendments of 1970; the other, pending Federal strip-mine legislation.

New air-quality standards are scheduled to be implemented by some States in about one year. Imposition of these standards on schedule will definitely disqualify for use large quantities of Appalachian coals that are now being produced because their sulfur content cannot be reduced sufficiently, and commercial processes for removing sulfur from stack gases have not yet been perfected. The Appalachian region has significant reserves of low-sulfur coals but their commercial development has not kept pace with that of the higher-sulfur coals because of higher production costs. Any significant expansion

of facilities for producing Appalachian low-sulfur coals, even under ideal conditions, is not possible in less than 5 years.

On this point, incidentally, the news is not really as bad as many believe it to be.

It is generally accepted as fact that the Western States have the bulk of the Nation's low-sulfur coal reserves and that any stringent enforcement of the air-quality control regulations would rule out the use of most of the Eastern coals, with a subsequent movement to Western coal development. But what is not known generally is the fact that the regulations are based on sulfur dioxide emissions per million Btu's of energy input and that, because of their relatively low Btu value, a large part of the Western low-sulfur reserve cannot meet established or proposed air-quality standards.

Recent regulations applicable to all major new fuel-burning plants constructed or modified after August 1971, limit SO<sub>2</sub> emissions to 1.2 pounds of SO<sub>2</sub> per million Btu's of input. Converted to sulfur content, this means that a coal containing 1.0 percent sulfur must have a caloric value of 16,666 Btu's per pound to comply with the standards. Calorific values of Eastern coals average, roughly, 12,000 Btu's per pound and at this value, the maximum allowable sulfur content for such coal is about 0.72 percent. Coals that have a caloric value of 14,000 Btu's per pound may have a sulfur content as high as 0.84 percent. On the other hand, Western low-sulfur coals probably average about 9,000 Btu's per pound and, in order to comply with the mentioned standards, their sulfur content would be limited to an average of 0.54 percent.

The other environmental problem area, surface reclamation, is being approached by proposed Federal strip-mine legislation which, if enacted, could have an impact on Appalachian production. A significant feature of pending legislation, passed by the Senate and being considered by the House, is a provision that requires the restoration of surface-mined coal lands to their original contour. The proposed bills provide, essentially, for backfilling, compaction, and grading to restore the approximate original contour of the land. That would represent a challenge to the industry and to existing technology. But the most difficult challenge of all is posed by the uncertainty as to what will eventually happen.

Of greater concern than at any time in the past is the availability of capital for the development of new coal mines. When these environmental uncertainties are put together with rising costs for new mine development, and the competition for investment capital from other energy resource-developing industries, it becomes much more difficult to attract money to the coal industry.

Another problem is transportation. Coal is moved from mines to market principally by rail and, right now, there are shortages of railroad hopper cars, particularly east of the Mississippi River. This deficiency affects coal movement and daily mine production too, as there are little or no storage facilities at mines and they cannot operate without a regular and adequate supply of railroad cars. The major railroads in the East have had serious financial problems in recent years and it is doubtful that they will be able to meet the expected demand for transporting coal without government or other assistance.

This brings us, finally, to the technology question, one that embraces and pervades all the others. The problems of pollution, capital requirements, and transportation shortages all express themselves in technologic terms—that is, they are all contingent on the use of current technology. And it is just here that I see some real hope for Appalachian coals and the Nation in general, for it is the technology of coal production and use that is most likely to change for the better over the next twenty years.

Without anticipating any Task Force recommendations I can point out that the Bureau of Mines is already deeply committed to coal mining technology improvements that would radically enhance the position of Appalachian coals. In particular, we have programs to develop new mining methods appropriate to the deeper Appalachian deposits not being mined today, and to greatly advance surface mining technology from all aspects, including environmental. The potential impact of such improvements is obvious. Better underground mining methods could increase output, thus effectively lowering capital investment requirements, for instance; or better surface mining technology could restore the good name and high production potential of this method. Other Bureau research also has a bearing on these problems, especially our work on getting sulfur oxides out of coal stack gases. Our very promising citrate process is undergoing two successful small-scale field trials, and may soon go to a much larger field test. In another approach, we are preparing for an Appalachian field test of underground coal gasification, a technique we hope will produce a clean, low-energy gas for generating electricity. Other gasification and liquefaction work is also underway.

Many people will object that such developments will do nothing to improve the short-run prospects of Appalachian coal and that is so. But it is equally true that no long-term improvements will come without such developments. It is foolish, for instance, to insist that relaxation of environmental restrictions will restore Appalachian coals to their rightful primacy in meeting America's energy demands. Those demands will soon be so great, if they aren't already, that conventional coal production technology could not meet them under any circumstances. The technology must change. And so it will.

Let me finish up with a brief look at the short-term prospects. Most of the Appalachian coals for the next decade or so will be consumed in markets already established, that is, electric-power generation, coke production, and exports.

Although there must be some reevaluation because of the current energy situation, recent Department of the Interior studies have concluded that energy resource inputs into the electric-utility sector in 1985 will be more than double the 1972 input and that nearly 60 percent of the input will be supplied by coal. This equates to a coal demand of 613 million tons for power generation in 1985, nearly twice the quantity consumed in 1973.

It is not possible to estimate the Appalachian region's share of this market because the bulk of the Appalachian coals going to electric utilities right now have sulfur contents that exceed the limitations proposed in most of the air-quality standards. It has been indicated that there may be some relaxation of the standards. If there is, the Appalachian States probably would maintain their present levels of supply to utilities, plus additional quantities commensurate with the percentages of utility coal that they supplied in the past. It appears also that a number of eastern utility plants that formerly burned coal but are now fueled with low-sulfur fuel oil will revert to coal because of the fuel-oil shortage. A recent Federal Power Commission study has shown that 46 such plants are located in the East and that Appalachian coals would probably supply most of the coals required in such a conversion.

The Appalachian region will continue to be called upon to provide the bulk of the premium quality coals required for the production of coke that is needed to reduce iron ore before it is converted into steel. But the quantities of this coal required in the near-term period are not expected to be materially larger than those of the present because, although iron requirements will increase, coke requirements per ton of iron production will

decrease with continuing improvements in iron extraction technology.

There will be continuing demand for United States coals, especially coking coals, in foreign markets and exports have been forecast to double by 1980 and reach 138 million tons by 1985. There has been some concern about the advisability of exporting domestic coals when the Nation has an energy shortage. The bulk of these coals are low in sulfur and, although many of them could be used as utility fuel in lieu of low-sulfur fuel oil, they command premium prices and usually their use by utilities would require some technological changes in power-generating equipment. Also, we must not lose sight of the fact that our coal exports earn credits to our international balance of payments of about \$1 billion annually.

In summary, the great potential of Appalachian energy is contingent on several major developments that can be expected to emerge over the next few years. First will come new Federal policies on coal; then new coal technologies. As a native of Appalachia, I may be prejudiced, but I cannot help but believe that the outcome will be a bright future for this energy-rich region.

Thank you.

#### GRADUATE AND PROFESSIONAL EDUCATION OF WOMEN

(Mrs. MINK asked and was given permission to extend her remarks at this point in the RECORD and to include extraneous matter.)

Mrs. MINK. Mr. Speaker, on Friday last week, I attended an AAUW Conference on Graduate and Professional Education of Women. I would like to share with the Members an excellent review of the literature and bibliography on this subject prepared by Ruth M. Oltman, assistant, director of program, higher education AAUW:

##### A. BACKGROUND AND CURRENT DEVELOPMENTS

"While the desirability of women obtaining an undergraduate education is now universally accepted, . . . the value of graduate education for women is not—except in 'appropriate fields' (Newman, 1973). There have been some changes over the past three years, but data shows that women still seek the traditional graduate programs, overlooking many areas which are only gradually opening up to them, partly because of requirements of the law. It will take time for high school and college counseling and guidance publications to 'catch up' with the changes occurring and to open broader educational and vocational fields for choice to women. APGA's (1970) own policy statement on 'career decisionmaking that protects freedom of choice while enhancing wisdom of choice' needs full implementation at all levels but particularly at the graduate level. CEEB's (1974) study of college-bound seniors showed many more males than females planning on graduate study and twice as many females intending to complete only a two-year program. The reasons must be examined and the causes remedied.

##### 1. REPORT ON GRADUATE EDUCATION

To understand the problems of access of women to higher education and their retention in graduate programs, once they are admitted, it is necessary to look at the present status of graduate education itself and some of the recent studies which provide analysis of current general issues. Graduate schools have been criticized for failing to respond to the needs of society and of the new types of students seeking advanced training. The ETS report (1973) on the Panel on Alternate Approaches to Graduate Education examines these criticisms of

"cultural lag" and makes recommendations for change. These include more discipline-related programs off campus; broader ways of evaluating out of classroom experience, faculty teaching, and curriculum; and increase in the admission of women and minority students who have been "hitherto discriminated against." "The politics of graduate education reflect the influence of a discriminating society," the report states. These recommendations would necessitate some major changes in procedures and attitudes, particularly toward part-time and more flexible programs of study, and new concepts of the role of the graduate faculty. They also would benefit women.

The decline in Federal financing of graduate education and research and of graduate students has been a matter of much concern because of the threat of erosion of quality graduate programs and reduction of research capabilities. In its report on Federal policy alternatives the National Board of Graduate Education (NBGE, 1974) outlines the importance of graduate education scholarship and research to both the university and society, and makes recommendations for a positive program of Federal support. These include assuring that "graduate education contributes to the National commitment to eliminate discrimination based on race, sex, age and socio-economic status."

In another NBGE study (1973) recommendations are made for long-term Federal commitment to doctorate manpower needs. Competitive fellowships to meet the needs of the most academically talented young people are suggested. The report also recommends that the numbers of minority group members and women employed in professional and faculty positions be increased.

The National Science Foundation did a survey (NSF, 1973) of manpower resources and support of graduate science education in the fall of 1971. This demonstrated a decline in enrollment of both U.S. and foreign students and a reduction in research and teaching assistantships, as well as in Federal support.

Derek Bok's presidential statement on graduate education at Harvard (Bok, 1973) illustrates the status of graduate programs on one campus, how it dealt with the drastic cuts in Federal funding, made changes in curriculum to fit social changes, and attempted to analyze and solve the problems of attrition.

Report No. 4 of the Newman Task Force II (Newman, 1973) examines the growth of American graduate education and reasons for Federal cutbacks, based on overall manpower evaluations. It recommends ways of focusing the Federal role sharply on excellence and reform through several kinds of incentives to students and institutions and redistribution of funding. "The Federal Government in the 1970's must become concerned with the kind and quality of graduates leaving the nation's universities . . . and seek to redirect graduate education to new social needs," it concludes. In awarding the "portable" fellowships in national competition suggested, "women would be awarded fellowships on equal terms with men. An individual dean or department chairman would not be in a position to play favorites. . . . To refuse admission to a woman fellowship holder would involve a clear cost . . . —the companion grant she would bring with her. If her family circumstances required her to change institutions, she would take both fellowship and companion grant to another university. It is hard to believe that her claims for help in obtaining housing or with her children would go unheard as frequently as present." The reply of the NBGE (Chronicle, 1973) is that "women are underrepresented in graduate schools primarily because fewer of them apply" and that "acceptance rates for men and women are about the same." Solmon (1973) makes a similar conclusion.

## 2. REPORTS ON WOMEN IN HIGHER EDUCATION

One of the most comprehensive studies of opportunities for women in higher education is found in the Carnegie report (1973), which contains seven specific recommendations regarding women in graduate study. These relate to non-discrimination in admissions, equal recruiting efforts, support of part-time study, flexibility in time limits for degree completion, equity in awarding fellowships or in appointing teaching and research assistants, provisions for the mature woman returning for graduate study, and positive attitudes on the part of faculty toward the serious pursuit of graduate study and research by women. Responsibility of the university for child care services is recommended in another chapter. A Women's Bureau survey (USDL, 1973) of programs for children on campus found that an estimated one out of four campuses had a day care center nursery or laboratory school program, 80% of which charge a fee.

At its annual meeting in 1972 the Council of Graduate Schools (Ryan, 1972), Scott and Rumberger provided interesting new data on women in graduate education. "In the high prestige universities," says Scott, "the percentage of women faculty in any department tends to be much smaller (often zero) than the percentage of graduate students who are women." "The facts on women graduate students tend to belie the myths." "We should not talk of diluting standards," Rumberger states, "but rather look forward to the transfusion which these persons [women] can give to our intellectual life."

In "Beyond the Open Door," Cross (1971) examines the access of educational opportunity to various groups and some of the projects developed to increase that access. In considering women as "new students" she believes that "numerically women constitute by far the largest reservoir of youthful talent not presently continuing education beyond high school," particularly in the lower economic levels.

Feldman's comprehensive research reported in "Escape from the Doll House" (Feldman, 1973) examines four aspects of inequality in graduate education. First, women have been channeled into academic disciplines which are traditional and of low power and prestige. Then, women have lower academic goals and have a less positive self-image than men and are less likely to be in the prestigious universities. The dedication of women to academic achievement is traditionally seen as less than that of men and marriage is considered an impediment creating conflict but "given equal opportunity, any differences in dedication disappears," he finds.

A research survey on graduate school admissions is available from ERIC (Harvey, 1971).

## B. SOCIAL FACTORS AND ATTITUDES

Social factors and attitudes of men towards women and women towards themselves create most of the problems which women experience in seeking an education and in using it fully. Higher education has yet to see its responsibility for the reeducation of learned social roles which operate to distort the image of women and restrict the contributions which women have to make to higher education and to society.

Considerable research has been done to dispel prevailing myths and to define the influencing factors. Astin's study (1969) clearly demonstrated that women with the doctorate do use their training and that "once a woman decides to invest herself, her time, and her energy in pursuit of specialized training, the likelihood of her maintaining a strong career interest and commitment is very high." Renshaw and Pennell (1969) found similar results in their survey of women with the M.D. degree, most of whom were practicing physicians.

Frankel (1974) found a close correlation between self-concept and attitudes toward femininity. If the latter as seen as requiring passive and dependent behavior, the self-concept is likely to be negative, with goals and behavior which is nonachievement oriented and "other"-directed. Findings for undergraduate and alumnae women used for the survey were similar. This adds another dimension to Horner's observations (1969) on woman's "will to fail."

Lavine (1973) sees the move by women to law schools as motivated by the desire to reconcile the conflict between fear of social disapproval and professional success in a field which will help to fulfill the social ideals of the female. Law provides a fusion between the aggressive trait and the helping role usually associated with women. But should this not, then, be equally true of medicine?

Attitudes of counselors reflect the stereotypes of social roles. Collins and Sedlacek (1974) found systematic differences in how counselors perceive their male and female clients. Men were seen as having more vocational-educational problems than women and women more often to have emotional-social problems. Whether these are real differences or the result of counselor's expectations and stereotypes, the attitudes do affect significantly how women are counseled.

Much has been said about "role models" and the value of these to women in higher education. Tidball's study (1973) confirmed this on a statistical basis. She found that the number of successful career graduates to be directly proportional to the number of women faculty in the achievers' undergraduate institutions at the time they were students. A disproportionately high number of women achievers came from women's colleges. Conversely, the higher the percent of men students enrolled, the smaller the number of women achievers. Campus career conferences, such as that described by Plotzky and Goad (1974) are planned, in fact, to "provide exposure to professional women who served as role models—temporary 'significant others' for the undergraduate women." They found that some graduate women in non-traditional departments felt particularly isolated and in need of supportive role models.

Another aspect of the graduate woman's problem is her relationship as a scholar to her male peers and professors. The Holstroms (1974) examined some of the factors which contribute to emotional strain and self-doubts among women doctoral students. Analysis of Creager's data (1971) demonstrated that faculty attitudes and behaviors contributed significantly. Interaction with faculty, though related to general satisfaction with graduate school for both men and women doctoral students, was significantly less for women students. Again, "role models" of women faculty may contribute to the solution, as well as a change in the "climate of expectation."

Kjerulff and Blood (1973) study confirms the Holstrom findings. "In terms of communication with professors, women graduate students do seem to be at a disadvantage in comparison with their male peers. They saw their research advisors less often, especially outside of the office context, and had fewer discussions with their research advisor." "Female graduate students thus miss out on a type of informal communication which could be helpful both in terms of acquiring research information and developing feelings of belonging in the field and acceptance as a colleague." Verbal communication thus is seen as related to research activity, stress tolerance, and attrition in graduate school.

Feldman's (1974) chapter on "External Constraints," analyzes the traditional relation between marital status and graduate education, as "life outside of graduate school

may have a strong effect on life within it." While at one time pursuit of a career as a scholar was possible only for spinsters, it is interesting to note that 55% of the women receiving doctorates in 1972 were married (NRC, 1973). Feldman's data shows that "if graduate women do marry, they are much more likely than men to have a spouse with graduate education." Family circumstances or pressure from the husband often force primacy of family over a career or even may cause divorce.

(See also conference papers by Sheila Tobias, Martha Kent, and Linda Hartsock.)

## C. INSTITUTIONAL BARRIERS

In March, 1974, a conference was held on the Douglass College campus on "Part-time Graduate Study: New Roads to a Degree" with particular reference to its value to women. While full-time graduate study has its advantages, generally the life-patterns of women do not adapt to it and a more flexible structure is needed. This restriction to full-time graduate study at many institutions and the practice of granting financial aid only to full-time students are two of the major barriers to women's pursuit of education beyond the baccalaureate degree. Douglass has prepared a useful resource book on part-time opportunities for graduate and professional study in the states of Delaware, New Jersey, New York and Pennsylvania.

Pitchell (1974) has reported that of all students enrolled in post-secondary educational programs, more than half are studying part-time, the majority of whom are women. He has proposed that we can no longer overlook the financial needs of these students and suggests seeking Federal support if we are truly committed to the concept of life-long learning.

Sells (1974) reports that women at the University of California who once had a drop-out rate twice that of men now complete their doctorates as often as men. Her project grew out of a concern for understanding the psychological and social factors contributing to the high drop-out rate of women. Among the problems women experienced were progressive demoralization by lack of acceptance by faculty as colleagues, negative faculty attitudes toward women, and ambivalence and conflict in women's own feelings about careers. Suggested were seminars of peers to discuss their problems, when preparing for exams and when writing dissertations.

Burstyn (1973) has reviewed the experiences of women at Carnegie-Mellon University as a result of administrative decisions which have had profound effect on their opportunities. Programs attracting women, such as social work and library science, were terminated and, in 1973, Margaret Morrison College for Women was abolished. In 1970-71 women received fewest degrees in the Graduate School of Industrial Administration, where there were only two faculty women. Only five other women taught in the graduate school. The percentage of women receiving master's degrees fell from 20% to 9% from 1946 to 1970, due principally to the structural changes in the university.

Davis (1973) describes some of her own experiences in graduate school which led to conclusions concerning informal structures of universities as they affect women, such as prejudging the attrition potential of women, counseling women to take the M.A. "just in case," greater interaction of male students with professors, criteria for awarding fellowships, placement differentials and, again, lack of female role models.

Clifford and Walster (1970) sent 240 college and university applications for admission which were identical at three ability levels, varying only by race and sex. Males were found to be markedly preferred at low levels, although the preference leveled off at higher levels.

The National Commission on Financing

Post Secondary Education, in a recent report (Mathews, 1974), found that an "equal chance to attend college is still denied prospective students from low income families, racial and ethnic minorities, large cities and rural areas, and women." Chalmers (1972) examined the complex reasons for the proportionately fewer women than men in higher education and raises the question as to "what is the obligation of graduate and professional schools sincerely committed to the elimination of discrimination." He suggests raising questions regarding bias wherever indicated and developing compensatory recruitment programs.

In reviewing the potential of non-traditional graduate admissions, Brown and Gregg (1973) look at the traditional methods which have merit but also at the increasing numbers of new students—minorities, women re-entering education, mid-career persons who must be served, and at the factors which require non-traditional approaches—such as increased student mobility and competencies not learned in the classroom. They raise the basic question: "Can an elitist institution, graduate education, react to the broad social pressures to meet the needs of our modern society without finding it essential to redefine its mission and modes of operation?"

Finally, Harvey (1971) sums up the major issues in graduate school admissions and reasons for non-entry, reviewing the relevant literature. Procedures used for evaluation are surveyed and criteria for admission are examined. Sex and academic performance are noted to be significantly related to application. "Women, though better students, are not enrolling in proper proportions. . . . If graduate schools are interested in attracting the best students, women should not be discouraged" as they often are. "The impression exists that the admissions process on the graduate level is haphazard if not indeed capricious," he states. Suggestions are made for improving this process.

#### D. TRENDS IN SPECIFIC DISCIPLINES

The annual report on doctorate recipients prepared by the National Research Council (see NRC, 1973) for the first time in 1973 included a complete analysis of data on women. 16% of those receiving doctorates in 1972 were women, following a slow increase since 1954, when the percentage was a low 9.1, although it had been 16.8 in 1929! In 1972 the median age for women receiving the doctorate was only 2 years higher than for men and the time lapse since the baccalaureate also only 2 years more. Actual enrollment time, however, was about the same. 55% of the women were married. (See paper by Clarebeth Cunningham of NRC).

Enrollment of women in the professional schools has increased over the past few years, in some instances dramatically. Examples from several of the disciplines will demonstrate.

In medicine the increase in enrollment has been the result of both legal requirements (Health Manpower Act of 1971) and Federal incentives for the expansion of total medical school enrollments (Spingarn 1974). Women represented 16.8% of all first year medical students in 1972-3 as compared to 9.0% in 1968-9 (Dubé 1974) and estimates are as high as 19% for 1973-4. This increase has not been at the expense of male students, whose numbers also have increased, but at a slower rate. A number of schools are taking a larger percentage of women than men applicants because they already are a more selective group. Eastern Virginia Medical School recognizes that better counseling and encouragement is needed for women in considering medicine as a career. The Medical College of Pennsylvania has launched a part-time residency for currently inactive women M.D.'s to get them back into the main stream of medicine; New York University has a part-time residency in psychiatry. (See re-

port prepared by Dr. Margery Wilson of AAMC.)

While more women than men drop out of medical school for non-academic reasons (for academic reasons they are similar), there appears to be no study of the reasons or whether some of these women might, with counseling or assistance, return. Spingarn (1974) reports that women rejected for admission "represent a much greater intellectual and financial loss to health and medical care, to society, and to themselves." While most rejections do go into graduate school, (74% men, 42% women) women turn to fields such as laboratory technology or choose other careers with lower educational requirements. Like the men, they report little help from their college advisers at the time of rejection.

Pharmacy has always had a fairly high percentage of women. In September of 1973 women made up 27.3% of the 73 schools of pharmacy in the U.S. In addition 25.8% of those in master's program were women and 14.7% of those in doctorate programs (Bliven 1974).

Engineering has been seen less as a woman's field, and women with a liking for science and mathematics often are not guided to consider engineering as a vocation. From 1960 to 1971, however, the % of women receiving engineering degrees increased from 0.38% to 0.82% and the number of master's and doctor's degrees increased more than seven fold (Kotel 1973). Women tend to concentrate in chemical engineering more than in mechanical or electrical; they also work more in research, development and design than in production, construction or management. Recently engineering schools have been making direct appeals to interest women in engineering—Stanford, e.g., has a special pamphlet to recruit women (Stanford, 1973). Enrollment of women in engineering schools in the fall of 1972 was up to 2.3% of totals in undergraduate and graduate programs.

The National Science Foundation *Highlights* (NSF, 1973) provides data from the 1972 Professional, Technical and Scientific Manpower Survey (from 1970 Census) on sex, age and educational attainment of persons in 5 engineering and scientific occupational groups. While women represent less than 1% of the engineers, they make up 27% of the mathematicians, 18% of the life scientists, 9% of the physical scientists, 19% of social scientists.

Perhaps the field of law shows the greatest increase in enrollment of women students over the past few years, the number of first-year students showing a 35.2% gain in the fall of 1973 over 1972. 16% of all law students were women (ABA 1974). As in medicine, percentage of women applicants accepted was greater than of men, as the pool was more selective. Schools varied, however, from less than 10% women to as much as 30% in a recent study by Byciewicz (1973). Many have an affirmative action program to recruit women and/or sent recruiting materials to college placement offices to encourage female applicants. Women, however, generally received less financial aid than men but were granted more loans. Fewer women dropped out for academic reasons than men, with a slightly higher percentage of women withdrawing for reasons of financial or family responsibilities. Only one law school reported the existence of a day care center.

At a meeting of the American Economic Association in December, the women's committee commented on the grossly disproportionate percentage of women (less than 10%) who were economists. While recognizing that many social factors create this proportion, "this does not excuse the economics profession from setting in motion processes which will raise its proportion of women" and compensation for this "economic loss to society." (Chronicle of Higher Education, 1974).

A report on "The Status of Women in Sociology, 1968-1972" (Hughes 1973) states that only 1 of every 100 women with a bachelor's degree in sociology goes on to a doctorate as compared to 10 or 11 men. The final statement in this report can well apply to all the professions:

"Many of the discriminatory practices which have held them back are, as has been shown, not there by intention but as a by-product of certain features of our social institutions, including a whole set of now inappropriate role expectations. But to remove the differentials in the opportunities and rewards open to men and women may not be enough. Changes in practice should be accompanied by re-socialization to modify attitudes and behavior—a process to which, perhaps more than anything else, the Committee's report was intended as a spur. The time to engage in these transformations is precisely now when increasing numbers of women are entering the academic profession. Although awareness of inequalities is at present sharp, the time is not yet when all sociologists will respond to each other qua sociologists, ignoring sex or ethnic identity in situations where occupation is the only relevant basis of social status. 'Liberated' sociologists, men or women, are those fully engaged in the profession in a social context that enables each to contribute to his or her fullest capacity. There are social and personal costs involved in the redefinition of roles but the gain to society at large and to the individual sociologist will be incalculable."

#### E. REQUIREMENTS OF THE LAW

These will be reviewed in a separate conference paper on graduate schools, prepared by Bernice Sandler. Her article in the *Journal of Law and Education* (1973) states the general issues and laws which affect women in higher education. Scott (1972) cites some of the problems which will be challenged by Education Amendments of 1972, such as rigid admissions and length-of-residence requirements, admissions quotas in departments and programs, state residence requirements, lack of housing for women, inequitable distribution of financial aid.

Hosken's testimony (1973) to the House Ways and Means Committee raises the serious question of tax-exemption for institutions which discriminate. The tax issue could become as important a control in compliance cases as government contracts. Accreditation also is an issue—whatever the academic merit of an institution, should it be accredited if it is not providing quality education for all of its students? Discrimination on campus is now an educational, social and legal matter.

Fields (1973) article describes the action of the U.S. Office of Civil Rights last year in notifying "graduate and professional schools and some public undergraduate schools that they must begin applying non-discriminatory admissions policies by June 24," 1973, in accordance with the Education Amendments of 1972. Formal regulations for these amendments have yet to be published by HEW, nearly two years after their passage.

In analyzing the Education Amendments of 1972 and how they may affect women, Temko (1973) cites specific cases, "A prima facie case of discrimination may be established by showing a substantial disparity between the percentage of women (and men) in a given institution. A question arises as to whether the population to be used as a comparison is the percentage of the class in the general population or the percentage of the class that is eligible or qualified for the particular institution or activity. The cases show that both figures have been used. The Education Amendments of 1972 would specifically permit the introduction of statistical comparisons with the total number or percentage of persons of a particular sex in a geographical area." "Statistical evidence of underrepresent-

sensation establishes a rebuttable presumption of discrimination," she states, but "mere protestations that discrimination was not practiced will not suffice to rebut this presumption." Equally, courts have held that policies neutral on the surface which perpetuate discrimination violate the equal protection clause. Temko's presentation provides strong legal precedents for enforcement of the amendment.

#### F. PROPOSED SOLUTIONS

Definitions of some solutions to the problems raised in this conference will, of course, be its major task. Some of these solutions are suggested in the two Carnegie reports and in many of the recommendations of the studies cited. They appear to include the following areas:

1. Enforcement of the law—contract compliance, tax exemptions, fines, assurances, accreditation.
  2. Admissions—affirmative methods of recruitment, use of merit criteria, elimination of quotas.
  3. Counseling—academic and personal.
  4. Non-traditional programming and flexible scheduling.
  5. Part-time study.
  6. Part-time financial aid.
  7. Provisions for child care.
  8. Models of successful professional women.
  9. Attitudes of faculty and peer students, acceptance of women as academic equals.
- The development of our positive recommendations and models should make a significant contribution to new opportunities for women in graduate and professional education.

#### SOUND COMMENTS ABOUT THE VICE PRESIDENT

(Mr. SIKES asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

Mr. SIKES, Mr. Speaker, on Monday night, May 13, the Vice President of the United States, the Honorable GERALD R. FORD, was guest of honor of the Pensacola Chamber of Commerce. The occasion was the annual dinner meeting of that organization. A capacity crowd of 1,500 was in attendance. Presiding was the able president of the chamber, Mr. William H. Clark.

The warmth of the reception and the welcome given to the Vice President was pleasing to me as a colleague of many years who has enjoyed the friendship and admired the good work of Mr. FORD. He gave an excellent address with the kind of down-to-earth comments that an American audience appreciates.

On the same date, the Pensacola Journal editorialized on the Vice President's visit in an outstanding way. I feel that my colleagues in the Congress will want to see the comments which were made by the Journal. I am pleased to submit them for reprinting in the RECORD.

#### VICE PRESIDENT FORD DESERVES OUR WELCOME

Not since Franklin D. Roosevelt whisked through people-lined streets of Pensacola and boarded his private railroad car on tracks on the site of the new Sheraton Inn in 1937 has an incumbent president or vice-president visited and delivered words to Pensacolians. Not until today.

Roosevelt's successor, Harry Truman, visited Eglin Air Force Base; and President Kennedy was later a first-hand observer of the Air Force's largest reservation.

But today we are honored by Vice President Gerald Ford, here for annual Pensacola Area Chamber of Commerce festivities.

We welcome the distinguished Vice President to our corner of the world, so far removed from the turmoil that surrounds White House '74. Indeed, he comes here young in the No. 2 office but experienced and honored as a Michigan congressman; a former House minority leader who seemingly was acceptable to all when President Nixon made his selection from legislative ranks for the office vacated by Spiro Agnew.

We assume Pensacolians and West Floridians in general will receive Vice President Ford warmly, viewing his presence in the national executive posture as some form of hope and substance from the long-lingering stains of Watergate. Ford will be in friendly, conservative country, West Florida having voted overwhelmingly for Richard Nixon in 1972.

And while President Nixon's popularity may be waning, or at least his supporters here befuddled and confused in the light of Watergate and those terrible, skin-stripping transcripts of tapes, Mr. Ford seems to be generally perceived here as a man of honesty and integrity.

He appears unmarred by Watergate, and quite possible could be the next President of the United States—one way or the other. His appearance here, as others throughout the nation, could be viewed as testing presidential waters, or at least bringing with him a message of comfort for all—Republicans and Democrats alike—who are bone-tired of the long string of horrors sifting out of the Potomac.

Also, Mr. Ford is not quite a stranger here. Last year, during one of the largest and most impressive Chamber of Commerce testimonial dinners for Congressman Bob Sikes, Gerald Ford was here for words of tribute along with House Speaker Carl Albert, Navy and Army executives and other Washington headliners. He spoke fondly of Congressman Sikes of Crestview, dean of Florida's delegation, a view returned on occasion by West Florida's own fondly-christened old "he-coon." Sikes and Mr. Ford have worked closely in the House of Representatives, both sharing conservative philosophies on major issues regardless of opposing party label.

Mr. Ford continues those qualities of gentlemanliness, consideration and courtesy most West Floridians desire in their elected leaders; qualities, we might add, notably lacking in those blasted transcripts from behind closed White House doors.

So, Gerald Ford is a fresh breeze from Washington on this evening when hundreds of Chamber members preview the past year and launch anew programs desperately awaiting implementation in our community. We are certain his reception here will be befitting the man, his achievements and the giant office he holds. We are sure that many attending the Chamber dinner tonight will find a measure of reassurance from a popular former congressman who is only a heartbeat away from the Presidency.

He deserves our welcome; he deserves the traditional friendly West Florida reception and good wishes for the days ahead.

Mr. Ford deserves nothing less.

Welcome, Mr. Vice President.

#### STRIP MINING BILL TOO WEAK

(Mr. HECHLER of West Virginia asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

Mr. HECHLER of West Virginia, Mr. Speaker, the bleeding hills of Appalachia will be further ripped and torn, and the virgin plains of the West will be raped by the strippers under the terms

of the bill just reported by the House Interior and Insular Affairs Committee.

Despite noble efforts by Representative PATSY MINK, Democrat of Hawaii, and Representative JOHN SEIBERLING, Democrat of Ohio, the committee has produced a woefully weak compromise filled with the kind of loopholes the coal and utility lobbyists have written into State strip-mine regulation for the past 30 years. For over a year, the Nixon administration and its allies in the coal industry have joined hands with a majority of the Interior Committee and danced a deadly minuet to produce a watered-down bill.

#### FALSE HOPES AND EMPTY PROMISES

H.R. 11500 spells false hopes and empty promises for thousands of people in the mountains and on the Great Plains. Enforcement power is given primarily to the States, whose regulatory track record is dismal. The production-oriented Department of the Interior is given some nominal authority, freezing out the Environmental Protection Agency, which has a little more backbone and experience in water quality control. Instead of requiring that strip mining must maintain water quality, it is suggested in section 210(b)(14) that operations "minimize the disturbances to the hydrologic balance at the minesite and in associated offsite areas and to be the quality and quantity of water." In section 210, the committee also failed to provide adequate protection of the coal seam aquifers and alluvial valley floors in the West. According to section 210(b)(6), erosion is to be controlled "as effectively as possible"—whatever that means.

For the first 40 months after the bill is enacted, even weaker "interim standards" apply in section 201, thus inviting a virtually unregulated coal rush before somewhat stricter standards go into effect over 3 years hence. The only really good features of the bill are the strip ban in national forests and fairly strong citizen participation provisions which mandate public hearings and citizen suits. Yet the weak "reclamation" standards mean that Congress is placing all the responsibility on the poor citizen in the hollow to go out and fight his own battles against the well-heeled legal talent of the coal company and its newest parent-in-law, the oil corporation.

#### SEIBERLING AMENDMENT SCUTTLED

With eight times as much coal which can be deep-mined as stripped with present technology, you would think the Interior Committee would act to meet the energy needs by encouraging deep mining. The Seiberling amendment attempted to do precisely that, by equalizing the disparate costs of deep and strip mining through a \$2.50 per ton tax on which rebates favored deep mining operations. The western stripping interests teamed up with the profiteering lobbyists everywhere to scuttle the Seiberling amendment in the closing days of the committee debate. The Jones amendment was adopted with a drastically lowered tax tied to Btu content which favored western strip-mining at the expense of eastern deep mining, thus spurring the pell-mell coal rush westward.

There are several villains in this

drama—including the administration lobbyists who threw their weight in on the side of the coal and utility interests attempting to weaken the bill. You would think the administration would have the guts to stand up for the public interest which the taxpayers assume that public servants should be protecting. Carl E. Bagge, president of the National Coal Association is paid handsomely to maximize already-fat profits for the coal industry. When Mr. Bagge contends, as he did in a May 1 statement that H.R. 11500 will "allow the surface coal mining industry to bleed to death in 2 or 3 years instead of sentencing it to immediate strangulation," he is telling what I bluntly label a lie. When Mr. Bagge contends, as he did in the same statement, that the House bill "would make surface mining impossible in much of Appalachia" and "would also wipe out most surface mining in the West," he is telling an absolute untruth and he knows it.

#### FADED ROSE OR SKUNK CABBAGE?

To make it worse, Mr. Bagge is acting very much like a hypocrite. Having succeeded in weakening H.R. 11500 up and down the line, Mr. Bagge is now playing the game of painting this faded rose as a skunk cabbage in hopes that he can get the bill weakened even further on the floor of the House. He secretly hopes that if he labels the bill as prohibitive, and I label the bill as too weak, then Representative MORRIS K. UDALL might be inspired to claim that the only reasonable middle course between extremes is to enact H.R. 11500.

For hundreds of thousands of Americans, it would be a disaster to enact H.R. 11500. The bill raises false hopes that it can provide the coal to meet the Nation's needs without destroying valuable topsoil, causing silt sediment and acid to pour into streams, disrupting aquifers and other sources of water, irreparably ripping up the land, and bringing more fear and despair to many thousands of people in strip mined areas. I will fight this bill. I will continue to fight against the exploitation of land and people. I will fight to strengthen the bill by restoring the Seiberling amendment. Then, I will fight it by attempting to phase out the strip mining of coal entirely within 6 months in mountainous areas and within 18 months in relatively flat areas.

#### WHEN DID THE PRESIDENT KNOW?

(Mr. WAGGONER asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

Mr. WAGGONER. Mr. Speaker, the national press and networks are engaged in reporting on the transcripts of the President's taped conversations, often with journalists' own views analyses. It would appear from most of the newspapers and television I have seen that these reports are critical.

Therefore, I was interested to read recently in the Wall Street Journal a very perspective story by Jude Wanniski making several important arguments in favor of the President. In order that my colleagues may have the benefit of Mr.

Wanniski's thoughtful research and comment I ask unanimous consent to have his May 3 Wall Street Journal article printed in the RECORD at this point.

#### WHEN DID THE PRESIDENT KNOW?

(By Jude Wanniski)

As the Ervin Committee hearings rolled on and on last summer, time and again Senator Baker would refocus the audience's attention on the questions, "What did the President know and when did he know it?" Yet now, with voluminous evidence of the President's knowledge suddenly available, few people have yet paid much attention to Senator Baker's presumably crucial question.

The focus so far has been elsewhere, for quite understandable reasons. The President warned the transcripts would be embarrassing to him, and they are. Especially at first reading, as the reader flinches with embarrassment for the President—the cocky Nixon, way ahead in the polls on election eve, Watergate supposedly disposed of as an issue, talking of putting the screws to his enemies in his second term. And there is all that outrageous brainstorming about how to handle Hunt's blackmail threat, Mr. Nixon's worst moments in these 1,308 pages.

But if the reader persists, and especially upon selected rereadings, the importance of Senator Baker's question reasserts itself. The reader is wrenched out of the present back into the Nixon mind of a year ago, beginning to realize that the President then did not know as much about Watergate as the average informed American knows today. Once the reader grasps that fact, he is far less embarrassed for the President, just as the reader who has been told the outcome of a mystery story at the outset cannot feel disdain for the detective who seems slow to put the pieces together.

A great part of the drama of the transcripts, indeed, is watching the President stumble on revelation after revelation about Watergate, seeing this lawyer gradually learn the meaning of the words "obstruction of justice," watching him reach for reassurance that he could rely on the aides he was trusting to investigate. The record may show executive weakness, misplaced loyalty, character faults and even a certain startling naivete. But in answer to Senator Baker's question, the transcripts show the President surprisingly uninvolved.

Some of the first revelations came in the meeting with John Dean on March 13. At this point, it's clear, the President thought his problem was with the Ervin Committee, the press, the defeated anti-Nixonites of 1972, and that he was fighting a political public-relations battle. The talk is of what new revelations may come out of the Ervin hearings:

D: They would want to find out who knew.

P: Is there a higher up? D: Is there a higher up? P: Let's face it, I think they are really after Haldeman.

D: Haldeman and Mitchell. . . .

P: In any event, Haldeman's problem is Chapin isn't it? . . . D: Chapin didn't know anything about the Watergate. P: Don't you think so? D: Absolutely not.

P: Strachan? D: Yes. P: He knew? D: Yes. P: About the Watergate? D: Yes. P: Well, then, he probably told Bob. He may not have. . . .

P: But he knew? He knew about Watergate? Strachan did?

D: Yes. P: I will be damned! Well that is the problem in Bob's case. Not Chapin then, but Strachan.

A few days later, in the March 17 telephone call from Mr. Dean, the President learns of the Ellsberg burglary:

D: The other potential problem is Ehrlichman's and this is—P: In connection with Hunt? D: In connection with Hunt and Liddy both. P: They worked for him?

D: They—these fellows had to be some idiots as we've learned after the fact. They went out and went into Dr. Ellsberg's doctor's office and they had, they were geared up with all this CIA equipment. . . .

P: What in the world—what in the name of God was Ehrlichman having something (unintelligible) in the Ellsberg (unintelligible)? D: They were trying to—this was part of an operation that—in connection with the Pentagon papers. They were—the whole thing—they wanted to get Ellsberg's psychiatric records for some reason, I don't know.

P: This is the first I ever heard of this. I (unintelligible) care about Ellsberg was not our problem. D: That's right. P: (expletive deleted).

By the March 21 meeting, of course, the Ellsberg burglary had become the centerpiece of the "blackmail threat" from Hunt, and this leads to all the agonized brainstorming. But even at this point, the President seems to view his problems as merely those of public relations. At one point he stumbles over the words "obstruction of justice." And he thinks if necessary the problems at the White House can be solved by simple disclosure.

P: So what you really come down to is what we do. Let's suppose that you and Haldeman and Ehrlichman and Mitchell say we can't hold this? What then are you going to say? What are you going to put out after it? Complete disclosure, isn't that the best way to do it? D: Well, one way to do it is—P: That would be my view.

By March 27, the President learned from Mr. Haldeman that Mr. Mitchell may in fact be guilty, but had trouble believing it.

H: The more he thinks about it, the more O'Brien comes down to Mitchell could cut this whole thing off, if he would just step forward and cut it off. He said the fact of the matter is as far as Gray could determine, Mitchell did sign off on it. And if that's what it is, the empire will crack.

E: You said, "Gray." P: What's that? I am sorry. H: O'Brien, not Gray. As far as O'Brien can determine Mitchell did sign off and Dean believes that to be the case also. . . . [a long explanation follows].

P: What I can't understand is how Mitchell would ever approve. H: That's the thing I can't understand here. . . . H: [according to Dean] Liddy told Kleindienst that Mitchell had ordered it. P: Oh. . . .

P: You know Mitchell could be telling the truth and Liddy could be too. Liddy just assumed he had abstract approval. Mitchell could say, "I know I never approved this damn plan."

In the same conversation with Mr. Haldeman and Mr. Ehrlichman, the President worries about being told what is going on, and concludes Charles Colson is probably innocent.

P: Colson in that entire period, John didn't mention it. I think he would have said, "Look we've gotten some information," but he never said they were. Haldeman, in this whole period, Haldeman I am sure—Bob and you, he talked to both of you about the campaign. Never a word. I mean maybe all of you knew but didn't tell me, but I can't believe that Colson—well—

By April 14, the President is recalling his March 21 conversation with John Dean, and wondering about the legal status of money payments to defendants.

P: I said, John, "where does it all lead?" I said, what's it going to cost? You can't just continue this way. He said, "About a million dollars." (Unintelligible) I said, John, that's the point. (Unintelligible) Unless I could get them up and say look fellows, it's too bad and I give you executive clemency like tomorrow, what the hell do you think, Dean. . . . The word never came up, but I said, "I appreciate what you're doing." I knew it was for the purpose of helping the poor bastards through the trial, but you

can't offer that John. You can't—or could you? I guess you could. Attorneys' fees? Could you go a support program for these people for four years?

E. I haven't any idea. I have no idea. P. Well, they have supported other people in jail for years. E. Sure, the Berrigan brothers. P. Huh? E. I say, I don't know how the Berrigan brothers and some of those—P. They all have funds. . . . E. So that they—P. But not to hush up. E. That's right. P. That's the point

And by the same date, the President has learned something about obstruction of justice:

P. We did not cover up, though, that's what decides, that's what decides . . . if three of us talk here, I realize that frankly—Mitchell's case is a killer. Dean's case is the question. And I do not consider him guilty. Now that's all there is to that. Because if he—if that's the case, then half the staff is guilty.

E. That's it. He's guilty of really no more except in degree. P. That's right. Then others. E. Then a lot of

P. And frankly then I have been since a week ago, two weeks ago.

E. Well, you see, that isn't, that kind of knowledge that we had was not action knowledge, like the kind of knowledge that I put together last night. I hadn't known really what had been bothering me this week. P. Yeah. E. But what's been bothering me is

P. That with knowledge, we're still not doing anything. E. Right. P. That's exactly right. The law and order. That's the way I am. You know it's a pain for me to do it—the Mitchell thing is damn painful.

The next day, the President has the fateful visit from Attorney General Richard Kleindienst, who has been up late with prosecutors briefing him on their talks with John Dean and Jeb Stuart Magruder:

K. Magruder's conversations and John's conversations with attorneys, with every absolute certainty that Magruder's going to be put on before the Grand Jury. P: Are they going to call him back? K: Yeah. P: Oh, of course, because he's going to plead guilty. K: He's going to plead guilty and he's going to tell everything he knows.

P. Sure.

K. That kind of information is not going to remain confidential.

P. As you now, the—we have no—I have not and I would not try to get information from the Grand Jury, except from you. K. Right. P. And we have not. But the reason—the reason that I am aware about the Dean thing—I have taken Dean off the matter, of course. I had to. As far as what he was reporting here at the time. I put Ehrlichman on. . . .

P. Except that Magruder may—you can't tell, in his view, that you can believe everything Magruder says because Magruder's apparently got a—K. Got a self-interest involved. P. He's got his self-interest and you don't know whether he's going to drag this fellow or that fellow or whatever the hell is. You know that's the trouble when a guy starts lying and, you know—I mean—wondering whether Magruder is telling the whole truth on John Mitchell—you know, Mitchell—have you talked to Mitchell?

K. No and I'm not going to. I don't think that I can talk to him. P. I think you should know, Mitchell insists—I didn't talk to him. You know, I have never asked him. Have you ever asked him? K. No sir. We have never discussed the matter. P. I never have either. I asked Bill Rogers about that. I said, Bill, should I ask him? No, John Mitchell. And so I asked Ehrlichman. I said, now I want you to ask him. . . .

K. The basic problem that—it's possible that Dean might testify to, what Magruder will testify to, and then you've got Strachan or somebody like that. He was on Haldeman's staff. There is a possible suggestion that

Haldeman and Ehrlichman ah, as yet—it looks that way—whether there is legal proof of it so far as that—that they.

P. Indicating what?

K. Well, knowledge in this respect, or knowledge or conduct either before or after the event. But that in any event, whether there's—

P. Both Haldeman and Ehrlichman? K. Yes. . . .

P. I have asked both Haldeman and Ehrlichman. K. I know you have. P. and they have given me absolute—you know what I mean. You can only—it's like, you'd believe John Mitchell. I suppose, wouldn't you? I don't believe Haldeman or Ehrlichman could ever—you know—(unintelligible) hurt to be so close to people and yet I think of—

Mr. Kleindienst recommended that the President put Assistant Attorney General Henry Petersen in charge of the investigation, and Mr. Nixon and Mr. Petersen met that afternoon. The White House has said their conversation was unrecorded. The new transcripts do show, however, that on the evening of April 15, the President and Mr. Petersen talked by phone from 8:14 to 8:18, from 8:25 to 8:26, from 9:39 to 9:41 and from 11:45 to 11:53. In the last conversation, the President said:

P. Let me say this. The main thing we must not have any question, now, on this, you know I am in charge of this thing. You are and I am. Above everything else and I am following it every inch of the way and I don't want any question, that's of the fact that I am away ahead of the game. You know. I want to stay one step ahead of the curve. You know what I mean?

Perhaps Senator Baker's question, which seemed so relevant back last summer, is not the relevant question today. But if impeachment proceedings go forward, it will become the relevant one again. The Congress is a body of lawyers. While as Congressmen, politicians or partisans they may want to be rid of this President, the lawyers under their skins will not let them do it without the clear legal basis Senator Baker's question suggests.

Especially in this light, the most damaging revelations in the transcript go to the question of whether or not Mr. Nixon authorized a blackmail payment or payments on March 21. A point that bears heavily in the President's favor should not be overlooked: The context of the conversation was that if further payments were to be made, someone would have to go out and raise the money. There was no question of whether money in hand should be turned over to Mr. Hunt. If the President intended the payment to go forward, surely the meeting would not have ended without resolving the important question of where the money was to come from.

The total weight of these transcripts, moreover, hangs in the President's balance. During the past year or more, a small minority of Americans have believed he was involved in the planning of the burglary. The transcripts quickly made it obvious he was not. A majority of Americans have believed that he must have known about the cover-up, if not having masterminded it. The transcripts indicate he did not begin sensing the full dimensions of the cover-up until mid-April 1973, and that he had only had bits and pieces of the story in March of that year, when John Dean began to spill the beans.

This is why the President will not be impeached. He may not be "innocent," but he is a thousand times "less guilty" than the people have imagined him to be.

Mr. Wanniski is a member of the Journal's editorial page staff.

#### THE RIGHT STEPS

(Mr. WAGGONER asked and was given permission to extend his remarks

at this point in the RECORD and to include extraneous matter.)

Mr. WAGGONER. Mr. Speaker, I saw an article in the San Francisco Chronicle for Saturday, May 11, quoting Rev. Billy Graham on one subject of Watergate, which I would like to share with my colleagues.

Reverend Graham's views are certainly worth heeding. Not only should we pray that the House Judiciary Committee and the President take the right steps, I would also pray that the Congress itself takes the right steps. I ask that the above mentioned article follow my remarks at this point:

#### GRAHAM'S VIEW OF SCANDAL

NEW YORK.—Evangelist Billy Graham said yesterday that the Watergate affair has put America in a grave situation.

He urged prayers that both the House Judiciary Committee and President Nixon will take the right steps.

Graham, a long-time friend of Mr. Nixon, said of the present circumstances facing the President:

"I think from knowing him, if he's the same man I used to know, I think he will put what's best for the country above everything else. I think he will look at it from the long view, the historical view, and do what he thinks best to protect the presidency and the country."

Graham paused, and added, "I hope that's going to be his position. The Nixon I know has a great love of country, a great dedication to it."

"We ought to pray for the country," he said. "We ought to pray for the Judiciary Committee, that God will give it wisdom. We ought to pray for the President, that he will be given the wisdom to do what God wants him to do."

With the committee launching its impeachment inquiry and Mr. Nixon under new political pressures to leave office, the evangelist said "the whole country is facing a very serious situation" in regard to its influence in the world.

Events and problems move ahead "and the situation in Germany, Britain, France and elsewhere demand strong American leadership," he said in a telephone interview from Phoenix, where he is holding a week's crusade.

The evangelist said that, because of the heavy schedule of his crusade, in which he is preparing a new sermon for each night, he has not read the transcripts of White House conversations released by Mr. Nixon and won't comment in detail until he does.

However, in regard to the numerous "expletives" deleted from the text, Graham said:

"It's not the language I've ever heard him use. However, around me, most presidents have been careful in their use of profanity. It's like when I go in a locker room, somebody says, 'Shhh, here comes Billy Graham.' Most people's talk around a clergyman is a little different."

However, he added, "The Lord is listening all the time. The Lord has got his tape recorder going from the time you're born until you die. He not only knows what you say, but your thoughts and intents. And all these are going to be brought to light in the judgment."

Associated Press.

#### RULING ON U.S. POSTAL REDEPLOYMENT PROGRAM

(Mr. BUCHANAN asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

Mr. BUCHANAN. Mr. Speaker, I am pleased to inform the House that Judge James H. Hancock in the U.S. District Court for the Northern District of Alabama has, in two instances, granted our plea, the plea for injunctive relief, on behalf of postal users throughout the United States against the U.S. Postal Service sought by me and our colleagues JOHN DUNCAN of Tennessee and SAM STEIGER of Arizona.

Pending a final hearing, Judge Hancock's order prohibits the Postal Service from further implementation of the consolidation and elimination of postal districts throughout the United States and the further implementation of the facilities deployment or retail analysis program.

Judge Hancock clearly established in his ruling the principle that in this Government of the people, by the people, for the people, citizens have a right to the review and hearing process proscribed by law in section 3661 of the Postal Reorganization Act of 1970 before the Postal Service implements nationwide changes affecting services to them as postal users.

While this is but the first battle in our legal fight for the rights of the people, Judge Hancock has made a vital ruling in their defense in this landmark case. His ruling follows:

[In the U.S. District Court for the Northern District of Alabama, Southern Division, CA74-H-407-S]

JOHN H. BUCHANAN, JR., JOHN J. DUNCAN and SAM STEIGER, individually and on behalf of Postal Users throughout the United States, Plaintiffs, versus the U.S. Postal Service, an independent establishment of the executive branch of the U.S. Government; E. T. Klassen, Postmaster General of the United States; and Francis Sutton, Acting Supervisor of the Birmingham, Ala., Post Office, defendants.

#### ORDER

This cause came on to be heard at a hearing before the court on May 11, 1974, on the request of plaintiffs for a temporary restraining order and on the prayer for a preliminary injunction contained in the amended complaint. The issues were submitted on the verified complaint as amended, affidavits, exhibits, depositions, oral testimony elicited at the hearing on May 11, 1974, and oral argument of counsel. The court has considered the matter and, for the reasons expressed in the Memorandum of Decision dated May 14, 1974, attached hereto, is of the opinion that the following injunctive relief should be granted.

Accordingly, it is ordered, adjudged and decreed that defendant United States Postal Service, defendant E. T. Klassen, defendant Francis Sutton, and their officers, agents, servants, employees, attorneys, and all persons acting on their behalf, as well as all persons in active concert or participation with them who receive actual notice of this order, are hereby restrained and enjoined:

(1) from all further actual implementation of any plan, program, or policy of reorganization which seeks to consolidate the administrative or policymaking functions of any Postal District in the United States with those of any other Postal District, and from any further elimination, transfer or consolidation of any Postal District in the United States pursuant to any plan, program, or policy which has not been submitted to the Postal Rate Commission pursuant to 39 U.S.C. § 3661;

(2) from all further actual implementation of the postal facilities' deployment program, or any program or methodology based

on a retail market analysis, as applied to any existing post office, branch office or station in any manner that could have the effect of relocating, downgrading or eliminating such post office, branch office or station or of reducing in any manner the postal services offered to postal users at these facilities or of changing the form in which or the hours during which these postal services are offered, provided that the development of any such program or methodology shall not be affected by the terms of this order, and provided further that the use of any data collected pursuant to such development of the program or methodology where such data is used in effecting changes which are occasioned by events not within the reasonable control of defendants, shall not be affected by the terms of this order.

It is further ordered that as to that part of the amended complaint directed toward the national bulk mail system program the prayer for a preliminary injunction and the request for a temporary restraining order are hereby denied.

It is further ordered that, before the injunction herein contained shall be effective, plaintiffs shall give as security a good and sufficient bond in the amount of Five Hundred and no/100 Dollars (\$500.00) for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained, such bond to be approved by the court or by the Clerk of the court.

It is further ordered that this order shall continue in full force and effect pending an order entered on final hearing of this cause or pending further order of this court.

DONE at 11:00 o'clock, A.M., this 14th day of May, 1974.

JAMES H. HANCOCK,  
U.S. District Judge.

[In the U.S. District Court for the Northern District of Alabama, Southern Division, CA74-H-407-S]

JOHN H. BUCHANAN, JR., JOHN J. DUNCAN, and SAM STEIGER, individually and on behalf of postal users throughout the United States, plaintiffs, versus the U.S. Postal Service, an independent establishment of the executive branch of the U.S. Government; E. T. Klassen, Postmaster General of the United States; and Francis Sutton, Acting Supervisor of the Birmingham, Ala., Post Office, defendants.

#### MEMORANDUM OF DECISION

This action for injunctive relief was filed on April 30, 1974, and immediately thereafter counsel for plaintiffs presented to the court their request for the issuance of a temporary restraining order. Since the Department of Justice is required by 39 U.S.C. § 409(d) to furnish defendant United States Postal Service with legal representation, the United States District Attorney for the Northern District of Alabama, upon request of the court, attended the informal presentation. The court concluded that the request for a temporary restraining order, as well as the prayer for a preliminary injunction contained in the complaint, should be set down for hearing at the earliest possible date and scheduled such hearing for May 7, 1974. By order entered May 2, 1974, the hearing was continued until May 11, 1974. On May 7, 1974, plaintiffs filed their First Amendment to the Complaint which amendment in essence adds an additional factual basis upon which plaintiffs seek relief. All defendants were duly served with a copy of the original complaint and this court's order of April 30, 1974, on or before May 2, 1974.

This matter came on for hearing as scheduled in Birmingham, Alabama, on May 11, 1974. Present on behalf of plaintiffs were William G. Somerville, Jr., John E. Grenier and John Tally, all of Birmingham, Alabama. Present on behalf of all defendants were

Henry I. Frohsin, Assistant United States Attorney, Birmingham, Alabama, and Jack T. DiLorenzo, Assistant General Counsel, Opinions Division, Law Department, United States Postal Service, Washington, D.C. At the commencement of the hearing, plaintiffs filed a Second Amendment to the Complaint which has the effect of adding as plaintiffs John J. Duncan and Sam Steiger, individually and on behalf of the putative class John H. Buchanan, Jr. seeks to represent.

Following the hearing and argument of counsel associated therewith, the court left the record open until noon on May 13, 1974, to permit the parties to file additional affidavits, depositions, documents and briefs which the parties felt should be considered by the court. The record has now been closed and the request for interlocutory injunctive relief has now been submitted to the court on the verified complaint; the verified First and Second Amendments to the Complaint; the affidavit of Carl C. Ulsaker attached to defendants' Motion to Dismiss; the affidavit of Edgar S. Brower; the affidavit of H. J. Welch; the affidavit of Henry Frohsin; the certified copies of certain news releases filed on May 11, 1974; the deposition of Edward V. Dorsey and all exhibits thereto; the deposition of Carl C. Ulsaker; the exhibit detailing the Retail Network Analysis; documents delivered to the court which, at the request of defendants, have been sealed to the extent that they are to be available only to all counsel and the court; a letter to Postmaster General Klassen, dated April 2, 1973, which was among certain documents defendants submitted to the court for an *in camera* examination with a claim for a 5 U.S.C. § 552 (b) privilege which, as to this letter, the court is denying and directing that it be filed herein; and the evidence adduced in open court on May 11, 1974. After full consideration thereof, the court proceeds to issue this memorandum of decision which, pursuant to Federal Rules of Civil Procedure, Rule 52, will contain the court's findings of fact and conclusions of law.

This action by plaintiffs Buchanan, Duncan and Steiger, individually and as a Federal Rules of Civil Procedure, Rule 23(b) (2) class action on behalf of postal users throughout the United States challenges three proposed postal service programs of defendant United States Postal Service (hereinafter sometimes referred to as the "Postal Service"). The amended complaint alleges that the first of these programs (hereinafter referred to as the "Postal District consolidation and elimination program") will consolidate and eliminate all 86 Postal Districts throughout the United States. The amended complaint alleges that the second program (hereinafter referred to either as the "retail analysis program" or the "postal facilities' deployment program") involves major changes in the location, nature and number of post office facilities in 26 cities throughout the nation. The amended complaint alleges that the third program (hereinafter referred to as the "national bulk mail system program") involves the construction, as a cost of over one billion dollars, of 21 bulk mail centers and 12 auxiliary service facilities spaced throughout the nation.

Primarily the amended complaint seeks to enjoin the further implementation of these programs until (1) the Postal Service has submitted the programs to the Postal Rate Commission pursuant to 39 U.S.C. § 3661, (2) the hearing required by such Section 3661 has been completed, and (3) the Postal Rate Commission issues the opinion required by such Section 3661. The Postal Service does not claim that it submitted a proposal to the Postal Rate Commission embodying any of the alleged changes which are the subject of this action. Rather

Footnotes at end of article.

it takes the position that it is not proposing any "change in the nature of postal services which will generally affect service on a nationwide or substantially nationwide basis" and hence is not required to make a submission to the Postal Rate Commission.

The principal issues thus arising by the amended complaint are:

(1) What changes, if any, are being proposed by the Postal Service?

(2) Are any such changes a "change in the nature of postal services which will generally affect service on a nationwide or substantially nationwide basis" and thus embraced by 36 U.S.C. § 3661?

(3) Do plaintiffs Buchanan, Duncan and Steiger, either individually or on behalf of the putative class, have standing to sue if such Section 3661 has not been satisfied?

The issues raised by the instant request for interlocutory injunctive relief are:

(1) Is there a substantial likelihood that plaintiffs will prevail on the merits?

(2) Is there a substantial threat that plaintiffs will suffer irreparable injury if interlocutory injunctive relief is not granted?

(3) Does the threatened injury to plaintiffs outweigh the threatened harm the injunction may do to defendants?

(4) Will the granting of a preliminary injunction disserve the public interest?

The Postal Reorganization Act of 1970<sup>2</sup> expressly authorized the Postal Service to be sued in its official name (39 U.S.C. § 401) and vests the United States district courts with jurisdiction to hear such a suit (39 U.S.C. § 409). Moreover, 28 U.S.C. § 1339 gives the district courts jurisdiction of any civil action arising under any Act of Congress relating to postal service. Thus, subject to the plaintiffs having the requisite standing to sue and hence presenting the necessary case or controversy for adjudications, this court has jurisdiction of the matters presented by the complaint.

Since members of the public who do not have sufficient nexus with the challenged agency action do not have standing to sue, a threshold inquiry in actions of the kind involved here is to determine the answer to the following two questions:

(1) Have the plaintiffs demonstrated by the amended complaint that the challenged agency action has caused them some injury in fact, economic or otherwise?

(2) Is the interest sought to be protected by the plaintiffs within the scope or zone of interest that the statute (39 U.S.C. § 3661) seeks to protect.

Only if the answer to both of these questions is in the affirmative do the plaintiffs have standing to sue.

Prior to the adoption of the Postal Reorganization Act of 1970, major changes in postal service and changes in postal rates resulted only by Congressional action. This necessarily subjected such changes to careful public scrutiny as the proposed changes traveled their way through both houses of Congress. The right of the public to express its views in a meaningful way prior to the implementation of such changes was not only by public committee hearings but also through the very nature of our representative form of government. Thus the Post Office Department, prior to 1970, was structured to be responsible to the American public.

In adopting the Postal Reorganization Act of 1970<sup>3</sup> it is clear that Congress intended generally to give the Postal Service broad powers and wide discretion in its operations and to remove such operations in large measure from the public and political pressures inherent in the old Post Office Department being replaced.<sup>4</sup> It is equally as clear, however, that on major changes in postal service or changes in rates Congress intended to retain for the public a right to be heard

so that the Postal Service would be responsive to the public and the public would have assurance that any major changes in postal service or changes in rates would conform to the basic policies established in the Postal Reorganization Act of 1970. Thus Congress provided as follows:

"§ 3661. Postal services

"(a) The Postal Service shall develop and promote adequate and efficient postal services.

"(b) When the Postal Service determines that there should be a change in the nature of postal services which will generally affect service on a nationwide or substantially nationwide basis, it shall submit a proposal, within a reasonable time prior to the effective date of such proposal, to the Postal Rate Commission requesting an advisory opinion on the change.

"(c) The Commission shall not issue its opinion on any proposal until an opportunity for hearing on the record under sections 556 and 557 of title 5 has been accorded to the Postal Service, users of the mail and an officer of the Commission who shall be required to represent the interests of the general public. The opinion shall be in writing and shall include a certification by each Commissioner agreeing with the opinion that in his judgment the opinion conforms to the policies established under this title."<sup>5</sup>

While a simple reading of such Section 3661 should be sufficient to demonstrate that, with regard to major changes in postal service and rate changes, Congress intended to assure that the Postal Service being created would be responsive to the public, a review of House Report (Post Office and Civil Service Committee) No. 91-1104, May 19, 1970, accompanying H.R. 17070 will dispel all doubt on this vital point. After discussing procedure substantially as subsequently enacted in Section 3661, the House Report concludes:

"The procedures just described represent significant innovations that should materially enhance the responsiveness of the Postal Service to the American public."<sup>6</sup>

It is impossible to conclude otherwise than that Congress intended by Section 3661 to give to each member of the public a right and opportunity to be heard before "changes in the nature of postal services which will generally affect service on a nationwide or substantially nationwide basis" would be implemented. Further proof of this intent is found in the general elimination (39 U.S.C. § 410) of the applicability of the Administrative Procedure Act to the Postal Service but the express provision in Section 3661 that the public's opportunity for a hearing on the record in accordance with the Administrative Procedure Act would remain where changes of the magnitude embraced in Section 3661 were being considered.

In the light of this general background, it is now appropriate to consider the answers to the two questions earlier posed which must be answered in the affirmative if plaintiffs have standing to sue.

The agency action challenged by this suit is the admitted failure of the Postal Service to submit to the Postal Rate Commission, prior to implementation, alleged changes in the nature of postal services which will generally affect service on a nationwide or substantially nationwide basis. If changes of the magnitude contemplated by 39 U.S.C. § 3661 are being implemented, then plaintiffs Buchanan, Duncan and Steiger, individually and the putative class they seek to represent, namely, all postal users throughout the United States, are being denied a very fundamental right—the opportunity for a hearing on the proposed change.<sup>7</sup> The denial of this statutory right is alone a sufficient injury in fact to support the requisite standing to sue. This injury is compounded, however, by the denial to plaintiffs of the expertise of the bi-partisan, five member Postal Rate Commission which Section 3661

requires must render an advisory opinion<sup>8</sup> on the proposed changes. Moreover, Section 3661 requires each member of the Postal Rate Commission individually to certify that he agrees with the advisory opinion and that in his judgment the opinion conforms to the policies established under the Postal Reorganization Act of 1970, thus requiring the advisory opinion to be a unanimous opinion of the Postal Rate Commission. In light of the Congressional history surrounding Section 3661, it is clear that this public hearing provision was to make the Postal Service responsive to the people it served. The interest sought to be protected by plaintiffs, i.e., a public hearing before the Postal Rate Commission, is completely within the scope or zone of interest that Section 3661 seeks to protect. The court therefore concludes that plaintiffs Buchanan, Duncan and Steiger, individually, have the requisite standing to sue. Moreover, to the extent that the court later determines that this action may be maintained as a class action under Rule 23, the court is of the further opinion that the named plaintiffs, on behalf of the appropriate class, also have the requisite standing to sue.

The court now turns its attention to a determination from the record before it at this time, albeit an incomplete record, of just what changes, if any, are being proposed by the Postal Service. The parties should be aware that the factual findings herein contained are for the purpose of the instant matter under consideration and that the court will not hesitate to alter such findings if later determined to be incorrect after a development of a full record.

While the Postal Reorganization Act of 1970 was enacted August 12, 1970, the Postal Service created thereby did not come into existence until July 1, 1971. During the intervening months, the Post Office Department, under the leadership of Postmaster General Blount, proceeded to develop an organizational structure with which the Postal Service would commence business on July 1, 1971. Among other things, this structure eliminated the then existing 15 Postal Regions, established 5 new Postal Regions in lieu thereof, and established 86 separate Postal Districts throughout the country within the 5 Postal Regions. Thus, when the Postal Service came into existence it inherited, and began business with 5 Postal Regions and 86 Postal Districts.<sup>9</sup>

Postmaster General Blount became the first chief executive officer of the Postal Service and guided it during its early months. Shortly after Postmaster General Klassen became chief executive officer in January of 1972, he began a review of the existing programs of the Postal Service to determine whether these programs should be continued or discontinued. The review necessarily led to a consideration of new programs also. Either as a result of this comprehensive review or otherwise, decisions were made as hereinafter indicated.

In early 1972 Postmaster General Klassen reaffirmed the earlier decision of Postmaster General Blount<sup>10</sup> to construct and place into operation, at a cost of hundreds of millions of dollars, 21 bulk mail facilities throughout the country and to modify 12 existing post offices throughout the country to serve as auxiliary service facilities for a national bulk mail system. Only one of the 21 new bulk mail facilities has now been completed with the remaining 20 to be completed, and the entire system placed into operation on July 1, 1975. The system is primarily a mail handling system designed to consolidate bulk mail in geographical areas and to move it among the areas on a scheduled (nightly) basis with damage to parcels reduced to an acceptable level, all at a minimum of costs. It is intended to reduce substantially the handling and rehandling of bulk mail and to provide a more consistent or predictable time of delivery, i.e., instead of a delivery time from the West Coast to the East Coast of between

Footnotes at end of article.

four to twenty days, the system is designed to establish this time at a consistent eight-day period.

During the summer of 1972, Postmaster General Klassen approved a program which authorized the five Regional Postmasters General to reorganize their regions by eliminating or consolidating the Postal Districts in their regions.<sup>11</sup> Apparently the object of this program is to eliminate down to approximately ten, if not entirely, the 86 Postal Districts with which the Postal Service began business on July 1, 1971. This program has thus far been implemented by the elimination of eight, or possibly ten, of these districts. It is apparent that this program has the strong backing of the Senior Assistant Postmaster General for Operations, and it is therefore logical to assume that its implementation throughout the nation will accelerate.<sup>12</sup> A Postal District is a geographical area over which the District Manager and his support personnel (quite limited in number) exercise the combined function of policy makers and decision makers with regard to the operations of the Postal Service in the particular Postal District. This includes deciding (or reviewing) questions regarding decisions relating to the implementation of the retail analysis program (postal facilities' deployment program) hereinafter discussed.

In January of 1973, Postmaster General Klassen authorized the implementation of a program which could have substantial effect upon postal users in every area of the country. This program is referred to by high-ranking Postal Service officers as the "postal facilities' deployment" program and as the "retail analysis" program. Indeed, there is some confusion over whether there are two programs or one and whether, if two, the retail analysis program support the facilities' deployment program or the facilities' deployment program is the end result of the retail analysis program. The program or programs are offered to the local Postmaster who, subject to review by his supervisors, decides whether to accept the program. As of March 11, 1974, the program has been accepted, and is currently underway in 25 major cities located in Alabama, California, Colorado, Florida, Georgia, Illinois, Iowa, Michigan, Missouri, North Carolina, Oklahoma, Tennessee, Texas, Washington and Wisconsin. Moreover, 40 more cities in 1974 are scheduled to commence implementation of the program, with an additional 40 cities scheduled in 1975.<sup>13</sup>

Essentially the program includes a retail market survey, both with regard to postal services used or not used by the retail consumer and with regard to customer demand for given services at a particular time or place. Thereafter, a decision is made with regard to all postal facilities in the particular area which decision includes such things as relocating some facilities, closing others and opening new ones; and terminating, limiting, increasing or adding specific services at a retail facility, such as meter postage sales, registered or certified mail services, lock box service, insured mail services, postage sales, package weighing and mailing, postal money orders, and similar services customarily provided by the Postal Service. Postmaster General Klassen states the object of the program to be to develop a coordinated system of facilities, collections and deliveries.

The record developed to date is sufficient for this court to conclude (a) that the Postal Service has determined to implement changes having a nationwide or substantially nationwide character and (b) that the implementation has commenced. While this finding by the court is primarily directed to the Postal District consolidation program and the postal facilities' deployment program (retail analysis program), it is conceivable, though unlikely, that after a full record is developed the national bulk mail system program could likewise be viewed

as a change. The record to date, however, reveals that the Postal Service simply decided not to discontinue that program which decision could hardly be viewed as a change.<sup>14</sup>

It is obvious that the changes are viewed by the Postal Service not to involve matters "in the nature of postal services" for it sought no Section 3661 advisory opinion from the Postal Rate Commission. Indeed, since its beginning, according to the Postal Service, it has made no nationwide change in the nature of postal services, for it has never sought such an advisory opinion, an unequivocal statutory prerequisite to a change. This could either speak well for the services provided by the now defunct Post Office Department or it could be construed unfavorably to the Postal Service. More likely, however, it highlights the central issue involved in this action—just what constitutes a change in the nature of postal services?

The parties are at opposite poles on this issue, and quite likely, the intended meaning is somewhere between the two extreme views.<sup>15</sup> For the purpose of this court's determination of whether to grant interlocutory injunctive relief, it is not necessary to decide that the challenged changes are in fact embraced in Section 3661. It is necessary to conclude, as the court has, that most likely they are and therefore that there is substantial likelihood that plaintiffs will prevail on the merits as to the Postal District consolidation and elimination program and as to the postal facilities' deployment program (retail analysis program) but are not likely to prevail on the merits as to the national bulk mail system program.

Earlier in this Memorandum of Decision the court has concluded that plaintiffs have standing to sue because they are being denied the opportunity for a hearing under Section 3661 on changes being implemented by the Postal Service. The denial of such a hearing, should one be required, is sufficient irreparable injury to support interlocutory injunctive relief, for it is clear that no hearing will be conducted and that the changes will continue unless enjoined. Defendants have made no effort to present evidence as to the threatened harm a preliminary injunction may do to them should the court enjoin the further implementation of the Postal District consolidation and elimination program or the postal facilities' deployment program (retail analysis program).<sup>16</sup> This absence of evidence, together with the irreparable nature of the injury being done plaintiffs, compels this court to conclude that the threatened injury to plaintiffs greatly outweighs any threatened harm the injunction contemplated herein may do to defendants. Moreover, the granting of such a preliminary injunction will serve, rather than disserve, the public interest.

In accordance with the foregoing, the court is of the opinion that it should issue a preliminary injunction which prevents the further consolidation or elimination of Postal Districts and which prevents the further implementation of the so-called postal facilities' deployment program pending further proceedings in this action. The injunction to be issued should not be construed as requiring the Postal Service to reestablish those eight or ten Postal Districts which have already been eliminated, although such affirmative relief may result following a final hearing. Moreover, it is not the court's intention by the injunction to prevent in any way the data gathering aspect of the postal facilities' deployment program or the use of that data in making untreated, isolated changes which are necessitated by events over which the Postal Service does not exercise reasonable control, such as failure of equipment, fire or other casualty, loss of lease, etc. Such injunction likewise is not intended to prohibit the opening of new facilities or the addition of services not cur-

rently being offered at existing facilities. The injunction as to the postal facilities' deployment program should be construed as directed primarily at a general implementation, on a timetable under the control of defendants, of the deployment program in a particular city where such implementation includes closing or relocating a facility or altering the character, nature or hours of service at an existing facility. Should the parties have any question as to the scope or application of this aspect of the injunction, the matter can be clarified upon application to the court.

An appropriate order of injunction will issue.

Done this 14th day of May, 1974.

JAMES H. HANCOCK,  
U.S. District Judge.

#### FOOTNOTES

<sup>1</sup> Plaintiff John H. Buchanan, Jr. is a Member of Congress representing the Sixth Congressional District of Alabama; plaintiff John J. Duncan is a Member of Congress representing the Second Congressional District of Tennessee; and plaintiff Sam Steiger is a Member of Congress representing the Third Congressional District of Arizona.

<sup>2</sup> Pub. L. 91-375, August 12, 1970, 84 Stat. 719, Codified in 39 U.S.C. §§ 101, et seq.

<sup>3</sup> For a fairly comprehensive legislative history of this Act, see 1970 U.S. Code Cong. and Adm. News, pp. 3649-3723.

<sup>4</sup> "If the American public is to have the postal service that it expects and deserves, the Post Office must be taken out of politics and politics out of the Post Office." *Id.* at page 3654.

<sup>5</sup> 39 U.S.C. § 3661. It appears the provisions dealing with § 3661 subject matter in the House passed version of H.R. 17070 and the Senate passed version of H.R. 17070 differ in form only, both one from another and from the final version resulting from the Conference Committee which ultimately placed § 3661 in its present form.

<sup>6</sup> 1970, U.S. Code Cong. and Adm. News, p. 3668.

<sup>7</sup> The record demonstrates that Congressman Buchanan and his staff assistants have relentlessly sought to be heard on the proposed changes, if for no other reason than to determine just what changes were being proposed.

<sup>8</sup> It is not necessary to decide if the opinion is binding on the Postal Service. What is necessary is that the advisory opinion be sought and, after a hearing, obtained.

<sup>9</sup> It also inherited approximately 600 Section Centers which it has now reduced to less than 300, but this reduction is not involved in this action.

<sup>10</sup> It is not clear whether this decision was made prior to July 1, 1971, but in all likelihood it was in view of news releases issued by the Post Office Department in the spring of 1971.

<sup>11</sup> This decentralized authority, as well as the initial authority given to each local Postmaster in connection with the retail analysis program (postal facilities' deployment program), is argued by defendants as clear evidence that the changes here considered are not nationwide. Apparently prior to July 1, 1971, the local Postmaster had to go to Washington for authority to acquire even pencils and paper. As commendable as is the decentralization of authority from the Postmaster General to the four Senior Assistant Postmasters General to the various Assistant Postmasters General to the five Regional Postmasters General to the 78 (originally 86) Postal District Managers to the thousands of local Postmasters, such decentralization of decision making and authority cannot be a shield to insulate a program available to the entire Postal Service from being nationwide where it is being accepted by the regional or local decisionmakers throughout the Nation either because the program is good or because there is attendant pressure to accept the program.

<sup>12</sup> Documents revealing the identities of certain districts scheduled for early elimination have, at the request of defendants, been sealed and will not be a part of the public record of these proceedings at this time. They support, however, this conclusion of an anticipated acceleration on a nationwide basis.

<sup>13</sup> See footnote 11.

<sup>14</sup> It is interesting to note, however, that counsel for the defendants in argument to the court stated that had the Postal Service decided to abort this program which it inherited from the Post Office Department, such a determination would not have been within the ambit of § 3661.

<sup>15</sup> Defendants take the position that only the elimination of Saturday deliveries or the elimination of special delivery service or charging the recipient for home delivery service or comparable changes can even arguably be changes in the nature of postal services. Plaintiffs take the position that changes which could in any material way affect the collection, transportation or delivery of mail or which could affect services associated therewith are clearly changes in the nature of postal services.

<sup>16</sup> Evidence was presented by defendants to support a finding which the court hereby finds, that substantial injury would be done defendants by an injunction of the national bulk mail system program, that such injury outweighs the injury, albeit irreparable, to plaintiffs and that the issuance of such an interlocutory injunction would disserve the public interest.

#### TERRORISM AND BARBARISM

(Mr. PODELL asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

Mr. PODELL. Mr. Speaker, I pray that peace will come to the Middle East and that relations will become normal between Israel and her neighbors. But that will never come to pass while presumably civilized nations harbor hordes of savages who cross international borders to murder innocent women and children.

Ninety children were held hostage in a Maalot school for the release of imprisoned Arab terrorists. The guerrillas had already murdered two adults and two children before taking the school. These killers attacked while Secretary of State Kissinger, representing the United States and the civilized world, is trying to negotiate a peace between Syria, the Arab world, and Israel. It looks shockingly like a planned insult to our peacemaking efforts.

Do the Syrians and the Arabs truly seek peace when they give free run of the nations to criminals; when they give aid, comfort, and weapons to marauders whose victims are women and children? Is it possible to fruitfully negotiate with nations which use international terror and murder as an instrument of foreign policy? Do these nations really value the peacemaking efforts of the United States?

Just a month ago 18 Israelis were slaughtered in a similar raid. When Israel retaliated the United Nations voted to condemn Israel, but made no mention of the murders by Arab guerrillas—and the United States voted for that censure. Would America permit Canadian or Mexican guerrillas to cross our borders and slaughter women and children without retaliation?

If Israel retaliates for the Maalot incident, will the United States again side

with the bullies and the criminals? We did last time and it encouraged further terror. They are now convinced they can get away with murder, and our vote in the U.N. helped to convince them of it. We must not be used that way again.

#### ARAB TERRORISTS

(Mr. GUDE asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

Mr. GUDE. Mr. Speaker, the outrageous action by Arab terrorists in holding hostage and then slaying innocent Israeli children not only endangers the current efforts to achieve a disengagement in the Golan Heights, but shows clearly the moral depths to which the Arab guerrillas have sunk.

Not content to press their case through accepted international channels, the guerrillas have bombed, hijacked, and murdered their way around the world in an effort to scare people into accepting their ideas. Not content even to attack those they consider their enemies, they have opened fire on innocent civilians of different nationalities, slaughtering many uninvolved people.

It is past time for these outrages to stop. It is time for clear action on the part of all nations which respect justice—action that will show regardless of how one stands on the Mid-East situation, terrorism and murder are never solutions.

I have today joined a number of my colleagues in the House in a resolution condemning terrorist activity, calling on all other nations to do the same, and urging those who harbor terrorists to take effective action to root them out. In addition I call upon the President to request a meeting of the United Nations Security Council for the specific purpose of developing plans to deal with international terrorism so decisively as to completely destroy it in order that justice and the rule of law can be restored.

#### LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. HELSTOSKI (at the request of Mr. O'NEILL), for today, on account of official business.

#### SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

Mr. PASSMAN, for 60 minutes, on May 22, 1974.

(The following Members (at the request of Mr. HANRAHAN) and to revise and extend their remarks and include extraneous matter:)

Mr. SYMMS, for 10 minutes, today.  
Mr. ROBISON of New York, for 15 minutes, today.

Mr. QUIE, for 50 minutes, today.  
Mr. STEELMAN, for 5 minutes, today.  
Mr. MCKINNEY, for 5 minutes, today.  
Mr. HOGAN, for 30 minutes, today.  
Mr. GOLDWATER, for 10 minutes, today.  
Mr. CHAMBERLAIN, for 30 minutes, tomorrow.

Mr. MARTIN of North Carolina, for 5 minutes, today.

Mr. SKUBITZ, for 5 minutes, today.  
Mr. KEMP, for 10 minutes, today.  
Mr. BUTLER, for 5 minutes, today.  
Mr. BURGNER, for 5 minutes, today.  
Mr. GILMAN, for 5 minutes, today.  
Mr. BLACKBURN, for 60 minutes, today.  
Mr. CLEVELAND (at the request of Mr. BAUMAN), for 5 minutes, today.

(The following Members (at the request of Mr. TRAXLER) to revise and extend their remarks and include extraneous material:)

Ms. HOLTZMAN, for 15 minutes, today.  
Mr. GONZALEZ, for 5 minutes, today.  
Mr. HAMILTON, for 15 minutes, today.  
Ms. ABZUG, for 20 minutes, today.

#### EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

Mr. MADDEN.  
Mr. BUCHANAN and to include extraneous matter notwithstanding the fact that it exceeds two pages of the RECORD and is estimated by the Public Printer to cost \$627.

(The following Members (at the request of Mr. HANRAHAN) and to include extraneous matter:)

Mr. STEELE.  
Mr. CLEVELAND.  
Mr. NELSEN.  
Mr. MARTIN of Nebraska in two instances.  
Mr. HOSMER in two instances.  
Mr. BROYHILL of Virginia.  
Mr. GUYER.  
Mrs. HOLT in 10 instances.  
Mr. LAGOMARSINO in two instances.  
Mr. ANDERSON of Illinois in two instances.

Mr. RINALDO.  
Mr. MICHEL in five instances.  
Mr. LENT.  
Mr. SMITH of New York.  
Mr. FRENZEL.  
Mr. WYMAN in two instances.  
Mr. HANRAHAN in three instances.  
Mr. McCLORY in two instances.  
Mr. MALLARY.  
Mr. GILMAN.  
Mr. MCKINNEY.  
Mr. RONCALLO of New York.  
Mr. ASHBROOK in three instances.

(The following Members (at the request of Mr. TRAXLER) and to include extraneous matter:)

Mr. ROONEY of New York.  
Mr. MURTHA.  
Mr. TEAGUE in six instances.  
Mr. VANDER VEEN.  
Mr. DE LUGO in 10 instances.  
Mr. GONZALEZ in three instances.  
Mr. RARICK in three instances.  
Mr. STEED.  
Mr. HICKS.  
Mrs. SULLIVAN in two instances.  
Mr. SISK.  
Mr. GREEN of Pennsylvania in two instances.  
Mr. MANN in 10 instances.  
Mr. REES.  
Mr. DIGGS.  
Mr. BERGLAND in three instances.  
Mr. COTTER in three instances.  
Mr. ADAMS.  
Mr. EVINS of Tennessee in two instances.

Mr. HUNGATE in three instances.  
Mr. DAN DANIEL.  
Mr. ROSENTHAL in five instances.  
Mrs. BURKE of California in 10 instances.

#### ENROLLED BILL SIGNED

Mr. HAYS, from the Committee on House Administration, reported that that committee had examined and found truly enrolled a bill of the House of the following title, which was thereupon signed by the Speaker:

H.R. 3418. An act to amend section 505 of title 10, United States Code, to establish uniform original enlistment qualifications for male and female persons.

#### BILL PRESENTED TO THE PRESIDENT

Mr. HAYS, from the Committee on House Administration, reported that that committee did on May 14, 1974, present to the President, for his approval, a bill of the House of the following title:

H.R. 6574. An act to amend title 38, United States Code, to increase the maximum amount of Servicemen's Group Life Insurance to \$20,000, to provide full-time coverage thereunder for certain members of the Reserves and National Guard, to authorize the conversion of such insurance to Veterans' Group Life Insurance, to authorize allotments from the pay of members of the National Guard of the United States for group life insurance premiums, and for other purposes.

#### ADJOURNMENT

Mr. TRAXLER. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 3 o'clock and 37 minutes p.m.), the House adjourned until tomorrow, Thursday, May 16, 1974, at 12 o'clock noon.

#### EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

2320. A letter from the Deputy Assistant Secretary of Defense (Installations and Housing), transmitting notice of the location, nature, and estimated cost of various construction projects proposed to be undertaken for the Army National Guard, pursuant to 10 U.S.C. 2233a(1); to the Committee on Armed Services.

2321. A letter from the Deputy Assistant Secretary of Defense (Installations and Housing), transmitting notice of the location, nature, and estimated cost of a facilities project proposed to be undertaken for the Army Reserve, pursuant to 10 U.S.C. 2233a (1), together with notice of the cancellation of various previously approved Army Reserve projects; to the Committee on Armed Services.

#### REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mrs. SULLIVAN: Committee on Merchant Marine and Fisheries. H.R. 11951. A bill to authorize the construction and operation of high seas oil ports, to be located in the offshore coastal waters of the United States, in order to facilitate the importation of petro-

leum and petroleum products into the United States, and for other purposes; with amendment (Rept. No. 93-1042). Referred to the Committee of the Whole House on the State of the Union.

Mr. PERKINS: Committee on Education and Labor. H.R. 14449. A bill to provide for the mobilization of community development and assistance services and to establish a community action administration in the Department of Health, Education, and Welfare to administer such programs; with amendment (Rept. No. 93-1043). Referred to the Committee of the Whole House on the State of the Union.

Mr. BOLLING: Committee on Rules. House Resolution 1110. Resolution providing for the consideration of H.R. 10294. A bill to establish land use policy; to authorize the Secretary of the Interior, pursuant to guidelines issued by the Council on Environmental Quality to make grants to assist the States to develop and implement comprehensive land use planning processes; to coordinate Federal programs and policies which have a land use impact; to make grants to Indian tribes to assist them to develop and implement land use planning processes for reservation and other tribal lands; to provide land use planning directives for the public lands; and for other purposes (Rept. No. 93-1044). Referred to the House Calendar.

Mr. PEPPER: Committee on Rules. House Resolution 1111. Resolution providing for the consideration of H.R. 13973. A bill to amend the title of the Foreign Assistance Act of 1961 concerning the Overseas Private Investment Corporation to extend the authority for the Corporation, to authorize the Corporation to issue reinsurance, to suggest dates for terminating certain activities of the Corporation, and for other purposes (Rept. No. 93-1045). Referred to the House Calendar.

Mr. MADDEN: Committee on Rules. House Resolution 1112. Resolution for the consideration of H.R. 14592. A bill to authorize appropriations during the fiscal year 1975 for procurement of aircraft, missiles, naval vessels, tracked combat vehicles, torpedoes, and other weapons, and research, development, test and evaluation for the Armed Forces, and to prescribe the authorized personnel strength for each active duty component and of the Selected Reserve of each Reserve component of the Armed Forces and of civilian personnel of the Department of Defense, and to authorize the military training student loads and for other purposes (Rept. No. 93-1046). Referred to the House Calendar.

#### PUBLIC BILLS AND RESOLUTIONS

Under clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. BIAGGI:

H.R. 14797. A bill to amend the Civil Rights Act of 1964 to include as an unlawful employment practice discrimination against an individual by any employer, employment agency, or labor organization because of the individual's prior drug abuse, and for other purposes; to the Committee on Education and Labor.

By Mr. BLATNIK:

H.R. 14798. A bill to amend title 38 of the United States Code in order to recognize as service during a period of war, for purposes of veterans' benefits, service between July 1, 1958, and August 5, 1964, in the Vietnam era of operations for which the Armed Services Expeditionary Medal was awarded; to the Committee on Veterans' Affairs.

H.R. 14799. A bill to provide for a temporary program of special unemployment compensation in areas of high unemployment and to amend the Federal-State Unemployment Compensation Act of 1970; to the Committee on Ways and Means.

By Mr. BROYHILL of Virginia:

H.R. 14800. A bill to amend the Federal Election Campaign Act of 1971 and title 18, United States Code, to provide for the reform of the Federal election campaign process, and for other purposes; to the Committee on House Administration.

By Mr. DENHOLM:

H.R. 14801. A bill expanding the definition of the word "person" as used in the Constitution and the laws of the United States; to the Committee on the Judiciary.

By Mr. FREY (for himself and Mr. St GERMAIN):

H.R. 14802. A bill to amend title 38 of the United States Code in order to provide service pension to certain veterans of World War I and pension to the widows of such veterans; to the Committee on Veterans' Affairs.

By Mr. HARRINGTON (for himself, and Mr. ASPIN):

H.R. 14803. A bill to insure that recipients of veterans' pension and compensation will not have the amount of such pensions or compensation reduced, or entitlement thereto discontinued, because of increases in monthly social security benefits; to the Committee on Veterans' Affairs.

By Mr. HASTINGS:

H.R. 14804. A bill to amend the Railroad Retirement Act of 1937 to increase the amount of earnings permitted before the limitation on earnings of a retirement annuitant takes effect and to provide for its further increase in certain circumstances when the Consumer Price Index rises; to the Committee on Interstate and Foreign Commerce.

By Mr. KOCH:

H.R. 14805. A bill to amend the Federal Food, Drug, and Cosmetic Act to authorize the Secretary of Health, Education, and Welfare to halt the sales and distribution of food, drug, and cosmetics adulterated or misbranded in a manner which presents an imminent hazard to the public health and to require their recall or destruction, as may be appropriate; to the Committee on Interstate and Foreign Commerce.

By Mr. KYROS:

H.R. 14806. A bill to amend title 10 of the United States Code in order to permit the establishment of Junior Reserve Officer Training Corps units at small secondary educational institutions; to the Committee on Armed Services.

By Mr. LAGOMARSINO:

H.R. 14807. A bill authorizing the Administrator of Veterans' Affairs to establish a national cemetery at Vandenberg Air Force Base, Calif.; to the Committee on Veterans' Affairs.

By Mr. MACDONALD:

H.R. 14808. A bill to provide assistance and full-time employment to persons who are unemployed or underemployed as a result of the energy crisis; to the Committee on Education and Labor.

By Mr. MCKINNEY (for himself, Ms. ABZUG, Mr. BEVILL, Mr. BRASCO, Mr. BROWN of California, Mr. DELLUMS, Mr. DIGGS, Mr. EDWARDS of California, Mr. EILBERG, Mr. FORSYTHE, Mr. HARRINGTON, Mr. HEINZ, Ms. HOLTZMAN, Mr. HORTON, and Mr. JONES of North Carolina):

H.R. 14809. A bill to amend title XVIII of the Social Security Act to authorize payment under the supplementary medical insurance program for regular physical examinations; to the Committee on Ways and Means.

By Mr. MCKINNEY (for himself, Mr. LEGGETT, Mr. PEPPER, Mr. POPELL, Mr. QUITE, Mr. REES, Mr. RIEGLE, Mr. ST GERMAIN, Mr. SARBANES, Mr. STARK, Mr. TIERNAN, Mr. WON PAT, Mr. YATRON, and Mr. YOUNG of Georgia):

H.R. 14810. A bill to amend title XVIII of the Social Security Act to authorize payment under the supplementary medical insurance program for regular physical examinations; to the Committee on Ways and Means.

By Mr. MAYNE:

H.R. 14811. A bill to amend title 38, United States Code, to provide a 10-year delimiting period for the pursuit of educational programs by veterans, wives, and widows; to the Committee on Veterans' Affairs.

By Mr. MOAKLEY:

H.R. 14812. A bill to amend the National Housing Act to improve conditions in the housing market by increasing maximum mortgage amounts under the various FHA residential housing programs, by providing a \$1.7-billion increase in GNMA's authority to purchase mortgages under the tandem plan, and by limiting the interest rate on mortgages which may be purchased under such plan; to the Committee on Banking and Currency.

H.R. 14813. A bill to require the Secretary of Housing and Urban Development to terminate the suspension of assistance under FHA's section 235 program of homeownership for lower income families and to carry out such program to the full extent of the funds and contract authority made available to him by law; to the Committee on Banking and Currency.

By Mr. NELSEN:

H.R. 14814. A bill to amend the provisions of the Social Security Act to consolidate the reporting of wages by employers for income tax withholding and old-age, survivors, and disability insurance purposes, and for other purposes; to the Committee on Ways and Means.

By Mr. NICHOLS:

H.R. 14815. A bill to amend part B of title XI of the Social Security Act to provide a more effective administration of Professional Standards Review of health care services, to expand the Professional Standards Review Organization activity to include review of services performed by or in federally operated health care institutions, and to protect the confidentiality of medical records; to the Committee on Ways and Means.

By Mr. QUILLEN:

H.R. 14816. A bill to amend the Internal Revenue Code of 1954 to provide for the suspension of excise taxes on diesel fuel and special motor fuels, and to roll back the prices for such products; to the Committee on Ways and Means.

By Mr. REID (for himself, Mr. BROWN of California, Mr. CLAY, Mr. DELLUMS, Mr. MITCHELL of Maryland, Mr. FRASER, and Mr. ECKHARDT):

H.R. 14817. A bill to prohibit law enforcement authorities from entering into any understanding to grant any President or former President immunity from prosecution for criminal offenses committed prior to or during his term in office, and for other purposes; to the Committee on the Judiciary.

By Mr. REID (for himself, Ms. ABZUG, Ms. CHISHOLM, and Mr. GREEN of Pennsylvania):

H.R. 14818. A bill to prohibit law enforcement authorities from entering into any understanding to grant any President or former President immunity from prosecution for criminal offenses committed prior to or during his term in office, and for other purposes; to the Committee on the Judiciary.

By Mr. ROBISON of New York:

H.R. 14819. A bill to amend the Internal Revenue Code of 1954 to increase the exclusion allowance for gain from the sale or exchange of a residence in the case of individuals 65 years and over; to the Committee on Ways and Means.

By Mr. ROUSH:

H.R. 14820. A bill to amend Section 203 of the Social Security Act to provide that an individual who devotes 45 hours or less a month to his or her trade or business shall not be considered to have rendered substantial services in self-employment for purposes of the retirement test; to the Committee on Ways and Means.

By Mr. STEELE (for himself, Mr.

YOUNG of Illinois, Mr. RONCALLO of New York, Mr. MADIGAN, Mr. COUGHLIN, Mr. ESCH, Mr. SYMINGTON, and Mr. LUKEN):

H.R. 14821. A bill making an additional appropriation for the fiscal year ending June 30, 1974, for the Department of Health, Education, and Welfare for research on the cause and treatment of diabetes; to the Committee on Appropriations.

By Mr. STEELE (for himself and Mr. KYROS):

H.R. 14822. A bill to provide financial assistance to the States for improved educational services for exceptional children; to establish a National Clearinghouse on Exceptional Children; and for other purposes; to the Committee on Education and Labor.

By Mr. STEELE (for himself, Mr. BREAU, Mr. FORSYTHE, Mr. GOODLING, Mr. KYROS, Mr. LOTT, and Mr. PRITCHARD):

H.R. 14823. A bill to provide additional financial assistance for educational biological, technological, and other research programs pertaining to U.S. fisheries; to the Committee on Merchant Marine and Fisheries.

H.R. 14824. A bill to provide additional financial assistance for educational, biological, technological, and other research programs pertaining to U.S. fisheries; to the Committee on Merchant Marine and Fisheries.

By Mr. STEELMAN (for himself, Mr. FRASER, Mr. STEELE, Mr. GROVER, and Mr. SARASIN):

H.R. 14825. A bill to amend the Public Health Service Act to provide for the making of grants to assist in the establishment and initial operation of agencies and expanding the services available in existing agencies which will provide home health services, and to provide grants to public and private agencies to train professional and paraprofessional personnel to provide home health services; to the Committee on Interstate and Foreign Commerce.

By Mr. STOKES (for himself, Ms. ABZUG, Mr. ASHLEY, Mr. ASPIN, Mr. BADILLO, Mr. BINGHAM, Mr. BOLAND, Mr. BROWN of California, Ms. BURKE of California, Mr. BURTON, Mr. CARNEY of Ohio, Ms. CHISHOLM, Mr. CLAY, Ms. COLLINS of Illinois, Mr. CONTE, Mr. CONYERS, Mr. CORMAN, Mr. DELLUMS, Mr. DIGGS, Mr. DRINAN, Mr. ECKHARDT, and Mr. EDWARDS of California):

H.R. 14826. A bill to require that discharge certificates issued to members of the Armed Forces not indicate the conditions or reasons for discharge, to limit the separation of enlisted members under conditions other than honorable, and to improve the procedures for the review of discharges and dismissals; to the Committee on Armed Services.

By Mr. STOKES (for himself, Mr. FAUNTROY, Mr. FORD, Mr. FRASER, Mr. GREEN of Pennsylvania, Mr. HARRINGTON, Mr. HAWKINS, Mr. HELSTOSKI, Ms. HOLTZMAN, Ms. JORDAN, Mr. KOCH, Mr. LEGGETT, Mr. LUKEN, Mr. MCKINNEY, Mr. MAZZOLI, Mr. METCALFE, Ms. MINK, Mr. MITCHELL, of Maryland, Mr. MOAKLEY, Mr. NIX, Mr. OBEY, Mr. PEPPER, Mr. PODELL, and Mr. PREYER):

H.R. 14827. A bill to require that discharge certificates issued to members of the Armed Forces not indicate the conditions or reasons for discharge, to limit the separation of enlisted members under conditions other than honorable, and to improve the procedures for the review of discharges and dismissals; to the Committee on Armed Services.

By Mr. STOKES (for himself, Mr. PRICE of Illinois, Mr. RANGEL, Mr. REES, Mr. REUSS, Mr. ROSENTHAL, Mr. ROYBAL, Mr. RYAN, Ms. SCHROEDER, Mr. SEIBERLING, Mr. SISK, Mr. JAMES V. STANTON, Mr. STARK, Mr. STUDDS,

Mr. THOMPSON of New Jersey, Mr. TIERNAN, Mr. WALDIE, Mr. CHARLES H. WILSON of California, Mr. WON PAT, Mr. YATRON, and Mr. YOUNG of Georgia):

H.R. 14828. A bill to require that discharge certificates issued to members of the Armed Forces not indicate the conditions or reasons for discharge, to limit the separation of enlisted members under conditions other than honorable, and to improve the procedures for the review of discharges and dismissals; to the Committee on Armed Services.

By Mr. SYMMS:

H.R. 14829. A bill to declare Lake Coeur d'Alene, Lake Chatcolet, Hidden Lake, Round Lake, and the lower reaches of the St. Joe River, in the State of Idaho, to be nonnavigable waters; to the Committee on Interstate and Foreign Commerce.

By Mr. WHITE:

H.R. 14830. A bill to designate the Bureau of Economic Analysis as the agency officially responsible for informing the public, through publication of appropriate statistics, concerning energy supply and demand conditions in the United States and for other purposes; to the Committee on Interstate and Foreign Commerce.

By Mr. WINN (for himself Mr. STEELE, and Mrs. Boggs):

H.R. 14831. A bill to authorize the Administrator of the National Aeronautics and Space Administration to conduct research and development programs to increase knowledge of tornadoes, hurricanes, large thunderstorms, and other types of short-term weather phenomena, and to develop methods for predicting, detecting, and monitoring such atmospheric behavior; to the Committee on Science and Astronautics.

By Mr. ANDERSON of California (for himself, Mr. SARASIN, Mr. MATSUNAGA, Mr. BELL, Mr. BROWN of California, Mr. CARNEY of Ohio, Mr. MCKINNEY, Mr. STOKES, Ms. BURKE of California, Mr. NEDZI, Mr. PEPPER, Mr. ECKHARDT, Mr. WON PAT, Mr. KOCH, Mr. FORSTHE, Mr. MOORHEAD of Pennsylvania, Mr. MITCHELL of Maryland, Mr. HICKS, Mrs. MINK, Mr. ABDON, Mr. DIGGS, Mr. STARK, and Mr. METCALFE):

H.J. Res. 1012. Joint resolution to prohibit the Bureau of Labor Statistics from instituting any revision in the method of calculating the Consumer Price Index until such revision has been approved by resolution by either the Senate or the House of Representatives of the United States of America; to the Committee on Education and Labor.

By Mr. BUTLER (for himself, Mr. BROYHILL of Virginia, Mr. PARRIS, Mr. WAMPLER, Mr. SATTERFIELD, and Mr. ROBERT W. DANIEL, JR.):

H.J. Res. 1013. Joint resolution to restore posthumously full rights of citizenship to General R. E. Lee; to the Committee on the Judiciary.

By Mr. ICHORD (for himself, Mr. DERWINSKI, Mr. BYRON, Mr. MOSS, Mr. SHOUP, Mr. WON PAT, Mr. WYMAN, Mr. ROE, Mr. RUNNELS, Mr. HANSEN of Idaho, Mr. GIALMO, Mr. GUNTER, Mrs. SCHROEDER, Mr. WAGGONER, Mr. LONG of Maryland, Mr. HOGAN, Mr. MITCHELL of New York, Mrs. BURKE of California, Mr. KEMP, Mrs. HECKLER of Massachusetts, Mrs. COLLINS of Illinois, and Mr. QUEE):

H.J. Res. 1014. Joint resolution requiring the President to submit to Congress a report concerning importations of minerals which are critical to the needs of U.S. industry; to the Committee on Ways and Means.

By Mr. SMITH of New York:

H.J. Res. 1015. Joint resolution to amend title 5 of the United States Code to provide for the designation of the 11th day of November of each year as Veterans' Day; to the Committee on the Judiciary.

By Mr. VANDER JAGT (for himself,

Mr. BROWN of Ohio, Mr. HOLIFIELD, Mr. ERLÉNBERG, Mr. HINSHAW, Mr. ROSENTHAL, Mr. HORTON, Mr. FASCELL, Mr. FRITCHARD, Mr. HANRAHAN, and Mr. MALLARY):

H.J. Res. 1016. Joint resolution designating the premises occupied by the Chief of Naval Operations as the official residence of the Vice President, effective upon the termination of service of the incumbent Chief of Naval Operations; to the Committee on Armed Services.

By Mr. WYMAN:

H.J. Res. 1017. Joint resolution designating the premises occupied by the Chief of Naval Operations as the official residence of the Vice President, effective upon the termination of service of the incumbent Chief of Naval Operations; to the Committee on Armed Services.

By Mr. BROZMAN:

H. Con. Res. 493. Concurrent resolution to call on the American people to diligently continue their energy conservation measures in the postembargo period; to the Committee on Interstate and Foreign Commerce.

By Mr. BAFALIS (for himself, Mr. CRONIN, Mr. CONLAN, Mr. COCHRAN, Mr. ARMSTRONG, Mr. BURGENER, Mr. WALSH, Mr. YOUNG of South Caro-

lina, Mr. MARTIN of North Carolina, Mr. HUBER, Mr. MITCHELL of New York, Mr. ROBERT W. DANIEL, JR., Mr. LAGOMARSINO, Mr. STEELMAN, Mr. JOHNSON of Colorado, Mr. SHUSTER, Mr. MOORHEAD of California, Mr. HINSHAW, Mr. HUDNUT, Mr. FROELICH, Mr. BAUMAN, Mr. HANRAHAN, Mr. LOTT, Mr. YOUNG of Illinois, and Mr. SYMMS):

H. Res. 1104. Resolution to urge expeditious action on fiscal and budgetary reform measures; to the Committee on Rules.

By Mr. BAFALIS (for himself, Mrs. HOLT, Mr. TAYLOR of Missouri, Mr. COHEN, Mr. SARASIN, Mr. TOWELL of Nevada, Mr. BUTLER, Mr. RINALDO, Mr. O'BRIEN, Mr. GILMAN, Mr. GUYER, Mr. TREEN, Mr. BEARD, Mr. KETCHUM, Mr. REGULA, Mr. PARRIS, Mr. ABDNOR, Mr. RONCALLO of New York, Mr. KEMP, Mr. DEVINE, Mr. CRANE, Mr. DERWINSKI, Mr. ROUSSELOT, Mr. BURKE of Florida, and Mr. SPENCE):

H. Res. 1105. Resolution to urge expeditious action on fiscal and budgetary reform measures; to the Committee on Rules.

By Mr. BAFALIS (for himself, Mr. YOUNG of Alaska, and Mr. YOUNG of Florida):

H. Res. 1106. Resolution to urge expeditious action on congressional spending reform; to the Committee on Rules.

By Mr. OWENS (for himself, Mr. BADILLO, Mr. LITTON, Mr. MURPHY of New York, Ms. CHISHOLM, Mr. RIEGLE, Ms. BURKE of California, Mr. DANIELSON, Mr. DIGGS, Mr. DELLUMS, and Mr. HARRINGTON):

H. Res. 1107. Resolution to amend the Rules of the House of Representatives to provide for the broadcasting of meetings, in addition to hearings, of House committees which are open to the public; to the Committee on Rules.

By Mr. STEELMAN:

H. Res. 1108. Resolution providing for the consideration of House Resolution 988; to the Committee on Rules.

#### PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII,

Mr. WINN introduced a resolution (H. Res. 1109) to refer the bill H.R. 14796 for the relief of NEES Corporation to the Chief Commissioner of the Court of Claims; to the Committee on the Judiciary.

## SENATE—Wednesday, May 15, 1974

The Senate met at 9 a.m. and was called to order by Hon. HARRY F. BYRD, Jr., a Senator from the State of Virginia.

#### PRAYER

The Chaplain, the Reverend Edward L. R. Elson, D.D., offered the following prayer:

We beseech Thee, O Lord, to fit us for this day remembering the words of the Psalmist:

*Blessed is the man that walketh not in the counsel of the ungodly, nor standeth in the way of the sinners, nor sitteth in the seat of the scornful. But his delight is in the law of the Lord; and in his law doth he meditate day and night.*—Psalms 1: 1, 2.

Help us, O Lord, not only to meditate upon Thy law, but to live by it in the spirit of Jesus, in whose name we pray. Amen.

#### APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. EASTLAND).

The assistant legislative clerk read the following letter:

U.S. SENATE,  
PRESIDENT PRO TEMPORE,  
Washington, D.C., May 15, 1974.

To the Senate:

Being temporarily absent from the Senate on official duties, I appoint Hon. HARRY F. BYRD, Jr., a Senator from the State of Virginia, to perform the duties of the Chair during my absence.

JAMES O. EASTLAND,  
President pro tempore.

Mr. HARRY F. BYRD, JR., thereupon took the chair as Acting President pro tempore.

#### THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of

the Journal of the proceedings of Tuesday, May 14, 1974, be dispensed with.

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

#### COMMITTEE MEETINGS DURING SENATE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that all committees may be authorized to meet during the session of the Senate today.

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

#### ORDER OF BUSINESS

Mr. MANSFIELD. Mr. President, I ask unanimous consent that at the conclusion of morning business this morning, the Gurney amendment, under the previous agreement, be laid before the Senate and made the pending business.

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

#### CONSIDERATION OF CERTAIN ITEMS ON THE CALENDAR

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar Nos. 806 and 807.

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

#### DISASTER RELIEF TO PAKISTAN, NICARAGUA, AND SAHELIAN NATIONS OF AFRICA

The Senate proceeded to consider the bill (H.R. 12412), to amend the Foreign Assistance Act of 1961 to authorize an appropriation to provide disaster relief, rehabilitation, and reconstruction assistance to Pakistan, Nicaragua, and the Sahelian nations of Africa, which had

been reported from the Committee on Foreign Relations with an amendment to strike out all after the enacting clause and insert:

That this Act may be cited as the "Foreign Disaster Assistance Act of 1974".

Sec. 2. Chapter 5 of part I of the Foreign Assistance Act of 1961 is amended by inserting after section 451 the following new section:

"SEC. 452. DISASTER RELIEF.—The Congress finds a need for (1) disaster relief, rehabilitation, and reconstruction assistance in connection with the damage caused by floods in Pakistan, (2) disaster relief, rehabilitation, and reconstruction assistance in connection with the earthquake in Nicaragua, and (3) famine and disaster relief and rehabilitation and reconstruction assistance in connection with the drought in the drought-stricken nations of Africa. Notwithstanding any prohibitions or restrictions contained in this or any other Act, there is authorized to be appropriated to the President, in addition to funds otherwise available for such purposes, \$150,000,000 to remain available until expended notwithstanding the provisions of any other Act, for use by the President for such assistance, under such terms and conditions as he may determine. Of the amount appropriated pursuant to this section, not more than \$50,000,000 shall be available solely for assistance to Pakistan; not more than \$85,000,000 shall be available solely for drought-relief assistance in Africa, of which not less than \$10,000,000 shall be available solely for Ethiopia; and not more than \$15,000,000 shall be available solely for assistance to Nicaragua."

The amendment was agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

The title was amended, so as to read: "An Act to amend the Foreign Assistance Act of 1961 to authorize an appropriation to provide disaster relief, rehabilitation, and reconstruction assistance to Pakistan, Nicaragua, and the drought-stricken nations of Africa."

### AMENDMENT OF ARMS CONTROL AND DISARMAMENT ACT

The Senate proceeded to consider the bill (H.R. 12799) to amend the Arms Control and Disarmament Act, as amended, in order to extend the authorization for appropriations, and for other purposes, which had been reported from the Committee on Foreign Relations with amendments, on page 1, line 3, after the word "That", strike out "(1)" and insert "(a)"; at the beginning of line 5, strike out "(a)" and insert "(1)"; in line 9, after the word "Code", strike out "and"; after line 9, insert:

(2) deleting "section 5 of said Act, as amended (5 U.S.C. 73b-2)" and substituting therefor "section 5703 of such title"; and

On page 2, at the beginning of line 3, strike out "(b)" and insert "(3)"; in line 4, after the word "therefor", strike out "one hundred and thirty days" and insert "130 days"; at the beginning of line 6, strike out "(2)" and insert "(b)"; in line 8, after the word "following" strike out "and"; and, in line 9, after "\$10,100,000", insert a comma and "and for the fiscal year 1976, the sum of \$10,900,000".

The amendments were agreed to.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read the third time, and passed.

### TRANSCRIPTS OF TAPES SUBMITTED BY THE PRESIDENT: PUBLIC TRANSCRIPTS—VIII

Appendix 45. Telephone conversation: The President and Petersen, April 18, 1973. (2:50-2:56 p.m.)

Opr. Yes, please.

P. Would you get me Assistant Attorney General Petersen, please?

P. Hello.

HP. Hello, Mr. President.

P. Well what's—anything I need to know today?

HP. No sir. There is no significant developments.

P. Right. Uh, huh. Alright.

HP. Strachan is coming in. Fred Vinson, former Assistant Attorney General under Johnson, is representing him.

P. Representing who?

HP. Strachan, I think it is, who is going to come in.

P. Strachan? Oh, yeah, yeah. Gordon Strachan.

HP. But there have been no developments. We are still negotiating. We have a problem with the Grand Jury. The only copy of the Grand Jury transcript has been locked up in the prosecutor's office. We have the FBI checking out the reporter on the ground that they have leaked it. The Judge called us in about it this morning.

P. Uh, huh. Sirica did.

HP. Yeah.

P. About what? About part of it leaking?

HP. He was concerned about leaking and, of course, Anderson has been printing some of it. We have changed reporters. We haven't even been bringing it over here for security reasons.

P. Yeah. I would hope to keep the Grand Jury from leaking. But—

HP. Well, you know I don't want to go too far on it either, because I don't want to get into a diversionary battle with Anderson.

P. Hell, no. I wouldn't pay that much attention to it. I agree, I agree. What I meant is just do the best to control it.

HP. We are indeed.

P. Because we know that its just wrong.

Now we are handling it over here, I trust, aren't we? I just told Ziegler he won't comment on anything because it might effect the rights of either the prosecution or the rights of innocent people or the rights of defendants.

HP. We are not taking any calls from them over here.

P. So that is all we are saying.

HP. You can't talk to them at all.

P. Fine.

HP. I was kind of pleased with the reaction your statement got.

P. I think it was probably the right thing to say.

HP. Yeah.

P. What have you got—you haven't made—you haven't finished the thing with Magruder yet, then, huh?

HP. No, we haven't finished the thing with Magruder. Ah,—

P. Dean the same, huh?

HP. Dean's, well, we have just backed off of him for a while. His lawyers want time to think.

P. I have deliberately, Henry—I left Dean in a position where I said look he was going to be treated like everybody else because it wasn't fair, I mean for him to be at all, you know—what I mean, like when we talked about resignation, etc., since he was making some charges. Well, it isn't that. Since he has at least had some private discussions, but they haven't yet been in the Grand Jury forum, so I have to respect those.

HP. I think that is right.

P. So that was your suggestion, at least, that we should not do anything on Dean at this point.

HP. I think that is right. I think you ought to just let him sit.

P. All I have is just information—

HP. That's right.

P. Basically from you and from him, but it is information the gravity of which I just can't judge until I see whether it is corroborated.

HP. You have to treat that as private, in any event.

P. Private, don't I? Yeah. And for that reason if I were to move to do it—so I think we are in the right position and, then, fine. OK—Then I won't expect any more from you today. I won't bother you.

HP. No. I am a little concerned about Senator Ervin's Committee. They have just, under the agreement Kleindienst worked out with Senator Ervin, have called the Bureau and asked to see the interview statements of Magruder, Porter, Sloan and LaRue.

P. Oh, my (expletive removed).

HP. Ah, and I feel like I am sitting on a powder keg there, but I don't feel like I can dare go to Senator Ervin until I get a definite commitment from Magruder.

P. Yeah, yeah. On Magruder, what's waiting besides the Committee with him? Oh, the deal with the DC jail and—

HP. Well that is right and whether or not the Judge is going to clap him in right away, and whether or not the Committee is going to put pressure on him.

P. In otherwords, you think—you haven't yet tried to talk to Ervin?

HP. No, Sir, and I don't want to until I can tie him down.

P. Til you've got him tied? I get it.

HP. Well, I've got to be able to say that I am coming out with something public in terms of a charge.

P. I see. Right, right.

HP. You know, have a valid basis for asking him to slow it up.

P. OK. Well, in any event, I am glad you thought the statement went well. I worked on it to be sure that it didn't compromise anybody one way or the other and as you noticed too I put the immunity thing. It leaves the ball in your court, but—

HP. I noticed.

P. But on the other hand, I had to express the view because basically people are going

to ask me, what about Mitchell, what about, you know, a lot of people and you know I just can't be in this position.

HP. I agree wholeheartedly.

P. Lower people are different. But you know, upper people, you know, they might think I am protecting (unintelligible)

HP. I agree.

P. OK.

HP. Alright, Mr. President.

P. Fine.

Appendix 46. Meeting. The President, Wilson and Strickler, EOB Office, April 19, 1973. (8:26-9:32 p.m.):

P. This is my EOB Office where I do a lot of—

W. Yes. We were—you know those initials that we were—

P. This is where I do most of my speech writing—

S. We saw your Oval room tonight.

P. What's that?

S. I said, "We saw your Oval Office tonight."

P. Oh, you were over there? You hadn't see it before?

S. No.

W. No. I've never been in it.

P. My gosh.

W. You know we are local boys here and—

P. You are going to get to see the things that tourists see—

W. Yes. One of our dear friends is a dear friend of yours and that is the Marriotts.

P. Oh, aren't they great people?

W. Aren't they? We have represented them for years—until young Bill got so he wanted large out-of-town law firms.

P. Foolish.

W. But Bill and Ollie and I have been—I have been friends with them forty years; they are the sweetest people in the world.

P. Well, they are really fine Americans, and you know.—And gee whiz, they don't drink themselves but they make a lot out of selling it. (Laughter)

S. There was a time when they didn't do that, as you well know.

P. Oh, I know and it's interesting they were telling me that they had a custom now in some of their houses where they—where they reserve a couple of floors for people who don't smoke.

W. Yes.

P. So people who come in—Incidentally, do you guys smoke?

S. I gave it up.

W. I never started.

S. —five or six years ago. I feel that—

P. You didn't start? Cigarettes or—

S. I was a cigarette smoker—about three packs a day. When I gave them up, I missed them. I was a hopeless addict.

W. I never smoked in my life.

P. Like some coffee? Uh? Coffee or Sanka?

W. A little Sanka—would be nice.

S. Coffee.

P. Coffee or Sanka? I have Sanka, I guess, Manolo?

M. Yes Sir.

P. Get a little sleep tonight.

W. I don't guess you get very much. (Laughter)

P. Yet all of our other problems we've got—we've got the one you've got.

W. Yes. We admire you so much—that we both are dyed-in-the-wool Republicans. I was just telling Bob Haldeman that I joined the party years ago. I said, "No sign of beating Calvin Coolidge with a Liberal!" (Laughter)

P. Well, tell me where it stands and—

W. Yes.

P. And, if you will, both from the standpoint of the people you are representing and from the standpoint of the Presidency, which, of course, we got to (unintelligible) and I—

W. I can tell you (unintelligible)

P. Oh, sure, one of those things where people with the best of intentions—I mean everybody. John Mitchell I love.

W. Of course.

P. He did things here, you know, that were (unintelligible) on a less, here we have people who got involved—tangentially. Really an—

W. We have had three days—three different daily sessions with Bob and John.

P. Right.

W. And two today. And two were—

P. (unintelligible)

W. by our visit to the District Attorney's office.

P. Right.

W. This afternoon. Uh—We want to first, go over the Bob situation. He's written a memo of things which boils down the sensitive area—

P. You're talking about Haldeman now.

W. —boils down to Bob—boils down to the matter of \$350,000.

P. Three fifty—right. I am aware of that.

W. And what knowledge he has—

P. And I have questioned him very thoroughly on all things myself.

W. —Uh—I'm sure you have and he said that Dean had come to him and told him of the need of this money.

P. For what purpose?

W. To help alleviate families and legal counsel of the Watergate people.

P. All right.

W. And that was one occasion. Later on, when the money was transferred over to the Committee, he just wanted to be rid of it. And he had no intention as to where it might go. And—uh—that's that. Now we said to him that we don't doubt that—about the truthfulness and what parties in these two effects (unintelligible) We said, "Circumstantially, if it be wrong to have done this, a jury might think that he did it with (unintelligible)."

P. If what? If what? That it would look—

W. It'd look like it to an impartial jury.

P. When you put it to a jury it looks like—it's just very questionable?

W. Yes. Yes.

S. Depending upon how the testimony comes out of the various people, it could become an issue.

P. Right.

W. Now that we—he said. "But wait a minute. What is this sin? What is wrong with this?" Well, by a far stretch, this might be something of accessory after the fact to a conspiracy at the Watergate. This Mr. President—

P. Accessory? For what? For the purpose of?

W. Of sort of aiding the consequences. I gave an example of Dr. Mudd.—

P. Yeah.

W. —in the John Wilkes Boothe case.

P. Just got that pardon.

W. Yes. I pointed out that he didn't commit the crime but he did sort of aid in the thing afterwards.

P. Right.

W. Uh.

P. Now, I suppose—it was evident? I suppose there, too, the motive as to whether he gave it to Dean with the knowledge and with the intent of keeping the defendants quiet. That—

W. That would be the argument. Uh—

P. The argument of the prosecution?

W. Yes.

S. Exactly. Now, we don't know what Dean will say on this.

P. Well, I guess you don't because he is involved himself.

S. Yes, this is right.

W. But—

P. (Unintelligible) you've got to.

S. We assume the worst. In our thinking, we assume the worst.

P. Exactly. Absolutely.

W. Now, we are old prosecutors, Mr. President.

P. Good.

W. And we think that this is not a case, according to our standards. This is not an

indictable case against Bob. On the other hand, bear in mind that we have got a group of zealots—uh, particularly in Seymour Glazer who is a fire-eating prosecutor, and uh—these zealots always shoot for the top.

P. Sure.

W. And they are not always conscientious enough to, uh—

P. To see what's wrong about it.

W. Whether it's a convicting case of whether it's—

P. In other words, they may indict even though they don't think they can (unintelligible).

W. That's it exactly. I couldn't—we couldn't exclude the possibility that the prosecutors might take this up. On the other hand, we—we—we don't think it amounts to a criminal case in a practical sense.

P. In other words, if it goes to a court—you—whoever tries it—you think you might be able to defend him?

S. On the evidence that we now have, yes.

W. Yes. That's our feeling.

P. Now, that's (unintelligible).

W. I want you to know we are guessing at this, Mr. President.

P. The letter to LaRue—was it to LaRue?

S/W. Yes. Yes.

P. The letter to LaRue—was in one sense a—(unintelligible) admitted that he was raising money for the defendants—have you got that?

S. Yes. We have that.

P. You must have it all, you see.

W. Yes. We have that. When I say that we don't think this is really a good case, this is just our best judgment.

P. Sure. I understand.

W. We could be as wrong as the devil about this thing and, yet, coming to certain conclusions—that's the reason we are presenting it to you in this way. Now this is Bob's situation—Bob and John brought us their problems three days ago. I want you to know that I never knew these guys.

S. But they are wonderful fellows.

P. They are. They're great, fine Americans. And they tell the truth, too.

W. Yes—

P. I can tell you one thing about your clients. They'll tell you the truth. They don't lie.

W. Yes. Yes. Now, now—we took up John's situation about the Deep Six.

P. Yes. This is Ehrlichman.

W. Yes.

P. Okay.

W. And—he tell's us that he (unintelligible) Hunt's safe and that there was a pistol there; there was some electronic—

P. Right.

W. Equipment. Bob didn't think it was bugging. But it was more recordings than bugging. But this is unimportant.

S. And a batch of papers.

P. Right.

W. Sensitive or semi-sensitive in nature.

P. Sensitive in what respect—political or other?

W. I don't think it was as much political as it was—didn't he have something to do with national security?

P. Yes.

S. I think it was a mixture of both.

W. Was it—guess it might have been.

P. Yeah.

W. Anyway. Uh—what I was going to say today.

P. Go ahead.

W. The same day, or almost—Yes, I do.

S. So the FBI was brought in and it seems that.

P. They got the pistol.

S. They got the pistol. They got the bugging equipment. And they got a large quantity of papers.

P. Which they gave to Dean—I mean to Gray.

W. Well, presumably not this particular sensitive area.

P. Oh.

W. Gray, as the head of the Department, may have seen it. But this is not the particular instance where we see Gray. Uh, Dean held back some papers.

P. Oh. They gave some of the papers to the FBI?

W. Most of them. Now Frank, correct me this if—

P. Thank goodness, they did that.

W. Oh yes. It was promptly done, wasn't it? S. Yeah, it was.

P. They saw the papers and they secured the area and they gave them to the FBI.

W. Yes.

P. And other papers though they didn't give to the FBI?

W. Now, do you recall whether John said that Dean informed him he was holding these back.

S. Yes, not contemporaneously but later on.

W. Yes.

S. Dean had—

W. Not at the moment.

S. Not at the moment.

W. Now let me go on. Dean had a little envelope which was unopened as far as John was concerned. He was unaware of its contents. And Gray was sent for. I think Dean suggested that Gray be sent for. Or maybe that was John.

S. I'm not sure whether it was Dean or John—I think it was John, though.

W. We have taxed our system in the last seventy-two hours.

P. I know, I know.

S. (unintelligible) did not make (unintelligible)

W. At any rate, this next meeting which was almost the next day—it wasn't more than twenty-four hours after the FBI had entered and as John described—Gray sat over there and John sat—he sat here—and Dean handed Gray this package of papers which as I say for John's purposes was sealed. He never saw the contents. Gray took it—the meeting did not last over four minutes. And left. Now Gray approached John. S. Ehrlichman

W. And said, I want you to not mention the fact that I received those papers.

P. Gray said that? To Ehrlichman?

W. Yes. And John said, "Well, I can't do that." He said, "This was a—you were (unintelligible) in this somewhere. I didn't know where it was—I never asked you what was in it." And Gray said, "Well, I'm embarrassed because I destroyed it." Now this is Gray's fault.

P. Terrible damned thing to do.

W. Oh terrible.

S. Wasn't there a solicitation from Gray on the basis that he had testified to the contrary?

W. I think he had.

S. And the—and then.

P. I don't think he—as I recall—he didn't testify. He told the U.S. Assistant—U.S.—Petersen.

S. He's got it wrong.

P. Yeah. It's in the record.

S. John left a rather equivocal response to the request. He called him back, upon reflecting, and said, "Look, I want you to know that I have got the question of papers."

P. John Ehrlichman?

S. John Ehrlichman, yes.

P. Then Gray got to Petersen and said, "Look, I did get it. And I destroyed it."

S. Yes, that's right.

P. That's the story.

S. Incidentally, you mentioned Petersen—P. And I guess the only basis Gray could say that it was political stuff and I didn't want to appear—pretty bad.

W. Yes. Yes. With respect to Petersen, I must give you an aside. I don't trust him. Myself.

P. You don't?

W. We both have had one experience with him. He divulged things we thought was confidential in a very serious matter to a

potentially co-defendant's lawyer who was an ex-Department of Justice lawyer when we played golf over the weekend, uh—and told him the whole of our business and I got it back from a lawyer in Philadelphia who heard it from the golf partner the next day. And I'm always aware that Petersen is dealing with ex-employees of the Department of Justice.

P. I'll remember that.

W. Well, I wish you would.

P. Well, I've got to talk to him now.

W. I know you do, but I don't go around maligning everyone.

P. I know—I understand. I need to know.

W. He's on my list of people I don't trust.

P. I understand.

W. Now, the second phase of John Ehrlichman was the idea of raising funds.

P. Which he was approached on.

W. Yes, and this was not to come out of the three-fifty. This was—

P. He didn't know about the three-fifty.

W. Oh, I think he knew about it—the—he must have according to the—

P. Well, what I meant is, it wasn't his field.

W. That's right. But he did get (unintelligible).

P. Raising money and Dean says, "Can I talk to Kalmbach?" And he said, "Yes." And—

W. And Kalmbach went out and did raise the money. Now these matters involving John alarm us even less, if I can make a comparison, than Bob's do. Because I don't quite—

P. Do you mean from a criminal side?

W. Yes, that's it. See—

P. He said they come to him and they say, "Look here. I'm going to raise some money. And Kalmbach here suggests okay." You mean that doesn't make him guilty of something?

W. Well, let's go go back to the accessory after the fact idea. This gets even removed further than the release of the money from the (unintelligible).

P. Yeah.

W. Of the White House fund to be used for that purpose. Now this compares—this contrast is not to be taken as making any great division between Haldeman and John. Well, frankly, our judgment is that neither one can be successfully prosecuted.

P. Because of what you see here?

W. Yes.

P. Well, now wait a minute. Let me ask you this, though. When you talked—give me a little rundown of your talk with the U.S. Attorney.

W. I certainly have.

P. Have you?

W. Yes, now we have—neither of us—I—

P. And also give me your judgment on this thing that Petersen told me about this—rather, I—I—

W. Non-indicted—they're better—

P. It seems to me the moment they come out of that, they killed themselves. They are dead.

W. Let me, yes.

P. I have never heard of that procedure before. But I may be naive about the law.

W. Let me answer that one, first, because that is more brief. In conspiracy indictments, very frequently they will name express defendants—conspirators—and they will name co-conspirators by name as well as other people to the Grand Jury unknown. But will not indict them. Now that's the (unintelligible) it's characterized as a non-indicting. It isn't—the word is not unindictable—non-indicting.

P. Which means that they were indicted in public—

W. Well, it's—they certainly are. And usually from that group they find witnesses who will testify against the defendants. Now that's what that phrase is. It's commonplace in the law of conspiracy. And, uh, I've seen it—I've been privy to it as a prosecutor myself.

P. Yes.

W. I'm sure Frank has too. Some of that (unintelligible) it's a black market. It might be compared to the treatment over (unintelligible) that people think that I'm guilty.

P. Well, for Bob and John—if they put them on that list—it kills them.

W. Oh.

P. I mean—it may not. It may not kill them legally, but it kills them from the standpoint of the public.

W. Now, as to our visit with these gentlemen this afternoon. We contacted—we sought to contact Glanzer first, whom we both know very well, and he was—uh—said to be unavailable and we asked Silbert, whom I had met on one occasion. Frank didn't know him at all.

P. Yeah. Yeah.

W. And so we were—we made an engagement for 4:30 and they said—this was with—do two things—and that they were going to go before the Grand Jury and that they were going to be very busy and they couldn't give us more than an hour. We came in—I'm telling you this so you'll be (unintelligible). We were taken into the room at (unintelligible). I began the presentation by saying that we were there representing Haldeman and Ehrlichman. And I had the strange feeling—and I think Frank will—now, you weren't there for the first few minutes—

S. I was not there the first ten minutes.

W. I think he indicated surprise to me—I think it was a mixture.

P. Glanzer?

W. Yes. He was alone with me until a subordinate named Campbell came in. And then eventually Silbert. But his surprise to me, I felt was that in a certain sense he was surprised that Haldeman and Ehrlichman had engaged me. This gave me a little encouragement as to whether he thought that they should engage (unintelligible). I will tell you why in a couple of minutes. Uh, secondly, I—he suspected that we were down there possibly representing John Mitchell. And I said, "Well, that isn't so." Anymore—and he said, "well, these people—these perspective people have been switching counsels," and he said, "I wasn't sure Mitchell was going to keep his counsel." And I said, "Who was his counsel?" and he said (unintelligible). Now, somebody said this. But anyway, uh—I said, "Now Seymour, you know I have heard you tell me before and I said I will (unintelligible) if my clients are being kicked around at the Courthouse." I asked him many questions. Get as many answers as you can. I don't come away with many answers. But I'll get mine. I said, "I asked you pertinent questions and I am not offended if you say you can't." Now, this is the way we talked. And we thought he was a little tight today because he was in the presence of his superior. We have found him more loose—and maybe on other occasions we'll be able to get him alone. And I said, "What have you got planned for these two? You going to have them before the Grand Jury?" He said, "We'll have an office interview which will not be recorded. We'll take no notes and you can be present while you take no notes. We want to know what they will say before we take them before the Grand Jury—if we go."

P. Petersen had told me they were going to be called before the Grand Jury.

W. Well, this is—this is quite possible. We've got some more to tell you.

P. I'm (unintelligible) about this thing.

W. Silbert arrived about this time and I repeated everything that had transpired. (unintelligible) And he qualified Glanzer by saying, "Well, I think we are going to have to talk to the Department of Justice about the interview." This wasn't the interview versus the Grand Jury, I don't think. This was no interview at all. Did you get that impression? So, we—then he said to me—said to us Silbert did—"We see from the papers that Ehrlichman has been conducting investiga-

tions." Can you admit this? (unintelligible) have been witnesses. I said, "We would like to have his notes on this." And I said "We had them." He says, "It's all in the paper."

P. This is true.

W. Ehrlichman says (unintelligible) I don't know and I'm not getting any answer from him (unintelligible) "Now I'm going to ask you what have you (unintelligible) from the other? He said, "Nobody's giving us any cooperation." And then Silbert said, "You know," he said, "this will (unintelligible) against the (unintelligible) problem. (unintelligible) And he said, "Well, if you come up with one of them (unintelligible) proceeding (unintelligible) and then Glanzer came to his rescue and said, "What could be—what is morally wrong with this whole thing—(unintelligible)" Then we got into—they volunteered this quite interesting problem. They volunteered that these leaks from the Grand Jury were irritating the hell out of them. And I said—

P. Do you think (unintelligible) put it out (unintelligible)?

W. Well, I do too—but they think a court reporter. I said—

P. Bull (Laughter) A court reporter?

W. He says Anderson's getting it right from the court reporter.

S. Fire him.

W. Well, I said, "Why do you bring the court reporter back the next day for?" I said, "This is a crime in itself."

P. And a very bad thing.

W. They—we didn't take him seriously. Now, general inquiries. "Oh," I said, "How are you proceeding? Are you proceeding with packages? Have you got a forerunner of some indictments? Have you got a package of other people? A second set of indictments?" He can't answer that. So I said, "Well, we understand—we'd be happy—we know you can't stay any longer. Can we leave here with the assurance that you will communicate with us?" (unintelligible)—an agreement with us that whatever you're going to do in the way of getting a Grand Jury—we got it pretty well committed there that (unintelligible) permitted. The interview would come first.

P. Yeah.

W. And he, and we left there with a commitment from them. I think that's—a commitment for what it's worth. (unintelligible) We didn't—we didn't trap people like this. This is a (unintelligible) thing. Anyway, we left there with sort of a commitment that this would happen. Now this wasn't much, but at least we have kind of (unintelligible) and then I added a question. I said, "Are you going to get around to this before Senator Ervin begins his proceedings?" He said, rather deliberately, rather hesitating, Silbert said, "yes, they would get around before then." Now, I had in mind the fifteenth of May, which is (unintelligible).

P. Yeah.

W. But that's the only point—any point there was. This was a relaxed meeting except that Silbert is not a (unintelligible) fellow. He is a serious man and a business-like man. But that's because, it seems to me, I met him one day (unintelligible) Chambers.

P. (unintelligible)

W. He didn't even remember me that day. He said, "(unintelligible) who you are." Glanzer, (unintelligible) with his boasting—and with some of his weaknesses. Isn't that right?

S. Oh yes, oh yes. Glanzer (unintelligible).

P. Yeah. He is obviously rough—

W. Oh, he is a rough, rough fellow. He exaggerates and at times he doesn't tell you the truth. And at other times he tells you half the truth. But we couldn't go about it any other way today. And with Silbert practically sitting in his lap. We couldn't handle it any other way, but when the chips are down—

S. He is obviously clear (unintelligible) point.

P. Do you think he'll go back and (unintelligible)?

W. Oh, I think he will (unintelligible) but Hunt was before the Grand Jury this afternoon.

P. Yeah.

W. And his lawyer was in two rooms from where we were meeting.

P. What happened? Of course, nobody knows what happened.

W. No—and then they—apparently nobody got the press in, to give them an opportunity to see him—he possibly went out a back door. I ran into a photographer down there and I said, "Did you get a picture of him?" And he said, "No—we—they shipped him out the back way."

P. Hmmmm.

W. So, that's where that stood. Now, Mr. President, Frank and I—uh—have these conclusions if I may get the conclusions.

P. Right.

W. Now, do you have any questions before this?

P. No. I'd like your conclusions and then I'll ask some questions. You've thought it over. You know what my questions are.

W. We think—we think that you and these two men—

P. Let me say my good friend Len Garmant and some others think that—uh—that Dean out there is a loose cannon—

S. Yes.

P. Threatening, and all that sort of thing. And I think obviously what is happening—and I think that Glanzer and Silbert are giving, trying to give, Dean an incentive to lie in order to get Haldeman and Ehrlichman. Dean is scared and Dean is capable of doing that. Do you agree with that?

S. I think so.

P. And Mitchell told him so. But, of course, that wouldn't get him out of it. There's no way he'd (unintelligible) criminal, (unintelligible). Now, that's one point.

W. Let me say this.

P. Yeah.

W. (unintelligible) see if this (unintelligible) I don't know whether Frank wants to talk to you about it. When I was at that meeting today, I had a feeling—and here again it's only my (unintelligible) have a feeling that these two men—Ehrlichman and Haldeman are really not (unintelligible).

P. But Petersen certainly indicated, when he came to see me here last Sunday—he said Haldeman and Ehrlichman should resign, and so forth (unintelligible) it is non-corroborated testimony, you know. General Eisenhower where Adams was thrown out for this sort of little thing—the poor guy—he sort of got—

W. And he served him well.

P. For seven years and that damned vicuna coat. Unfortunate thing.

S. Yes.

P. But my point is we have very great pressures, you know—quite candid about this—and say that Haldeman and Ehrlichman destroyed in the public mind and they'll say "breach of a public trust," (unintelligible) two questions that I really think—one, I don't want to do anything—the heat's going to be on anyway. I don't want to do anything that would jeopardize their case. I want these men to be (unintelligible). I know there is, I really.

W. Quite so. We (unintelligible).

P. The second point, however, I have (unintelligible) And they know that. And if—if—uh—you conclude that the best thing to do is for Haldeman to step forward and say, "you're not guilty of a doggone thing." They have released the Grand Jury notes. I've been attacked by the press; I've been (unintelligible) all this (unintelligible) outside of this office including (unintelligible). In it, one (unintelligible) regard to the (unintelligible) as to whether it affects their (unintelligible) too in regard to the President. You've thought of both of those points?

W. We have. Yes. We have.

P. All right. What is your present conclusion?

W. Well, these are related items and in the area of Presidential judgment, we are (unintelligible). You know you've had such an awful experience. Excuse me, if I state it frankly. I think that either a suspension which I understood has been proposed by Petersen on the basis that—

P. They've been attacked.

W. Yes.

P. They've been named.

W. But there would be a suspension or either their resignation is no assurance that they would not be indicted.

P. I asked Petersen that today. He said it would—

W. There's no assurance.

P. That's right.

W. Yes.

P. Frankly, I said, "Now look here. If they resign does that mean that—" I put it straight to him.

W. Well, then my guess is—

P. If I thought their resignation would avoid an indictment, I would have them resign.

W. Yes, Yes Sir.

P. All right.

W. Now, I trespass on your area of judgment when I say—I think that if they resign or are suspended that this is a reflection on the Presidency.

P. Well, if they don't resign or are suspended and then are indicted, that's all (unintelligible).

W. Well, yes. But if—you have already announced you would suspend them then.

P. That's true.

W. And—

P. Anybody who was indicted will be suspended—anybody who is indicted will resign.

W. Is there, except for their own (unintelligible) is there any difference between—if they stay? By the way, you know this. I don't have to tell you. They are willing to leave.

P. Oh, I know—they're—(unintelligible) my (unintelligible) Absolute (unintelligible)

W. And yet on the other hand they are willing to stand up to this thing.

P. Oh, yes. Yes.

W. If it doesn't hurt you.

P. Yes.

W. And that's the reason I look at these two things in a kind—of a best—

P. Right. Right. Right.

W. Because of—in an urgent way, I think if they resign or are suspended then—that it reflects on you. I think if they are indicted and you suspend them or they resign upon indictment, I imagine that they wouldn't even expect you to—

P. No—they know (unintelligible) Or if they are even included in this list of co-conspirators . . .

W. Yes. I just don't think—

P. Already said, of course.

W. That—there's any difference. I really don't.

P. What do you think, Frank?

S. This is my feeling. I feel that resignation now by these two gentlemen will be a tremendous reflection on the Presidency. They are—the effect to it—because the public statement says that this is only in Senator Ervin and other sources, because there is no evidence to tie them into a criminal situation. Now if they stepped out at this point there is going to be a public feeling that this is an admission of guilt and this is going to flow over from them right to the (unintelligible) and I have a very strong feeling that this is not one—and I don't want to say you shouldn't run from it. It's not running from it—but it's facing up to it. That's the way I feel about it.

P. Now, on the other hand—then just take—you would say that you would lean in the direction of taking the risk which there would be—that they may be named as so-called co-conspirators? And, if they are, then we just have to move in.

W. That's it. As I see this, Mr. President, and I hope this time schedule works out—it is possible that if these gentlemen submit to this informal interview—and we haven't decided that question yet—but I think we are leaning toward doing it and I think they are leaning toward having it, too. And maybe we will be present at the interview. And I told them, I said, "We don't sit silent in these interviews. We're not just spectators. We cover for our client. And if the question is unfair, I enter into the act."

P. Absolutely.

W. Oh, yes. This is not a thing where we are throwing the sheep to the wolves. And so, they, I think they—we didn't make a decision, but I think they—I think they are inclined to think that way. Did you get that?

P. I wonder if you could give that interview soon? Is there any way? If you could get that timing some way—or other.

W. I think that—

P. Or maybe you don't want it soon.

W. This was a little (unintelligible) that I had with him. Silbert turned to me and said, "(unintelligible)." He said, "the man who is being talked about seeks the interview, or seeks to go before the Grand Jury. This, I—this, I never would seek. You are in there alone with no counsel and the prosecutor has been in there for months and he controls the Grand Jury and this is the score—of the rule. And I said—now the other point is whether we would ask for the interview or that he would call us for it. I said, "Listen, Silbert, (unintelligible) not taking it in the order in which the thing is supposed to. You suggested, first, that you want them for the interview. Why don't you play your cards? Why don't you call upon us first? I would prefer it that way."

P. In other words, wait 'til they're ready?

W. Yes. Yes, I would. Uh, now I—

P. I told Petersen they'd come anytime he wanted them. That's the way I felt it.

W. Well, this is—we did not resist it. (unintelligible) any idea (unintelligible) to the interview for. It wasn't that at all. It wasn't that we said, "If they didn't come—nothing like that." But I have said—Frank, if you don't agree with this, please tell the President.

S. No—whenever I don't disagree with John—I agree.

W. He's—

S. But I am not hesitant to disagree.

P. I understand.

W. Oh yes—he is. He's just awful at times.

P. Good.

W. And he's always willing to be critical when he thinks I'm going astray.

P. Let me ask—in other words, your advice at the present time is stand with these men, because basically if you flush them now, it's going to probably hurt—let me put it this way—it will hurt their case. Wouldn't it?

W. Yes. That's right.

P. Unless we can look at their case first and then everybody. It will hurt their case, don't you think?

W. I—it will—in the public eye.

P. And you think that—but—and my point is—so take the risk of going down and letting them be indicted and then if they—

W. Well, so you take a risk, hopefully, of the interview.

P. Oh, the interview. Certainly.

W. Yes.

P. Then what?

W. Well, let's find out—let's find out—

S. Then you take another look at it—

W. What questions they ask and what they appear to have and what they are after—and then reappraise this situation. This—this thing, Mr. President, in my judgment has to be played in steps.

P. Don't go too fast?

W. Well, no.

P. You don't know how much they have and what they can prove?

W. That's it, exactly.

P. Then, you got to remember Dean, as I have said, is a loose cannon.

W. I know he is.

P. The damndest charges you've ever heard. Some of them are unbelievable.

W. Yes.

P. This fellow that was sitting in here and who in the Office of the President—a very bright young guy and these guys would talk to him and so forth—but he now wants to drag them down with him.

W. Yes. Oh, he's bad.

P. They must have told him what I—they—I think—have told Dean that, "If he'll—if he can get Haldeman and Ehrlichman—he gets immunity." Now, on that point, do you want Petersen to give him immunity, or not?

W. Uh—

P. Dean.

W. Well.

P. Should he?

W. Uh. Let me—as I understood, they were hung up upon that right now.

P. They are.

W. Now.

P. See, that's why—I put out a statement that no major figure should be given immunity.

W. Let me tell you—

P. Basically, because I think it would look bad if—(unintelligible) from our standpoint. What do you think about it?

W. Let me tell you about the two kinds of immunity, may I get to this?

P. Sure—anything.

W. The prosecutor has the power, of course, to say I'm going to (unintelligible) that man, usually use him as a witness and he may have other reasons (unintelligible). So, he'd get *case immunity*. But it gets to the prosecutor now to use him as a witness and he'd involve in the cross-examination of (unintelligible). You admit he's named you, involving your total service. You are going scott free while you hope that this will contaminate him before the Jury.

P. I see.

W. So that's case immunity. Now, the immunity statute that has been on the Federal statutes for years—up to 1968—was a confusing statute. It was to be co-terminus with the Fifth Amendment. That is to say, that no testimony was to be used against you. But the (unintelligible) in the courts has variously confused. It was because of that fact and so nobody would ever believe that it was co-determinus with the Fifth Amendment. So in '68, perhaps it was, thereabouts, Congress passed a statute which we call "Use Amendment"—Use means use of the testimony. This does not exonerate him from indictment. This merely says that what you tell us cannot be used against you, except for perjury.

P. I see.

W. And that we can turn around and indict you the next day if we can indict you on independent evidence, having no source. So we call it case immunity in the instance where the prosecutor turns a fellow loose, and that's it. And *use immunity*. Now I don't know whether Dean is dickering for—by the way, this use immunity is a very elaborate procedure. This Attorney General must ask the District Judge for it and the District Judge gives it to him. As far as I know, I guess this is an open court proceeding. We considered one but it never seemed to work.

S. I mean, we got them sufficiently confused enough at one time on this very question, but—

W. But we got it resolved in the meantime. But this is a—this is a fairly new statute—but if this means—in the use immunity case—that the man can incriminate—get himself immunity. Now this is devastating where there is a witness on the stand too.

P. Yes.

W. This is a weak link in the prosecutor

if he has to use a witness who got immunity by trading off his friends. And for that reason I don't know what he is trading with you—trading with trading loose on this whole mess.

P. Yeah.

W. Or whether he's trading him loose on himself.

P. I don't think Dean's lawyers—Schaffer is his name. Do you know him?

S. Who is he?

P. I think Dean's lawyers are just trying to get him off.

W. Yes. On this one case.

P. Off the whole damned thing.

S. What we have found in other cases with Glanzer is that they don't want to go to the elaborate statutory procedure and just want to have an oral understanding, "If you cooperate with us, we'll give you our word we won't prosecute you."

P. That's what they told Dean.

S. That's generally their procedure when there are conspirators.

W. This is Petersen's style. He practically gave us this in another case but he double-crossed us gently and we just don't believe him. You see, let me tell why we—why we are a little cocky. And maybe this—this is a bad basis for judgment. But a very prominent national industrialist was charged with—threatened with perjury before a Grand Jury. In order to get him to testify against a dubious lawyer and it was said that Mitchell wanted to get and uh—the man had been threatened by—on the perjury thing before the Grand Jury. If a man gets indicted he's not entitled to (unintelligible). We studied law for two years on that case until finally we got alarmed and we brought our client and we said, "Mr. So and So. We've got to take a chance. The time is running out on you, the time is running out on the District Attorney, but if you just want to stand the way you've stood it for two years and—you can't do that for two years—it's your risk. You can only judge us as you would be judged."

P. By the fact.

W. He says, "To hell with it. I will stand up to it. He hasn't got a perjury case. He didn't say anything."

S. What this was—they were applying the screws to get this industrialist to testify against the lawyer more than they wanted the one against the industrialist. They didn't have the evidence against the industrialist but they would just sit down in that office and swear they had enough to return an indictment. This—this, I think—this is what they are doing. I am confident that they are going to tell each one of these witnesses that are scattered around—potential witnesses against Mr. Ehrlichman and Mr. Halderman—they are putting the screws on them—they are scaring them. And they are using psychology. Now this overflows—it overflows on John, it may and the (unintelligible). You have to recognize this—have to recognize what we've got here. Go from that to the merits of the case—this is what I am trying to do, and when I look at it from the merits of the case, I don't think they have a criminal case against these gentlemen at this point.

P. Even on conspiracy? You see, the thing is, I understand that conspiracy is very broad—

S. One overt act and they can bring conspiracy.

P. But you have to have an overt action.

W. Not on the part of every defendant. Not on the part of every defendant. But the overt act could be in itself innocent if they are part of the pattern.

P. I think that is really what they are going to try to nail Haldeman and Ehrlichman on. Not on the—not the Watergate thing—they can't do that. (unintelligible) had approved the budget that (unintelligible). They can prove that whole thing. Never

prove that that's what (unintelligible) never prove that.

S. Sure. Sure.

P. But on the other hand, they will say that on the three-fifty—"Haldeman and Ehrlichman were involved with Dean and Magruder in an effort to get the money to keep the defendants quiet" What's the answer to that? (unintelligible) McCord—you say—

W. Well, of course—Dean's—if I understand John and Bob correctly—Dean's presentation goes no further, as far as we know, than money to take care of their families.

P. That's right.

W. And legal counsel.

P. That's right.

W. Well, you might say circumstantially that helping the defendants—

P. Yeah.

W. And (unintelligible) it, but it isn't quite as wrong as—having to pay the money to the defendants for the purpose of shutting their mouths.

P. Yeah. The other thing—there was perhaps one instance—very little—very little where it said there is the matter of (unintelligible). I am confident their motive in every instance was to help their families and with their legal counsel.

W. Yeah.

P. I can't see that that's wrong.

S. I cannot either. No, there's no crime in this. And we—we asked them because the innuendos and inferences of pay-off to keep the defendants quite—yes—surfaced quite a while ago.

P. Well, McCord has said it. Yes, and the defendants may so now testify.

S. Yes. That's right. But none of these actions have we been able to pin down occurred after these allegations arose. This to us—

P. I see your point.

S. Is significant. If they had—

P. If they knew that these allegations had been made and they still were (unintelligible)—

S. Yes. That's right. If they were chargeable with newspaper stories of allegations of payoffs and then they sent the money over, for the families—

P. I think there were newspaper stories that the defendants were getting money and so forth, but the allegations that they were paid off to keep quiet—I think it was the first time in Court—but you better check that. But I know—I don't think anything after that. It is a point worth checking.

W. You know, Mr. President, it may appear to you and I repeat only because I (unintelligible), if you had the interview (unintelligible) and given these two men together on the basis of what we call the vernacular of capital appeals.

P. Oh, I understand.

W. And, I really—

P. Well, there are no good choices in a case like this.

W. No.

P. Just take the least bad one.

W. That's right.

P. Your point is that, which has some merit to me, that probably it's just as bad—let's look at it—at its worst. It's just as bad to sink them now as it is to sink them if they are indicted.

W. Sure.

P. Isn't that the point?

W. Yeah.

P. If they are indicted, then I've given them every chance. And if they are indicted, we'll let them go.

W. That's right.

P. If on the other hand they are not indicted—

W. You may—

P. You have to remember, though, that they may even if they are not indicted—this is the argument that these prosecutors and Petersen will make—that if they are not

indicted, they will be indicted in the public mind with all this stuff.

W. That's right.

P. Well, put your hat on now.

W. If they are named as not involved—

P. Not named at all. Not named at all. Because of the newspaper stories, and the leaks and the columns and in the attacks by the Weickers, et cetera—these men are going to be really merciless by—Dean's testimony. They are going to be indicted in the public mind. Do you think their usefulness will be destroyed by that?

S. Won't there come a time when they will testify before Senator Ervin's Committee and have a chance to make their public presentation?

P. Yes. Well, no. I think they will be testifying in court before that.

S. In court before then.

P. I don't see how—I personally don't see how the Ervin Committee can possibly be allowed to go forward at a time when these court suits develop.

S. Yeah. They will probably say that (unintelligible) too.

W. Going back to the Petersen—

P. Yeah.

W. And here again you must take my observations with the fact that I am prejudiced against him.

P. Yes. Tell me about—

W. Dean's getting off the hook, possibly.

P. For having revealed too much to Dean?

W. No. From indicting your top men.

P. He didn't want to indict them.

W. Well, yes. And I—in other words—

P. Well, he doesn't seem to be concerned about indicting Mitchell. He is concerned—he is petrified. And Mitchell will be indicted.

W. That's what I am told. I have never been in quite this far as they are with this situation, but I know—

P. You mean they are going to be reluctant to indict the two top men.

W. That's—that's what I would say except you know—I would put it this way—Petersen will handle—this problem. I guess—a holdover from the Democratic Administration.

P. That's right. He is.

W. Well, I doubt (unintelligible)

P. What's your judgment?

S. I was following Petersen. I don't know his (unintelligible)

W. I said. "His background—his background as a Democrat—"

S. Oh, Assistant Petersen?

W. I thought as the prosecutor he would love to—unless he was just crazy or ruthless to want to indict the top of the ladder.

S. Without the strongest case and I think—

P. He didn't want to indict unless he can convict.

S. Yes. But this is not one. I don't think he would throw in your two top assistants—into an indictment as defendants, without clear evidence against them.

P. How about this co-conspirators—not-indicting? Think they would do that?

S. Not without clear evidence. I equate either one as being one and the same.

P. I do, too. Because they know if they are named as that then I would have to suspend them. They have to fight that. It's a hell of a procedure—that co-conspiracy.

W. Yes. But it's been going on since time immemorial.

P. Unindicted co-conspirators?

W. Yes. And using that phrase the man who hands down unindicted guys would say—and others to the Grand Jury unknown—so they have a sweeping cover that way in getting them confused. I just think—

P. Well, at this point, I think the thing to do is to stand firm.

W. That's what I wanted to say.

P. Stand firm.

W. Let's play this almost—

P. Don't panic.

W. That's a very good phrase. And let's play

this slowly and as things develop and take another—

P. These are good men. I just hope we can save them. It's a miserable thing to have them go through.

W. But you do know, I am sure, we have said to you that while we have their interests—well, I'll say, not primarily, but largely—in our heart, they are—because they are our friends.

P. Sure.

W. We are equally interested in this possibility.

P. I understand.

W. We think it spills over other people.

P. If anything's done now—let's just sit it out awhile—take the smears for awhile.

S. One thing I was wondering and I hesitate to bring it up because it is more of my problem. The statement from Huston—interviews in depth with your top assistant that you have gone into the facts with them—that you've put your confidence in them—believe what they say.

P. If I said that to them?

S. Yes.

P. Want me to say that?

S. Yes.

P. Want me to say that?

S. Well, I'm wondering, I'm curious—and you put this critic and foe that you have had this in-depth contact with him on this basis—that you believe them—you place your faith and credit in them—and from what they have told you—they have not done anything wrong.

W. If you come to the conclusion to do this, Mr. President, and while I like Frank's presentation of that—I'm concerned about the credit.

S. I haven't given it any thought.

W. But I think you could add—I'm not trying to get any bouquets for this and their counsels then (unintelligible). I don't know that you want to say that, but support for you because that—

P. Their counsels advise me that.

W. No, not advised (unintelligible)—

P. That they have not—

W. That they have not—I mean I don't—

P. I think the timing on that—let's have that in a reserve—I think that's a good point.

W. I wouldn't mix the (unintelligible)—

P. Let's let Easter go by—hope the weekend survives.

W. Now Magruder isn't coming back 'til Monday, have you been informed of that?

P. No.

W. They heard that this afternoon while—

P. Hunt was there today.

W. Yes.

S. But, somebody is coming in tomorrow—it was flashed by very rapidly in an exchange. I don't know who it was.

W. The thing is if they can work and we're going to be—obviously, we'll see these men tomorrow again.

P. We appreciate your work.

W. And, any time over the weekend that they—

P. You going to go back and talk to Glanzer again some time?

W. Yes, aren't we, Frank?

S. Oh yes, there's always been that we have a formal conference—then maybe another one. Then you can drop in the office and see them informally and see—you go down on another matter and Seymour is very cooperative.

W. You couldn't do that initially—this had to be a scheduled conference. He had a man there—he didn't know us and besides he was jumping in first (unintelligible).

S. The problem—that we should be trying to get information at Seymour Glanzer's level and you're in conversation with the Assistant Attorney General, but yet it seems worthwhile and productive.

P. I'm not sure that Glanzer is telling the truth.

W. Well, on occasion I've never been (unintelligible) to that—He did some good opinions.

S. You know why I remember that case. He was an Assistant Attorney General then but—

W. Yes, he was one of the (unintelligible)—

S. He was doing all the work. Well, we're at your disposal.

P. Well, as I say, you've got honest men; I know they're telling the truth.

W. I'm extremely impressed with them.

P. Well, they're touched by this because anybody who was in the campaign is touched by everything about it. And frankly, Mitchell's an honest man. He just wasn't tending the shop—he had problems with his wife—these jackass kids and other fools around did this thing and John should have stepped up to it—that's what happened in my opinion. And I think I—

W. Sure, I know.

S. Well, we're available to them and if you would like to see us again any time you want to and we can tell you always be delighted.

P. Well, I appreciate that.

W. It's nice to talk to you even under these circumstances.

P. Well, we hope that by Golly—that we'll talk under better—

S. Last time I saw you it was crowded—out at the Wardman Park—the Shoreham—I could have lifted my feet off the floor and watched you—you and your family on the podium.

P. What was that?

S. That was election night.

P. Election night—you were there? Oh boy, That was a great night! Well, That was what it was all about.

S. Yes, it sure was.

P. Well, we'll survive this. You know—people say this destroys the Administration and the rest—but what was this? What was Watergate? A little bugging! I mean a terrible thing—it shouldn't have been done—shouldn't have been covered up. And people shouldn't have and the rest, but we've got to beat it. Right.

W. Everybody does—the Democrats have been doing—going on for 20 years. (Laughter)

S. Mr. President, on behalf of my daughter Nancy—she asked me to do it.

P. How old is she?

S. She's sixteen.

P. Next time you come in—I'll give her a little something—

P. You've got—they have good men to (unintelligible).

Appendix 47. Meeting: The President and Petersen, Oval Office, April 27, 1973. (5:37-5:43 p.m.):

P. Come in.

HP. How are you today?

P. How was your hard day?

HP. I'm sure no harder than yours, sir.

P. Sit down, sit down. I was down in Mississippi today. We have gotten a report that, ah, that really we've got to head them off at the pass. Because it's so damned—so damn dangerous to the Presidency, in a sense. There's a reporter by the name of Hersh of the *New York Times* you probably know.

HP. He's the fellow that did the Vietnam stories.

P. Right. Who told Bittman, who told O'Brien, apparently that they have information—Hersh has information I don't know. You can't ever tell who is saying "this is from Hersh" or "this is from Bittman." Information indicating that Dean has made statements to the prosecuting team implicating the President. And whether—and whether—the *Post* has heard similar rumors. Now, Henry, this I've got to know. Now, understand—I have told you everything I know about this thing.

HP. I don't have any problem with that,

Mr. President, and I'll get in touch with them immediately, but—

P. Who?

HP. With Titus, Silbert and Glanzer and Campbell? Who are—

P. Do you mind calling them right now?

HP. No, sir.

P. OK. Say, "Now, look. All of your conversations with Dean and Bittman, do they implicate the President?" Because we can't—I've got—if the U.S. Attorney's office and, ah—

HP. Mr. President, (unintelligible) I had them over there—we had a kind of crisis of confidence night before last. I left to come over here and I left my two principal assistants to discourse with Silbert and the other three. And in effect it concerned me—whether or not they were at ease with my reporting to you, and I pointed out to them that I had very specific instructions, discussed that with them before on that subject, and—well

P. Yes.

HP. As a consequence—I kind of laid in to Titus yesterday and it cleared the air a little bit, but there is a very suspicious atmosphere. They are concerned and scared. Ah—and I will check on this but I have absolutely no information at this point that—

P. Never heard anything like that—

HP. No, sir. Absolutely not.

P. My gosh—As I said—

HP. Mr. President, I tell you, I do not consider it, you know, I've said to Titus, "We have to draw the line. We have no mandate to investigate the President. We investigate Watergate." And I don't know where that line draws, but we have to draw that all the time.

P. Good. Because if Dean is implicating the Presidency—we are going to damned well find out about it. That's—that's—because let me tell you the only conversations we ever had with him, was that famous March 21st conversation I told you about, where he told me about Bittman coming to him. No, the Bittman request for \$120,000 for Hunt. And I then finally began to get at them. I explored with him thoroughly, "Now what the hell is this for?" He said "It's because he's blackmailing Ehrlichman." Remember I said that's what it's about. And Hunt is going to recall the seamy side of it. And I ask him, "Well how would you get it? How would you get it to them?" so forth. But my purpose was to find out what the hell had been going on before. And believe me, nothing was approved. I mean as far as I'm concerned—as far as I'm concerned turned it off totally.

HP. Yeah. My understanding of law is—my understanding of our responsibilities, is that if it came to that I would have to come to you and say, "We can't do that." The only people who have jurisdiction to do that is the House of Representatives, as far as I'm concerned.

P. That's right. But I want you to know, you tell me, because as far as I'm concerned—

HP. I'll call them. Do you want me to call from here or outside?

P. Use the Cabinet Room and you will be able to talk freely. And who will you call, who will you talk to there?

HP. I'll call Silbert. If he's not there, I'll get Titus.

P. You'll say that "This is the story some *New York Times* reporter has and Woodward of the *Post*, but Hersh is reporting that Dean had made a statement to the prosecutors." Now understand that this is not a Grand Jury thing. Now dammit, I want to know what it is.

HP. I'll call right away.

P. And I need to know.

HP. Yes, sir.

Appendix 48. Meeting: The President, Petersen and Ziegler, Oval Office, April 27, 1973. (6:04-6:48 p.m.).

P. Come in. As, like all things, some substance, some falsity.

HP. Ah, last Monday Charlie Shaffer was in the office, and a continuation of the ne-

gotiations. Charlie Shaffer is the lawyer. Charlie is a very bright, able bombastic fellow. And he was carrying on as if we're making a summation in a case. And he said—that—ah he was threatening. "We will bring the President in—not this case but in other things." What "other things" are we don't know what in the hell they are talking about.

P. Don't worry.

HP. "In other areas," more specifically is the word he used. That they regarded—and didn't consider of importance they regarded as the elaboration of his earlier threat. You know, "We'll try this Administration—Nixon—what have you, what have you." There's a new conversation by them with Dean since the Sunday we first met (unintelligible) Whatever is said through Shaffer the lawyer.

P. What else do you have besides that?

HP. Well, let's see. They did that at a later date in the proceedings that Dean went to the President, and I assume that's the February or March or whatever that date was. But that's in the course of your trying to find out. Ah, today they were after the Cubans and the receipt of the money which they confirmed. Dorothy Hunt on being the intermediary that passed it through. They are going to have Butterfield in a few minutes.

P. What I am getting at, Henry, about this threat that—

HP. There's no more on that other than I've just told you.

P. Why in hell can't we stop though—the paper that Hersh—to think that to bring the President with a thing like that, (expletive removed), you know. Understand. Let me say this. If it were in with the Grand Jury I want to know that too.

HP. All right. Well—

P. (expletive removed). You've got to believe me. I am after the truth, even if it hurts me. But believe me, it won't.

HP. I understand that, you see. But, you know—

P. Just like it won't hurt you. We are doing our job. And somebody was in here the other day and they were saying, well, Dean is going to blackmail you because of something you're supposed to have told me. And I said, (expletive removed) I said, you have a right to tell me what was going on.

HP. The only thing I think is that it's either Dean or Shaffer or this McCandless. Now, Shaffer says that it's McCandless that's leaking this stuff to the press.

P. Who is McCandless?

HP. McCandless is another lawyer that Dean has retained.

P. He's leaking to the press that they are going to try the President, huh? (unintelligible)

HP. Other areas, but what those areas are, we don't know. Now, Silbert said, "Stop." So, he didn't let them go on. He said, "Why get into that?" Ah—

P. It's not this case. Go ahead. (unintelligible)

HP. Well, I told those fellows, look. I told those fellows this. I know you can't believe these reporters all the time. He's had one or preferably two weeks—

P. I'm glad we have that then. When I heard that, I thought that Dean must be out of his damned mind or something. The man is not, ah—I don't know. Going to have Butterfield in? Good.

HP. Well, that's in connection with the \$350,000. Now, we are going to have Jack Caulfield in to the Grand Jury.

P. That's on, because he worked on—

HP. He set up the intermediaries that were being used as couriers to transfer money either to or from LaRue.

P. Oh, he did? Caulfield, eh. What would be the liability of a man like that? Would he be a conspirator?

HP. If it's done with knowledge—if it's done with knowledge—

P. Yeah, with knowledge. But also, there

is a certain—it has to be willful or—there are two statutes—

HP. When you talk about conspiracy, you are impugning knowledge, and you impugn the knowledge of the facts unless there's specific evidence of the—

P. (unintelligible) I just don't want to see guys get hurt that didn't know what the hell they were doing.

HP. And we don't want to either.

P. (unintelligible)

HP. But we are looking for witnesses, to be perfectly honest.

P. Sure.

HP. Strachan, they are still negotiating with him on having flunked the lie detector test.

P. Maybe the best thing to do is to plead guilty to the prosecutor—plead guilty?

HP. Well, you know, ah—

P. What?

HP. Basically, I mean, what we are telling Strachan is that he has got to make the choice whether he wants to be a witness or a defendant. "You can just hang tough, and you can be technically be a witness." (Ziegler enters.)

P. That story, according to Henry Petersen—he just called the U.S. Attorney's office. It is a totally false story. Needs to be totally knocked down.

Z. Yes, sir.

P. Read me exactly what you can recall the U.S. Attorney—

HP. Called U.S. Attorney and said that in the past an attorney representing John Dean was in his office and indicated that if we insisted on Dean, that they would be tying in the President, not in the Watergate, but in other areas.

P. That's not Watergate, but in other areas.

HP. Whatever that means.

P. Well, that's fine. Just let them tie us in.

HP. Now, to put that in context, they had previously said that if we insisted on trying Dean and not Ehrlichman and Halde- man that that they would be "trying this Administration," the President and what have you.

P. So basically that's the game they are playing.

Z. I can understand how—you indicated that their attorney, the other day, said they would resist in tying in—did you say? In not the Watergate, but—

HP. They would be tying in the President. I mean it was an emotional statement.

P. Emotion at tying in the President, not in Watergate but in other things. Right.

HP. Not in the Watergate, but in other things. Whatever they would be—

P. When was this?

HP. Monday. Monday of this week.

P. Monday of this week.

HP. Monday of this week.

P. Well, I think this — — I think this thing we just hit back on.

HP. Well, that's the only thing. And I don't know that. And they had no idea.

P. But Dean gave them.

HP. What?

P. But Dean give them.

HP. Oh, yes, but, but—

P. That was one of the reasons that was so important to disclose that because they could have hung that over our heads, you see and—

P. You remember my call from Camp David. I said, "Don't go into the national security stuff." I didn't mean—

HP. Oh, I understand.

P. 'cause I remember I think we discussed that silly damned thing. I had heard about it, just heard about. You told me that. That's it, you told me.

P. What (expletive removed) did they break into a psychiatrist's office for? I couldn't believe it.

RZ. I think what all of this is—

P. What do you think it is?

RZ. I think it's the attorney.

P. I think he is bargaining for Dean.  
 RZ. I had occasion to talk to Dean a few minutes ago, but a call—  
 P. You did?

RZ. He is a very good friend of mine.  
 P. Well, tell us what you—now understand we have to watch how we handle him now, because we've got—

RZ. It was a very good conversation. He said, "Ron, I am issuing no statements." Incidentally, he said, "I got a telephone call." P. A telephone call from the President. You know, that shows you what a person he is. I called—you know—some nice things we do—I called six people, members of my staff. I called Ron, Henry Kissinger, Ehrlichman, and Rose, my secretary and John Dean. I just go down a list of people, and just say "I want to wish you a Happy Easter" That's all I did. And it's all over the press!

HP. Well, you know, we got a report. Again, I got it through Charlie Shaffer that he was pleased and elated and reassured. And you know, as a human being—

P. I don't want to hurt John Dean. Believe me—I'd like to help him.

RZ. He went out of his way to make the point to me, just in this two-minute conversation, he said "I didn't make that telephone call, Ron" I don't know who may have done it cause he knows—

P. Oh, you did not discuss this crazy Hersh story.

RZ. No.  
 P. Now the problem about this Hersh story, is that if the *Times* comes out and runs this—

RZ. Oh, no. As a matter of fact I talked to Clifton Daniel this afternoon, and he didn't raise it.

P. The Woodward story. Woodward also has the same story. Woodward of the *Post*.

RZ. Woodward said that reliable sources said that someone had implicated the President in their testimony, or referred to him.

P. In the Dean story?

RZ. No, that was Hersh.

P. What did Woodward say?

RZ. Woodward said they had two stories; one was the fact that it was reaching a new plateau, and he was not ready to read the story because he was still working on it, and Woodward was taking the position that he was confused and needed to talk to someone to get a perception.

HP. They are trying people.

RZ. What they are trying to do is to get a fix on what's happened over here.

P. OK. Take a hard line. Gergen to Woodward. Anything on that they better watch their damned cotton picking faces. Because boy, if there's one thing in this case as Henry will tell you, since March 21st when I had that conversation with Dean, I have broken my ass to try to get the facts of this case. Right? Tried to get that damn Liddy to talk. We tried to get—finally got Gray to refresh his memory. (unintelligible) We finally got—incidentally, we put Ruck in that thing rather than—I didn't think based on what you had told me earlier, we should put Feld—because there's too much (unintelligible) over there and Ruckelshaus is a perfectly trustworthy man. He'll stay 30 days—

HP. I know him and I think well of him.

P. and for that matter, we'll have another man ready. Does that sound alright to you? I told Ruck, incidentally, that he was to cooperate with the investigation and I said, "Ruck you are to do anything that the prosecutor says to do, Henry Petersen, or the prosecutors, leave no stone unturned and I don't give a damn who it hurts." Now believe me, that's what he's been told. So you got a man there who will—

HP. I know him and I think well of him, Mr. President.

P. Well, he's Mr. Clean, you know so you understand.

HP. Yes, indeed. He's quite able, he is indeed.

P. So there you are. You've got to knock that—Crack down. If there's one thing you have got to do, you have got to maintain the Presidency out of this. I have got things to do for this country and I'm not going to have—now this is personal. I sometimes feel like I'd like to resign. Let Agnew be President for a while. He'd love it.

HP. I don't even know why you want the job.

P. You are talking about this story—that Agnew is getting ready to resign? That's the *Post* also?

RZ. Well, that's the *Post* and *Times*.

P. *Post*? Well, what did Agnew say?

RZ. "That's ridiculous." Marsh Thompson's going to turn it off. Well, look. Let me have Gergen call him back, and say, "He raised two points with me. Let me tell you what is going on here. What's going on here, Bob, is the President is going to get to the bottom of this."

P. That's right.

RZ. And then have Gergen say, I have checked this at a very high level and you'd better, absolutely not even go into any emotional concerns of running a story like this. You had better just wipe it out of your mind. Because there is nothing to it.

P. That's right.

RZ. If you say you want to be responsible and fair, well, you had better not go with a source that you have to speculate on.

P. Right. The same with the *Times*.

RZ. The *New York Times* man, I'm sure—

P. Well, Hersh is so damn unreliable.

RZ. (unintelligible)

P. I'd call Daniel. Hersh told Bittman who told O'Brien that Dean had testified that there was a new—that the President was involved, right?

RZ. Not testified, but told the prosecutor or something.

P. Told the prosecutor that the President was involved, right?

P. Let me ask Henry a question. You have Titus and those saying Dean, neither Dean or his lawyers, have said anything of that sort except this one thing.

HP. They said, "tying in the President" not in the Watergate but in other areas and the prosecutor said, "Stop! We don't want to get in this. We don't want to discuss this."

P. (unintelligible)

HP. What I think is its bombast, its negotiation—it's ah—

P. Again make it clear that Henry's made his check.

RZ. Just to put this into perspective. This is not, as I sense it, about to break in the papers. This is just rumor type.

P. Well, kill it. Kill it hard.

RZ. OK, sir. (Ziegler leaves)

P. Let me say this, let me ask you about (unintelligible). First, on Dean—I would not want to get into a position—You have told me now, "You can do what you want with Dean." You have given up. You mean, in other words, fire him, hire him, leave him, treat him like the others, wait until the Grand Jury acts, or something. You see, I have three courses: I can wait until the Grand Jury acts, I can take leaves of absence, or I can take resignations, I have three different courses on all three men. I can do different things with each one of them. Right?

HP. Yes, sir.

P. These are the options, but what I will do remains to be seen. Now in Dean's case, I do not want the impression left that—I have gone over with you before, that by saying "Don't grant immunity to a major person," that in so doing I am trying to block Dean giving evidence against Haldeman or Ehrlichman.

HP. I understand that.

P. I have applied that to others, and I don't want to—no. Do I make myself clear?

HP. Yes, let me make myself clear.

P. Yes.

HP. I regard immunity authority under the statutes of the United States, to be my responsibility, of which I cannot divest myself.

P. Right.

HP. And—ah—we take opinions, but I would have to treat this as advisory only.

P. Right. Well understand, I only expressed an opinion.

HP. I understand.

P. And understand you have got to determine who is the major culprit too.

HP. Yes, sir.

P. If you think Dean is an agent—Let me say. If Dean, I—I think Haldeman and Ehrlichman in the case of themselves with Dean. But my point is, you have got to—ah—I don't know what your prosecutors think, but if your prosecutors believe that they have got to give Dean immunity, in whole or in part, in order to get the damned case, do it. I'm not—I'm not telling you what to do, but—you understand? Your decision. Now have you talked to the prosecutor about this situation?

HP. They vacillated. In the first instance they, I think, felt quite strongly that Dean should be immunized, and I was resisting. And the last time we discussed it, why they had made other—

P. Why? Maybe because of what I said? See? I don't want—I don't want them—

HP. No. I don't think so, because, one, they are in a position to simply make the recommendation and let me shoulder the heavy burden.

P. Why do you think that they had turned around?

HP. Well, I think they see the question of credibility. They have come to the recognition that if they are going to put him on the stand and he's going to have any credibility at all, he'll have most credibility if he goes in and pleads and testifies as a co-defendant against Ehrlichman and Haldeman as opposed to someone who has been given immunity and is testifying against them.

P. Even an old man like Wilson will tear hell out of him.

HP. Well, John Wilson may be old, but he's one hell of a lawyer.

P. Oh, I can see—

HP. A top-notch man—

P. I met him last night, I said privately and I won't again, but I was impressed with him. He is a delightful man. And I could see, I can see—I would want to be on the stand with him interrogating.

HP. He's a fair—

P. He must be pretty good.

HP. Yes, sir he is. And did you meet Frank Strickler?

P. Yeah.

HP. They are both delightful people.

P. Yeah. Strickler, he just looks sort of a big country bumpkin, but there is a sharp mind in there.

HP. Very able fellow. And they are decent people to deal with—as adversaries. They are decent. They are honorable lawyers, they are pleasure to deal with.

P. All right. We have got the immunity problem resolved. Do it. Dean if you need to, but boy I am telling you—there ain't going to be any blackmail.

HP. Mr. President, I—

P. Don't let Dick Kleindienst say it. Dean ain't—"Hunt is going to blackmail you." Hunt's not going to blackmail any of us. "It is his word, basically, against yours." It's his word against mine. Now for—who is going to believe John Dean? We relied on the damned so—Dean, Dean was the one who told us throughout the summer that nobody in the White House was involved when he, himself apparently, was involved, particularly on the critical angle of subornation of perjury. That's the one that—I will never, never understand John.

HP. I, I can almost quote him. He said, "Henry, God damn it, I need this information. That man designated me to get all these facts." And he calls me in there and chews my ass off.

P. Do you know something?

HP. And this was before the trial—

P. Dick Kleindienst, incidentally, Dick Kleindienst told me this last night when I talked to him. He said, "You know, Mr. President—" And I said, "Do you know the first time I ever saw Dean alone was on February 27, 1972, except for 5 minutes when I signed my will on August the 14th." Dick probably repeated, because I think you were in the room. He said, "Are you kidding?" I said, "No, why? Did you hear otherwise?" He said, "Well, Dean was around here quoting the President all the time." Did he indicate that I was telling him to do this?

HP. He told me that he had been designated by you to accumulate all these facts and he was reporting to you personally. And that you'd be clearing his ass out if he didn't have it and I went back to him again, I said, "John, are you sure this information is not going laterally?" I said, "Not that I distrust you, but you, where is it going? Do you know?" He said, "Henry, it is only going upward," which I took to mean—Ehrlichman, Haldeman and you.

P. Ehrlichman. It went to Ehrlichman, I am sure. And then in to Haldeman. And to Ziegler, because Ziegler used Dean. But that was because he had to (unintelligible).

HP. Well, I didn't have any problem with that. I got in—

P. Dean. You will get Dean in there. Suppose he starts trying to impeach the President, the word of the President of the United States and says, "Well, I have information to the effect that I once discussed with the President the question of how the possibility, of the problem," of this damn Bittman stuff I spoke to you about last time. Henry, it won't stand up for five minutes because nothing was done, and fortunately I had Haldeman at that conversation and he was there and I said, "Look, I tried to give you this, this, this, this, this, this, and this." And I said, "When you finally get it out, it won't work. Because, I said, "First, you can't get clemency to Hunt."

HP. I agree.

P. I mean, I was trying to get it out. To try to see what that—Dean had been doing! I said, "First you can't give him clemency." Somebody has thrown out something to the effect that Dean reported that Hunt had an idea that he was going to get clemency around Christmas. I said, "Are you kidding? You can't get clemency for Hunt. You couldn't even think about it until, you know, '75 or something like that." Which you could, then because of the fact, that you could get to the—ah—But nevertheless, I said you couldn't give clemency. I said, "The second point to remember is 'How are you going to get the money for them?' If you could do it, I mean you are talking about a million dollars." I asked him—well, I gave him several ways. I said, "You couldn't put it through a Cuban Committee could you?" I asked him, because to me he was sounding so damned ridiculous. I said, "Well under the circumstances," I said, "There isn't a damn thing we can do." I said, "It looks to me like the problem is sue John Mitchell." Mitchell came down the next day and we talked about executive privilege. Nothing else. Now, that's the total story. And—so Dean—I just want you to be sure that if Dean ever raises the thing, you've got the whole thing. You've got that whole thing. Now kick him straight—

HP. That's—I mean—that's what we had to do. I just don't see how we can minimize that man. That's all there is to it.

P. But I suppose he talks to his friends. Is he talking to Bittman? No, Dean was talking to O'Brien, wasn't he? Dean wasn't talking to Bittman.

HP. Not to my knowledge. Wasn't that story that Bittman—that Bittman talked to O'Brien—Bittman, Bittman to O'Brien—

P. No. Bittman to O'Brien said, "Look, we need the money."

HP. That's right.

P. Or was it Bittman to Dean? I don't know. What kind of a guy is O'Brien?

HP. I've only met O'Brien one time and then only recently at a recent Bar dinner. I don't know him. Bittman, I know well. I just thank God I broke off social relations with him from the time he represented Hunt. We had a golf date, and I just broke it and I haven't seen him since then.

P. What about Bittman?

HP. What he's concerned about is the allegation that he, in behalf of Hunt, was attempting to blackmail the White House for substantial sums of money in return for Hunt's silence. That's the allegation. And that's what McCord said—ah

P. McCord said that Bittman—

HP. McCord said that Dorothy Hunt told him all this sort of thing.

P. And so how do you get to them? Do you have to call Bittman? What do you do?

HP. Well, we may get into the fee. Fees are not privileged.

P. I see.

HP. Now—

P. You say, "Where did he get your fee?"

HP. That's right.

P. And how would you go about that one?

HP. We'll have to subpoena the fee records out of the law firm.

P. And then if he got the fee, you say, "Did blackmail the White House for this?"

HP. Well, ah.

P. How did he pay the fee?

HP. No, no. I think that—one, we try and find out whether or not the amount of fees reflected on the books of the law firm were consistent with the amount of money that was—oh—to have gone to the law firm. In other words, what we think happened is that a considerable amount within the law firm was paid out in fees and the balance went on to Dorothy Hunt for distribution to the Cubans and what have you.

P. For support.

HP. The strange thing about this one, Mr. President, is that they could have done it openly.

P. Why, of course!

HP. If they had just come out in the Washington Post could say, "Well these people were—"

P. They helped the Scotsboro people, they helped the Berrigans, you remember the Alger Hiss defense fund?

HP. And we're going to help these—They were doing this—Once you do it in a clandestine fashion, it takes on elements—

P. Elements of a cover-up.

HP. That's right, and obstruction of justice.

P. That's what it is, a question of the way it was done.

HP. Sir.

P. Curious thing. I get your point there, I see that in other words, the—so let's look at Bittman. Bittman says he is trying to blackmail the White House. Alright you called Bittman. Bittman says that—he says that O'Brien—Where did you get the money? And so forth—

HP. Now Bittman maintains that it's a lie.

P. He'd be better off to say it's a lie.

HP. Yeah. He simply says that this is a statement by McCord that is lacking in veracity.

HP. And is attributed to (unintelligible) and Dorothy Hunt.

P. Of course, you've got Dean now corroborating—

HP. Well, we have Dean alluding to it, but not in circumstances that we can use it. It depends upon whether or not—

P. But Dean must say—this is also hearsay on that point. I had forgotten this is hearsay. Because he says that he had heard that Bittman needed money, I mean, Bittman had said he had to have a hundred—

HP. The link here is O'Brien.

P. Huh?

HP. The link here is O'Brien.

P. I—oh, I see.

HP. The lawyer.

P. I see. That Dean had heard from O'Brien. Bittman or O'Brien?

HP. No. I say the link we can break into this is O'Brien. Cause O'Brien's a lawyer. He's very scared and—

P. Yeah. So. O'Brien, Let's see what he says. I am just trying to see where it sorts out. O'Brien—can you get him in? What's he done? Has he spoken up?

HP. Well, I don't know that I can really predict—ah—ah—but conceivably if he said—ah—

P. Bittman.

HP. "As part of the scheme to ensure silence of those that were convicted, we made an arrangement whereby money would flow through Bittman in the form of legal fees for distribution to those people."—Then you've got it.

P. In the form of legal fees, I see. And then you've got Bittman and then you've got O'Brien and then you got the people that did it. If they—ah—At least those that knew. Like Kalmbach, might not have known.

HP. That remains to be seen. And LaRue.

P. LaRue? LaRue did know. He had to. And Mitchell. You've got Mitchell there, you've got LaRue. Who else is missing? LaRue, is he the one that used the code name of Rivers?

HP. I don't know whether—

P. I have heard that name Rivers.

HP. I heard Baker. Now there's two, but these may be couriers that Caulfield recruited, I am not sure.

P. And in all that Caulfield is involved, probably only coincidentally. You can't—they say some of these down there. But O'Brien in other words. O'Brien is scared. And O'Brien says that Bittman—I am just trying to see how they ever got—The only way you could ever get—Let me say, there is no way they could get that to the President without going through Haldeman and Ehrlichman. But I am referring to this man here. There's no way they could get it to here except through the fact that on March 21st Dean, as I had reported to you, did report to me that Bittman had told O'Brien that they needed the money. They needed the money. It was discussed and we, I said, "It can't be done. We can't do it." He went on to see Ehrlichman, and Ehrlichman said, "No dice." Nothing could be done. Now that is the fact. As far as we're concerned. That isn't much of a thing for Dean to have.

HP. Yeah.

P. But you could have Bittman. I suppose Dean—he could have talked to him—but then you have hearsay. But Dean is not credible. He is not credible. He really can't. He can't go out and say, "Look I've talked to the President and he told me this and that and the other thing." First, it's not true.

HP. That's the reason I say, in order to make Dean a credible witness; one, it seems to me that he has to plead and two, he has to be corroborated in an essential degree, not everything he says. But in sense an essential number of factors by other witnesses. And he may be corroborated in one respect by LaRue and in other respect by O'Brien, and in still a third respect by someone else, and in a fourth respect by Magruder. You know, and that's the way it goes and the case is being built. So, maybe we can bring O'Brien out.

P. Well, there's only this one charge I give to you, among many others, and that is: If any of this—I mean, I can't allow it. Believe me that even prosecutors shouldn't even have informed you of this one. Or me—I—

HP. They have described it as bombast, and rhetoric, and—you know, posing—

P. You examine them tomorrow. And you tell them, they are my men. I'm for them too. I want them to do the job. I want this to come out solid and right here. And they will

start right in to get the big fish. Let's come to the Dean thing again.

I can give you some more time if you want to negotiate with him. I mean, when I say I—more time—

HP. He needs more pressure. It's become counterproductive of the President.

P. What?

HP. It's become counterproductive. I think he was pressed up against the wall, he's seen the early-morning crisis pass and now he's had resurgence. You know, he sees Ehrlichman here. He sees Haldeman here. He sees John Dean still here. Nothing happens. His confidence is coming back rather than ebbing. And—

P. What do you think? Without your advice—Is the proper course of action to have Dean to either—There are two courses of action I can take. I can take a leave of absence until they clear. You know what I mean. Which of course is a very—Bill Rogers thinks is the fairest. And in the end—and then they resign, of course. Or I can ask—just resign. Now the problem with resignation, which hits at—There isn't any question about what I will do when you get through with your damned Grand Jury. I just don't—I don't want to—you know what I mean? I don't want him in effect—by something that I do—to totally prejudice even Dean. You understand what I mean?

HP. I understand that aspect of it.

P. As President I shouldn't give a damn about that, but as President—I'll speak to the country on this. And I will soon. But my point is with a leave of absence, with a leave of absence for all three.

HP. With a leave of absence, you have the best of both worlds. You have given them the benefit of the doubt and you haven't cut the Gordian knot. You haven't asked for their resignations.

P. I have asked for a leave of absence. And I say, "Now I will determine at the conclusion not just of the Grand Jury, but at the conclusion of this entire investigation, that means the Ervin Committee is in there too." If, for example, you don't happen to indict one of these three, or one or two or three. I am not going to take that as clear evidence—it is not enough to serve the President simply to get by—

HP. I understand—

P. And I have told them all of that. They have got to be—

HP. I don't see that we're in any disagreement there. The problem is one of timing, as I see it. I think, in my humble judgment, that the question of timing is working first to your detriment, with respect to your image, before the press and public.

P. Do you mean now would be a good time—

HP. And secondly, I think it is working toward the detriment of the investigation because it is giving all of these people an attitude of hope that I think is unwarranted and I think that if he—

P. Let me ask you this. How about moving Haldeman and Ehrlichman and see what that does to Dean. I am just thinking about that—Let me put it this way. I am not in communication with Dean at all. For obvious reasons. But Haldeman and Ehrlichman, I hold my damn brain sessions. I know that they are telling me the truth. Dean, I can't believe him. Because I don't know what he is up to, you see? And, this leave of absence talk, let me say—Please let us keep it within ourselves. I can't leak this out. It will kill them. It will kill the whole thing. I am particularly—can't let it out to Dean. I don't like to put the three of them in the same bag. Although they may all be there.

HP. Mr. President, why do you not like to put them in the same bag? You don't like to put them in the same bag because Haldeman and Ehrlichman are loyal to the last minute, and you—

P. No, no it isn't that. It isn't that.

HP. I am not questioning your motive.

P. I am referring primarily to the fact that I have a different relation with the others. At this point I can't get Dean in and say, "Look fella, you take a leave of absence and if you come through clean I will take you back." You know, something like that.

HP. Well, I, in all candor, I think a leave of absence—absence—is just a preliminary step to ultimate departure.

P. I see.

HP. I don't see how either way any of them could come back. But it certainly at least in terms of bias and prejudice it indicates to the public at large that you haven't completely abandoned them. You haven't completely and unalterably decided their fate. On the other hand, I am separating myself from them and saying now, by golly, you—What you say is you are guilty until you are proven innocent. That's what the leave of absence is. You see. The other way I am saying, "Resignation—you're guilty." That's the difference, isn't it? The leave of absence in effect is saying, "Look, fellas, I give you leave of absence. So I hold you, basically, not that you're guilty," but—I'm not holding you guilty, I'm not finding you guilty, but I'm saying is that you've got to prove that you are innocent before you can come back.

HP. No.

P. Now in recognition I am saying—HP. No—you're saying that you have to prove you're worthy to work in the Office of the President.

P. Oh, I see. I understand.

HP. But I think that, I think that's a much more ritualistic way of saying—

P. Well, that's what I told them. That's what I told them. You know what I mean by guilt and innocence, I mean worthiness.

HP. That's right.

P. You have to prove you're worthy.

HP. But you see that's what I see has to get out to the public. But Mr. President, my wife is not a politically sophisticated woman.

P. That's right—

HP. She knows I'm upset about this and you know, I'm working hard and she sees it. But she asked me at breakfast—She, now I don't want you to hold this against her if you ever meet her, because she's a charming lady—

P. Of course.

HP. She said, "Doesn't all this upset you?" And I said, "Of course it does."

P. "Why the hell doesn't the President do something?"

HP. She said, "Do you think the President knows?" And I looked at her and said, "If I thought the President knew, I would have to resign." But, you know, now there is my own family, Mr. President—

P. Sure. Sure.

HP. Now whatever confidence she has in you, her confidence in me ought to be unquestioned. Well, when that type of question comes through in my home—

P. We've got to get it out.

HP. We've got a problem.

P. Well you know I have wrestled with it. I've been trying to—

HP. Mr. President, I pray for you, sir.

P. I have been trying to get the thing. Like even poor Gray—there was nothing we could do. Ah—wrestling with Dean's covers. But ah—

HP. I wouldn't try to distinguish between the three of them.

P. I understand. I understand. Well, I won't try to distinguish, but maybe they will be handled differently due to the fact that I am not communicating with Dean.

HP. Mr. President, it is always easier to advise than it is to assume the responsibility.

P. I will do it my way. And it will be done. I am working on it. I won't even tell you how—how—

HP. I understand—

P. But what are you going to do? What will happen now? The FBI will now interview Dean on that report in California?

HP. Yes, sir. They will interview Ehrlichman and they will, ah, attempt to identify the psychiatrist. They will interview the psychiatrist named as Ellsberg's psychiatrist to determine whether or not they were burglarized or know they were burglarized. They will attempt to determine if there's any police report of a burglary. We will check with the Defense Department since they have been involved in this thing. We will recheck the FBI. We've already checked them once.

P. What did they find?

HP. Well, nothing. We've checked our own people—

P. Now, the FBI did not do anything.

HP. I understand. But . . . we're talking about the evidence of information that may have been stemmed from that source.

P. Yeah. Well they got into the trial.

HP. Whether any of that has gotten into the file in any way. And when we do that and we do that, we have to file a report to the Court and we will and ah we'll see what develops.

P. Alright. Thank you.

Appendix 49. Statement: The President, April 30, 1973. (9:01-9:25 p.m.).

[9:01 p.m. e.d.t.]

I want to talk to you tonight from my heart on a subject of deep concern to every American.

In recent months, members of my Administration and officials of the Committee for the Re-election of the President—including some of my closest friends and most trusted aides—have been charged with involvement in what has come to be known as the Watergate affair. These include charges of illegal activity during and preceding the 1972 Presidential election and charges that responsible officials participated in efforts to cover up that illegal activity.

The inevitable result of these charges has been to raise serious questions about the integrity of the White House itself. Tonight I wish to address these questions.

Last June 17, while I was in Florida trying to get a few days' rest after my visit to Moscow, I first learned from news reports of the Watergate break-in. I was appalled at this senseless, illegal action, and I was shocked to learn that employees of the Re-election Committee were apparently among those guilty. I immediately ordered an investigation by appropriate government authorities. On September 15, as you will recall, indictments were brought against seven defendants in the case.

As the investigations went forward, I repeatedly asked those conducting the investigation whether there was any reason to believe that members of my Administration were in any way involved. I received repeated assurances that there were not. Because of these continuing reassurances—because I believed the reports I was getting, because I had faith in the persons from whom I was getting them—I discounted the stories in the press that appeared to implicate members of my Administration or other officials of the campaign committee.

Until March of this year, I remained convinced that the denials were true and that the charges of involvement by members of the White House staff were false. The comments I made during this period, and the comments made by my Press Secretary on my behalf, were based on the information provided to us at the time we made those comments. However, new information then came to me which persuaded me that there was a real possibility that some of these charges were true, and suggesting further that there had been an effort to conceal the facts both from the public, from you, and from me.

As a result, on March 21, I personally assumed the responsibility for coordinating intensive new inquiries into the matter, and I

personally ordered those conducting the investigations to get all the facts and to report them directly to me, right here in this office.

I again ordered that all persons in the Government or at the Re-election Committee should cooperate fully with the FBI, the prosecutors and the Grand Jury. I also ordered that anyone who refused to cooperate in telling the truth would be asked to resign from government service. And, with ground rules adopted that would preserve the basic constitutional separation of powers between the Congress and the Presidency, I directed that members of the White House staff should appear and testify voluntarily under oath before the Senate Committee Investigating Watergate.

I was determined that we should get to the bottom of the matter, and that the truth should be fully brought out—no matter who was involved.

At the same time, I was determined not to take precipitate action, and to avoid, if at all possible, any action that would appear to reflect on innocent people. I wanted to be fair. But I knew that in the final analysis, the integrity of this office—public faith in the integrity of this office—would have to take priority over all personal considerations.

Today, in one of the most difficult decisions of my Presidency, I accepted the resignations of two of my closest associates in the White House—Bob Haldeman, John Ehrlichman—two of the finest public servants it has been my privilege to know.

I want to stress that in accepting these resignations, I mean to leave no implication whatever of personal wrongdoing on their part, and I leave no implication tonight of implication on the part of others who have been charged in this matter. But in matters as sensitive as guarding the integrity of our democratic process, it is essential not only that rigorous legal and ethical standards be observed, but also that the public, you, have the total confidence that they are both being observed and enforced by those in authority and particularly by the President of the United States. They agreed with me that this move was necessary in order to restore that confidence.

Because Attorney General Kleindienst—though a distinguished public servant, my personal friend for 20 years, with no personal involvement whatever in this matter—has been a close personal and professional associate of some of those who are involved in this case, he and I both felt that it was also necessary to name a new Attorney General.

The Counsel to the President, John Dean, has also resigned.

As the new Attorney General, I have today named Elliot Richardson, a man of unimpeachable integrity and rigorously high principle. I have directed him to do everything necessary to ensure that the Department of Justice has the confidence and trust of every law abiding person in this country.

I have given him absolute authority to make all decisions bearing upon the prosecution of the Watergate case and related matters. I have instructed him that if he should consider it appropriate, he has the authority to name a special supervising prosecutor for matters arising out of the case.

Whatever may appear to have been the case before—whatever improper activities may yet be discovered in connection with this whole sordid affair—I want the American people, I want you to know beyond the shadow of a doubt that during my term as President, justice will be pursued fairly, fully, and impartially, no matter who is involved. This office is a sacred trust and I am determined to be worthy of that trust.

Looking back at the history of this case, two questions arise:

How could it have happened?

Who is to blame?

Political commentators have correctly ob-

served that during my 27 years in politics, I have always previously insisted on running my own campaigns for office.

But 1972 presented a very different situation. In both domestic and foreign policy, 1972 was a year of crucially important decisions, of intense negotiations, of vital new directions, particularly in working toward the goal which has been my overriding concern throughout my political career—the goal of bringing peace to America and peace to the world.

That is why I decided, as the 1972 campaign approached, that the Presidency should come first and politics second. To the maximum extent possible, therefore, I sought to delegate campaign operations, and to remove the day-to-day campaign decisions from the President's office and from the White House. I also, as you recall, severely limited the number of my own campaign appearances.

Who, then, is to blame for what happened in this case?

For specific criminal actions by specific individuals, those who committed those actions must, of course, bear the liability and pay the penalty.

For the fact that alleged improper actions took place within the White House or within my campaign organization, the easiest course would be for me to blame those to whom I delegated the responsibility to run the campaign. But that would be a cowardly thing to do.

I will not place the blame on subordinates—on people whose zeal exceeded their judgment, and who may have done wrong in a cause they deeply believed to be right.

In any organization, the man at the top must bear the responsibility. That responsibility, therefore, belongs here, in this office. I accept that. And I pledge to you tonight, from this office, that I will do everything in my power to ensure that the guilty are brought to justice, and that such abuses are purged from our political processes in the years to come, long after I have left this office.

Some people, quite properly appalled at the abuses that occurred, will say that Watergate demonstrates the bankruptcy of the American political system. I believe precisely the opposite is true. Watergate represented a series of illegal acts and bad judgments by a number of individuals. It was the system that has brought the facts to light and that will bring those guilty to justice—a system that in this case has included a determined Grand Jury, honest prosecutors, a courageous Judge, John Sirica, and a vigorous free press.

It is essential now that we place our faith in that system—and especially in the judicial system. It is essential that we let the judicial process go forward, respecting those safeguards that are established to protect the innocent as well as to convict the guilty. It is essential that in reacting to the excesses of others, we not fall into excesses ourselves.

It is also essential that we not be so distracted by events such as this that we neglect the vital work before us, before this Nation, before America, at a time of critical importance to America and the world.

Since March, when I first learned that the Watergate affair might in fact be far more serious than I had been led to believe, it has claimed far too much of my own time and attention.

Whatever may now transpire in the case—whatever the actions of the Grand Jury, whatever the outcome of any eventual trials—I must now turn my full attention once again to the larger duties of this office. I owe it to this great office that I hold, and I owe it to you—to our country.

I know that as Attorney General, Elliot Richardson will be both fair and fearless in pursuing this case wherever it leads.

I am confident that with him in charge, justice will be done.

There is vital work to be done toward our goal of a lasting structure of peace in the world—work that cannot wait. Work that I must do.

Tomorrow for example, Chancellor Brandt of West Germany will visit the White House for talks that are vital element of "The Year of Europe" as 1973 has been called. We are already preparing for the next Soviet-American summit meeting, later this year.

This is also a year in which we are seeking to negotiate a mutual and balanced reduction of armed forces in Europe, which will reduce our defense budget and allow us to have funds for other purposes at home so desperately needed. It is the year when the United States and Soviet negotiators will seek to work out the second and even more important round of our talks on limiting nuclear arms, and of reducing the danger of a nuclear war that would destroy civilization as we know it. It is a year in which we confront the difficult tasks of maintaining peace in Southeast Asia and in the potentially explosive Middle East.

There is also vital work to be done right here in America—to ensure prosperity, and that means a good job for everyone who wants to work, to control inflation, that I know worries every housewife, everyone who tries to balance a family budget in America, to set in motion new and better ways of ensuring progress toward a better life for all Americans.

When I think of this office—of what it means—I think of all the things that I want to accomplish for this nation—of all the things I want to accomplish for you.

On Christmas Eve, during my terrible personal ordeal of the renewed bombing of North Vietnam, which after 12 years of war, finally helped to bring America peace with honor, I sat down just before midnight. I wrote out some of my goals for my second term as President.

Let me read them to you.

"To make it possible for our children, and for our children's children, to live in a world of peace.

"To make this country be more than ever a land of opportunity—of equal opportunity, full opportunity for every American.

"To provide jobs for all who can work, and generous help for all who cannot.

"To establish a climate of decency, and civility, in which each person respects the feelings and the dignity and the God-given rights of his neighbor.

"To make this a land in which each person can dare to dream, can live his dreams—not in fear, but in hope—proud of his community, proud of his country, proud of what America has meant to himself and to the world."

These are great goals. I believe we can, we must work for them. We can achieve them. But we cannot achieve these goals unless we dedicate ourselves to another goal.

We must maintain the integrity of the White House, and that integrity must be real, not transparent. There can be no whitewash at the White House.

We must reform our political process—ridding it not only of the violations of the law, but also of the ugly mob violence, and other inexcusable campaign tactics that have been too often practiced and too readily accepted in the past—including those that may have been a response by one side to the excesses or expected excesses of the other side. Two wrongs do not make a right.

I have been in public life for more than a quarter of a century. Like any other calling, politics has good people, and bad people. And let me tell you, the great majority in politics, in the Congress, in the Federal Government, in the State Government, are good people. I know that it can be very easy, under the intensive pressures of a campaign, for even well-intentioned people to fall into shady tactics—to rationalize this on the

grounds that what is at stake is of such importance to the Nation that the end justifies the means. And both of our great parties have been guilty of such tactics in the past.

In recent years, however, the campaign excesses that have occurred on all sides have provided a sobering demonstration of how far this false doctrine can take us. The lesson is clear: America, in its political campaigns, must not again fall into the trap of letting the end, however great that end is, justify the means.

I urge the leaders of both political parties, I urge citizens, all of you, everywhere, to join in working toward a new set of standards, new rules and procedures—to ensure that future elections will be as nearly free of such abuses as they possibly can be made. This is my goal. I ask you to join in making it America's goal.

When I was inaugurated for a second term this past January 20, I gave each member of my Cabinet and each member of my senior White House staff a special four-year calendar with each day marked to show the number of days remaining to the Administration. In the inscription on each calendar, I wrote these words: "The Presidential term which begins today consists of 1,461 days—no more, no less. Each can be a day of strengthening and renewal for America; each can add depth and dimension to the American experience. If we strive together, if we make the most of the challenge and the opportunity that these days offer us, they can stand out as great days for America, and great moments in the history of the world."

I looked at my own calendar this morning up at Camp David as I was working on this speech. It showed exactly 1,361 days remaining in my term. I want these to be the best days in America's history, because I love America. I deeply believe that America is the hope of the world, and I know that in the quality and wisdom of the leadership America gives lies the only hope for millions of people all over the world, that they can live their lives in peace and freedom. We must be worthy of that hope, in every sense of the word. Tonight, I ask for your prayers to help me in everything that I do throughout the days of my Presidency to be worthy of their hopes and of yours.

God bless America and God bless each and every one of you  
9:25 P.M. EDT.

#### REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. KENNEDY, from the Committee on Labor and Public Welfare, with an amendment:

S. 3344. A bill to authorize appropriations for activities of the National Science Foundation, and for other purposes (Rept. No. 93-848).

By Mr. BIBLE, from the Committee on Interior and Insular Affairs, with amendments:

S. 2465. A bill to authorize the Secretary of the Interior to guarantee loans for the financing of commercial ventures in geothermal energy; to coordinate Federal activities in geothermal energy exploration, research, and development; and for other purposes (Rept. No. 93-849).

By Mr. PEARSON, from the Committee on Commerce, without amendment:

S. 3500. An original bill to promote and coordinate amateur athletic activity in the United States and in international competition in which American citizens participate and to promote physical fitness, and for other purposes (Rept. No. 93-850).

By Mr. HART, from the Committee on Commerce, without amendment:

H.R. 10942. An act to amend the Migratory Bird Treaty Act of July 3, 1918 (40 Stat.

744), as amended, to extend and adapt its provisions to the Convention between the United States and the Government of Japan for the protection of migratory birds and birds in danger of extinction, and their environment, concluded at the city of Tokyo, March 4, 1972 (Rept. No. 93-851); and

H.R. 10972. An act to delay for 6 months the taking effect of certain measures to provide additional funds for certain wildlife restoration projects (Rept. No. 93-852).

#### EXECUTIVE REPORTS OF COMMITTEES

As in executive session, the following favorable reports of nominations were submitted:

By Mr. SPARKMAN, from the Committee on Foreign Relations:

Foy D. Kohler, of Florida, to be a member of the Board for International Broadcasting. (The above nomination was reported with the recommendation that the nomination be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

Helen J. Terranova, of Florida, and sundry other persons for reappointment in the Foreign Service as Foreign Service officers.

Mr. SPARKMAN. Mr. President, as in executive session, I also report favorably sundry nominations in the Diplomatic and Foreign Service which have previously appeared in the CONGRESSIONAL RECORD and, to save the expense of printing them on the Executive Calendar, I ask unanimous consent that they lie on the Secretary's desk for the information of Senators.

The PRESIDING OFFICER. Without objection, it is so ordered.

By Mr. EASTLAND, from the Committee on the Judiciary:

D. Dortch Warriner, of Virginia, to be U.S. district judge for the eastern district of Virginia.

James L. Browning, Jr., of California, to be U.S. attorney for the northern district of California.

(The last above-mentioned nomination was reported with the recommendation that the nomination be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

#### INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bill was introduced, read the first time and, by unanimous consent, the second time, and placed on the calendar as indicated:

By Mr. PEARSON, from the Committee on Commerce:

S. 3500. An original bill to promote and coordinate amateur athletic activity in the United States and in international competition in which American citizens participate and to promote physical fitness, and for other purposes. Ordered placed on the Calendar.

#### ADDITIONAL COSPONSORS OF BILLS

S. 1811

At the request of Mr. CHURCH, the Senator from Wisconsin (Mr. NELSON) was added as a cosponsor of S. 1811, a bill to amend the Internal Revenue Code of 1954 to increase the credit against tax for retirement income.

S. 3143

Mr. CHURCH. Mr. President, I ask unanimous consent that at the next printing the names of the Senators from Minnesota (Mr. MONDALE), Wyoming (Mr. MCGEE), Utah (Mr. MOSS), Hawaii (Mr. INOUE), Colorado (Mr. HASKELL), California (Mr. TUNNEY), Missouri (Mr. EAGLETON), Nevada (Mr. BIBLE), Indiana (Mr. BAYH), Tennessee (Mr. BROCK), Massachusetts (Mr. KENNEDY), New Mexico (Mr. DOMENICI), South Dakota (Mr. MCGOVERN), Pennsylvania (Mr. SCHWEIKER), South Dakota (Mr. ABOUR-EZK), Indiana (Mr. HARTKE), Delaware (Mr. BIDEN), Montana (Mr. METCALF), New Mexico (Mr. MONTOYA), West Virginia (Mr. RANDOLPH), New York (Mr. JAVITS), New Hampshire (Mr. MCINTYRE), and Rhode Island (Mr. PASTORE) be added as cosponsors of S. 3143, a bill to amend titles II, VII, XI, XVI, XVIII, and XIX of the Social Security Act to provide for the administration of the old-age, survivors, and disability insurance program, the supplemental security income program, and the medicare program by a newly established independent Social Security Administration, to separate social security trust fund items from the general Federal budget, to prohibit the mailing of certain notices with social security and supplemental security income benefit checks, and for other purposes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CHURCH. Mr. President, I also ask unanimous consent that a statement by Senator BAYH, another cosponsor of S. 3143, may be printed in the RECORD, at this point.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### STATEMENT OF SENATOR BAYH ON COSPONSORING S. 3143

Mr. BAYH. Mr. President, I am privileged today to join as a cosponsor of S. 3143. The Social Security Administration has become a fundamental institution of our society. Today over 30 million persons receive social security benefits. One hundred million workers will make social security contributions in 1974. A large portion of our elderly population is almost exclusively dependent upon monthly social security payments.

Those who benefit from and contribute to social security have every right to expect that the Social Security Administration be non-political and be administered in an efficient manner solely for the benefit of the citizenry. Yet they see Commissioners of the SSA removed for political reasons; they receive announcements from the Social Security Administration which carry political connotations; and they see social security trust funds included in the unified budget along with other items which are very controversial.

This bill represents an important step in removing social security from partisan politics. It would establish an autonomous social security agency outside of the Department of Health, Education and Welfare and would prohibit the mailing of announcements with Social Security and SSI checks which make reference to any officer of the government. Further, it would remove the transactions of the social security trust fund from the unified budget.

I believe enactment of S. 3143 would be a wise exercise of legislative power. I commend Senator Church for introducing this bill, and I urge my colleagues to favorably consider its provisions which would do much

to insure the integrity of the social security system.

S. 3339

At the request of Mr. HUMPHREY, the Senator from Illinois (Mr. PERCY) was added as a cosponsor of S. 3339, a bill to amend the program of supplemental security income for the aged, blind, and disabled—established by title XVI of the Social Security Act—to provide for cost-of-living increases in the benefits provided thereunder.

S. 3492

At the request of Mr. BROCK, the Senator from Utah (Mr. BENNETT), the Senator from Massachusetts (Mr. BROOKE), the Senator from California (Mr. CRANSTON), the Senator from Oregon (Mr. PACKWOOD), and the Senator from Texas (Mr. TOWER) were added as cosponsors of S. 3492, to prohibit discrimination on the basis of sex or marital status in the granting of credit.

**SENATE CONCURRENT RESOLUTION 86—SUBMISSION OF A CONCURRENT RESOLUTION AUTHORIZING THE PRINTING OF ADDITIONAL COPIES OF THE HEARINGS AND FINAL REPORT OF THE SENATE SELECT COMMITTEE ON PRESIDENTIAL CAMPAIGN ACTIVITIES**

(Referred to the Committee on Rules and Administration.)

Mr. ERVIN submitted the following resolution:

**SENATE CONCURRENT RESOLUTION 86**

Resolved by the Senate (the House of Representatives concurring), That the authorization (pursuant to Senate Concurrent Resolution 29, 193d Congress, agreed to June 28, 1973) for the Senate Select Committee on Presidential Campaign Activities to have printed for its use 5,000 additional copies of its hearings on illegal, improper, or unethical activities during the Presidential election of 1972 be extended through the duration of its existence as a select committee.

SEC. 2. There shall be printed for the use of the Senate Select Committee on Presidential Campaign Activities 6,000 additional copies of its final report to the Senate.

**ADDITIONAL COSPONSORS OF A RESOLUTION**

SENATE RESOLUTION 324

At the request of Mr. HUMPHREY, the Senator from Ohio (Mr. TAFT), the Senator from Vermont (Mr. STAFFORD), and the Senator from Massachusetts (Mr. BROOKE) were added as cosponsors of Senate Resolution 324, relating to terrorist action threatening the lives of 90 Israeli schoolchildren.

**EDUCATION AMENDMENTS OF 1974—AMENDMENTS**

AMENDMENT NO. 1334

(Ordered to be printed and to lie on the table.)

Mr. BROCK submitted an amendment intended to be proposed by him to the bill (S. 1539) to amend and extend certain acts relating to elementary and secondary education programs, and for other purposes.

AMENDMENT NO. 1336

(Ordered to be printed, and to lie on the table.)

Mr. MCGOVERN (for himself, Mr. CASE, Mr. ABOUREZK, Mr. BIDEN, Mr. BROCK, Mr. COOK, Mr. GRAVEL, Mr. HANSEN, Mr. HASKELL, Mr. KENNEDY, Mr. MONTAYA, and Mr. TUNNEY) submitted amendments, intended to be proposed by them, jointly, to Senate bill 1539, supra.

AMENDMENT NO. 1337

(Ordered to be printed, and to lie on the table.)

Mr. DOLE submitted an amendment, intended to be proposed by him to Senate bill 1539, supra.

AMENDMENT NO. 1338

(Ordered to be printed, and to lie on the table.)

Mr. CRANSTON (for himself, Mr. STAFFORD, and Mr. MATHIAS) submitted amendments, intended to be proposed by them, jointly, to Senate bill 1539, supra.

**AUTHORIZATION OF THE SECRETARY OF COMMERCE TO ENGAGE IN CERTAIN EXPORT EXPANSION ACTIVITY—AMENDMENT**

AMENDMENT NO. 1335

(Ordered to be printed and referred to the Committee on Foreign Relations.)

Mr. BROCK submitted an amendment intended to be proposed by him to the bill (S. 1486), to authorize the Secretary of Commerce to engage in certain export expansion activities.

Mr. BROCK, Mr. President, the Commerce Committee as well as the Committee on Foreign Relations recently completed their hearings on the national problem of promoting the expansion of American exports. We are all concerned about our trade balance, which traditionally had been in surplus, and which in 1972 showed a staggering deficit of \$6.9 billion. Our exports over the last 12 years have been rising at an average of 7¼ percent per annum, but imports have been rising at the rate of 10¼ percent. The year 1973, because of two devaluations of the dollar, showed some improvement over 1972, but the small export surplus of \$1.7 billion can give only scant comfort and must not be interpreted as an indicator of continuing recovery. Unfortunately, a sharply higher bill for petroleum products will dominate the import picture for 1974, and the next years.

Another increase in imports of other industrial supplies can be expected because of our dependence on foreign sources for certain commodities has been growing and prices also have been increasing. The key problem lies, of course, in the fact that as a Nation we have not exported enough. Although the aggregate amount of U.S. exports has risen, our share of world exports has declined from 18.2 percent in 1960 to 12.6 percent in 1971 and to 12 percent in 1972. We are losing markets, that is, we are getting a smaller piece of the increase in total world exports.

It is clear that if we continue down the road of excessive international spending while not earning enough foreign exchange, then our ability and free-

dom to act in the political, economic, and military sphere will be limited. In other words, we must earn more foreign exchange as a nation.

Accordingly the effectiveness of our economic agencies and especially of the Department of Commerce encounters ever-increasing challenges. Often new legislation is needed to permit the Federal Government to act as effectively as the situation demands. S. 1486 is a case in point. Its various provisions, if enacted, should enable the Department of Commerce to strengthen the promotion of exports considerably. The bill, however, fails to deal with the crucial role of Commerce's 43 field offices, which 2 years ago were instructed to give priority to the promotion of export today.

Parallel with this development on the Federal level, there was an increasing emphasis on foreign trade promotion by State development agencies, by commercial banks, chambers of commerce, and so on. The trouble was that some of these efforts were not fully coordinated, because the lines of responsibility of the various organizations and institutions engaged in trade promotion overlapped. Following my suggestion, the Department of Commerce, as of January 1, 1974, reorganized the areas of responsibility of the field offices so that they now coincide with the borders of the States. In other words, the export promotion by Federal and State agencies and by the private sector is now fully coordinated.

A second problem occurs in the staffing of these field offices. As a rule, only two or three officers can be assigned to the export promotion of an entire State, and to advise hundreds of would-be exporters how to overcome the numerous obstacles. Obviously this is a backbreaking assignment, for which my amendment provides a remedy. It authorizes the Department of Commerce to obtain from private industry one hundred experienced export executives on loan. They would be assigned in small groups to appropriate domestic target areas and offer their experience and know-how to newcomers in the export trade.

Another small but important projected improvement pertains to the availability of up-to-date export data. As I mentioned on other occasions, the most recent official statistical data for exports from the individual States pertain to the year 1971, and even they are estimates.

In other words, the directors of the field offices, which are responsible for giving assistance to all the exporters in their areas, have to work with figures which are about 2 years old. I do not believe there is a sales manager of a private firm in this country who will turn to his bookkeeper only to learn that the latest available sales report is 2 years old. My amendment will authorize the Bureau of the Census at minimal expense to compile export data on a monthly basis and to supply them promptly to the 43 field offices as well as to their headquarters in Washington, D.C.

Mr. President, at this point, I ask unanimous consent that the text of my amendment be printed in the RECORD.

There being no objection, the amendment was ordered to be printed in the RECORD, as follows:

AMENDMENT NO. 1335

On page 23, line 23, strike out "section 8" and insert in lieu thereof "section 10".

On page 24, line 10, strike out "section 11" and insert in lieu thereof "section 13".

On page 33, between lines 14 and 15, insert the following:

INTERNATIONAL TRADE SPECIALISTS

SEC. 7. (a) (1) There is established within the Department of Commerce and in its field offices an International Trade Specialist Program. The Secretary shall recruit, train, and assign such personnel to the program as may be necessary to implement the purposes of the Act, except that the number of such personnel shall not exceed three in each field office, and shall not exceed one hundred for the entire program.

(2) Each international trade specialist appointed under this section shall have had at least five years of executive level experience in private industry directly related to exporting products from the United States. Any individual who is or who has been a career employee of the United States shall be ineligible for an appointment under this section for a period of five years following the date of his separation from employment by the United States.

(3) Appointments as international trade specialists shall be without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title, relating to classification and General Schedule pay rates.

(4) An individual appointed as an international trade specialist may occupy such position for a period of (or periods aggregating) not more than five years, and shall be compensated at rates established by the Secretary, but not to exceed \$25,000 per annum.

(b) The function of international trade specialists will be to augment existing field office staffs. International trade specialists will be engaged exclusively in the promotion of export expansion activities through the export expansion programs administered by the Secretary.

(c) The Secretary shall conduct an evaluation of the program carried out under this section and transmit a report to the Congress not later than three years after the date of enactment of this Act. Such report shall include information on the recruitment, training, and placement of personnel, the export expansion programs under which such personnel operated, data on increased exports in terms of dollar amounts and quantity of shipments, and recommendations with respect to the program's continuation.

EXPORT MEASUREMENT

SEC. 8. (a) To measure adequately the progress of the export expansion programs carried out by the Secretary, more accurate and definitive measures that those already in use must be established and implemented.

(b) The Secretary shall establish and implement a procedure within the Bureau of Census of the Department of Commerce to insure that each shipper's export declaration contains the address (including the State) of the exporter. Total exports for each State, by country of destination and by schedule B commodity groups, will be compiled in a monthly report for each of the field office areas of the Department of Commerce.

(c) The permanent implementation of the procedure described in subsection (b) and the availability of funds authorized under subsection (e) are contingent on the implementation and conduct of a pilot project encompassing the exports of not less than eight States for not less than six consec-

utive months. For the purpose of this subsection, there are authorized to be appropriated not to exceed \$175,000 for each of the fiscal years ending June 30, 1975, and June 30, 1976.

(d) An evaluation of the measurement program established under this section shall be carried out by the Office of Field Operations, Department of Commerce, in cooperation with its field offices. Not later than eighteen months after the date of enactment of this Act, the Secretary shall transmit a report on such evaluation to the Congress including therein information on the implementation of such procedures, an analysis of results, and recommendations as to improvements, or discontinuation of the program.

On page 33, line 16, strike out "Sec. 7." and insert in lieu thereof "Sec. 9."

On page 36, line 11, strike out "Sec. 8." and insert in lieu thereof "Sec. 10."

On page 38, line 17, strike out "Sec. 9." and insert in lieu thereof "Sec. 11."

On page 39, line 16, strike out "12 and 13" and insert in lieu thereof "14 and 15".

On page 41, line 6, strike out "13" and insert in lieu thereof "15".

On page 41, line 14, strike out "Sec. 10." and insert in lieu thereof "Sec. 12."

On page 43, line 11, strike out "Sec. 11." and insert in lieu thereof "Sec. 13."

On page 44, line 6, strike out "section 11" and insert in lieu thereof "section 13".

On page 45, line 5, strike out "section 11" and insert in lieu thereof "section 13".

On page 46, line 21, strike out "Sec. 12." and insert in lieu thereof "Sec. 14."

On page 46, line 24, strike out "section 11" and insert in lieu thereof "section 13".

On page 47, line 21, strike out "section 11" and insert in lieu thereof "section 13".

On page 48, line 17, strike out "sections 12 and 13" and insert in lieu thereof "sections 14 and 15".

On page 49, line 22, strike out "Sec. 13." and insert in lieu thereof "Sec. 15."

On page 50, line 20, strike out "section 12" and insert in lieu thereof "section 14".

On page 51, line 16, strike out "Sec. 14." and insert in lieu thereof "Sec. 16."

On page 54, line 2, strike out "Sec. 15." and insert in lieu thereof "Sec. 17."

On page 56, line 23, strike out "Sec. 16." and insert in lieu thereof "Sec. 18."

On page 57, line 18, strike out "Sec. 17." and insert in lieu thereof "Sec. 19."

On page 58, line 12, strike out "and".

On page 58, between lines 12 and 13, insert the following:

"(4) \$3,500,000 for purposes of carrying out section 7; and".

On page 58, line 13, strike out "(4)" and insert "(5)".

On page 58, line 22, strike out "and".

On page 58, between lines 22 and 23, insert the following:

"(4) \$3,500,000 for purposes of carrying out section 7;

"(5) \$500,000 for purposes of carrying out section 8 (other than subsection (c)); and".

On page 58, line 23, strike out "(4)" and insert "(6)".

STANDBY ENERGY EMERGENCY AUTHORITIES ACT—AMENDMENT

AMENDMENT NO. 1339

(Ordered to be printed, and to lie on the table.)

Mr. COOK submitted an amendment, intended to be proposed by him, to the bill (S. 3267) to provide standby emergency authority to assure that the essential energy needs of the United States are met, and for other purposes.

ADDITIONAL COSPONSORS OF AMENDMENTS

AMENDMENT NO. 1239

At the request of Mr. HELMS, his name was added as a cosponsor of amendment No. 1239, to the bill (S. 1539) to amend and extend certain acts, relating to elementary and secondary education programs, and for other purposes.

At the request of Mr. McCLELLAN, his name was added as a cosponsor of amendment No. 1239, to Senate bill 1539, supra.

AMENDMENT NO. 1249

At the request of Mr. HUMPHREY, the Senator from South Dakota (Mr. McGovern) was added as a cosponsor of amendment No. 1249 to S. 1539, Education Amendments of 1974.

AMENDMENT NO. 1250

At the request of Mr. HUMPHREY, the Senator from South Dakota (Mr. McGovern) was added as a cosponsor of amendment No. 1250 to S. 1539, Education Amendments of 1974.

ANNOUNCEMENT OF HEARINGS ON GOVERNMENT SECRECY

Mr. MUSKIE, Mr. President, the Subcommittee on Intergovernmental Relations has scheduled 6 days of hearings on Government secrecy—May 22, 23, 29, 30, and 31 and June 10—to consider legislation dealing with the classification of official information related to the national defense and to conduct oversight on the implementation of the President's Executive Order 11652 of March 8, 1972, regulating information classification practices.

The subcommittee has been fortunate in obtaining for these hearings the testimony of witnesses of great stature and distinguished service in previous administrations as well as officials of the present administration responsible for supervising classification policies and practices. Sponsors of five pending secrecy control measures—S. 1520, S. 1726, S. 2451, S. 3393, and S. 3399—as well as of S. 2738, dealing with Government surveillance of individuals—are also to testify at the hearings.

The fact that so much legislation has been offered in this field is proof of the concern in this Congress with the established practice of deferring to executive regulation of Government secrecy. We have seen how such unmonitored regulation has led to abuse of classification standards in order to deceive the Congress and mislead the public.

It is our intention, at these hearings, to seek ways to put a clear legislative foundation under secrecy standards and a binding statutory limitation over officials who implement those standards. Our aim is to find and guarantee the balance between the confidentiality needed to conduct the national defense and the free flow of information needed to maintain our democratic heritage.

Any person wishing additional information should contact Mrs. Lucinda T. Dennis, chief clerk of the subcommittee at 225-4718.

## ADDITIONAL STATEMENTS

SENATOR LAWTON CHILES AND  
LATIN AMERICA

Mr. MANSFIELD. Mr. President, Senator LAWTON CHILES, of Florida, is making a serious and commendable effort to understand our relations with Latin America. He is already one of the most knowledgeable Senators with respect to this region. I note that he has had firsthand exposure on several trips to that part of the world. That is essential to a full understanding not only of the Florida connection with Latin America, important as that is, but of our overall relations with the rest of the hemisphere to the end that we can maintain and deepen our community of interest and do so on a steady and sustained basis. All too often, our relations with Latin America have been an up-and-down affair and that day, I hope, is past.

Senator CHILES has made a factfinding trip to Latin America each year since he has been in the Senate. He went to Peru and Brazil in 1971, to Chile and Argentina in 1972, to Venezuela, Colombia, Costa Rica, and Guatemala last year and as chief of the U.S. mission at the inauguration of the President of Costa Rica this year. He joined me in going to Mexico to participate in the 11th Mexico-United States Interparliamentary Conference in 1971 and went to Nicaragua in 1972 to examine earthquake damages, on behalf of the Appropriations Committee. On each of his trips he has had an opportunity to talk with a wide variety of people in public and private life and to gain from them a broad understanding of these countries and our relations with them.

The Senator from Florida (Mr. CHILES) rightly perceived the Inter-American Conference of Tlatelolco in Mexico City last February as an important moment in inter-American relations. He took the time to draw together his thinking on issues affecting this hemisphere and put them in the form of an "Aide Memoire on U.S. Policy Toward Latin America." He then sent this aide memoire to Secretary Kissinger 10 days before the meeting of foreign ministers in Mexico so the Secretary could have the benefit of the Senator's thinking as he went into this important meeting. Secretary Kissinger has told me how much he appreciated Senator CHILES' recommendation, on how helpful they were to him in his discussions with his counterparts at Tlatelolco.

Senator CHILES was kind enough to send me a copy of his paper which I have read with great interest. His suggestions are worthy of the most careful consideration. Other Senators, I am sure, would also be interested in reading Senator CHILES' paper. I commend the Senator from Florida (Mr. CHILES) for his outstanding efforts. The Senate has, in him, a Member whose understanding of the inter-American situation will continue to be very helpful in the furtherance of inter-American ties.

I ask unanimous consent that Senator CHILES' "Aide Memoire on U.S. Policy Toward Latin America" be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

[Prepared for the Honorable Henry A. Kissinger, Secretary of State]

AIDE MEMOIRE ON U.S. POLICY TOWARD  
LATIN AMERICA

(By Senator LAWTON CHILES)

"What is in the interest of Mexico—in a wider sense—is in the interest of the United States. And what is in the interest of the United States is in the interest of Mexico. We shall apply this principle to all of Latin America."

Mr. Secretary, these words, spoken hours after your designation as Secretary of State, are of great importance because they go to the heart of how our relationship with Latin America should be cast. Our policy should be based on interests. Many might advocate that we try to shape our policy according to what interests Latin America or in order to correct the mistakes of the past. I would say that we should begin with our shopping list of what our interests are and approach the Latin Americans in a spirit of reciprocity to see what they can do for us and what makes sense to do for them in return. Then a real relationship will exist in which we both have something at stake. If we have no pressing interests with Latin America and are only responsive to their concerns our relationship will be hollow and paternalistic. So it is both to our benefit and to Latin America's benefit that real interests undergird U.S.-Latin American relations. We will both have to realize that neither bullying by us of the Latin Americans nor rhetorical accusations against us by them will serve our mutual interests.

Your words also go to what has been the fundamental irritant in hemispheric relations. This is the sense in Latin America that we are more important to them than they are to us. We are seen as the "Colossus of the North" and accused of "benign neglect" in part because of the disparity of power between the United States and Latin America and in part because of the low priority status the hemisphere has had in U.S. foreign policy in recent years. These disparities in economic power and foreign policy priority are central political elements of our relations with Latin America today.

Your explicit sensitivity to these elements and your recognition of the political need to address the question of Latin America's importance to the United States and address it in terms of U.S. national interests are, I think, most promising. Your words indicate that interdependence and mutual interests do exist and that a spirit of reciprocity, where what is important to Latin America is as important to us as it is to them, can be a refreshing new departure in our relations with the countries in Latin America.

Mr. Secretary, as you prepare for the Inter-American meeting of Foreign Ministers in Mexico on February 20th, I thought it would be helpful in an atmosphere of comity between the Congress and the Executive to share some of the observations I have had as a result of my attention and travel to Latin America since I have been in the United States Senate.

For there to be a United States foreign policy toward Latin America that is based on real interests and that also addresses the sense of disparity in the relationship, the President must be involved in this reason of foreign policy in the way that he has been in other areas. The President is the ultimate vehicle for the expression of the U.S. national interest in foreign policy. The degree of his involvement is the measure of the foreign policy priority inter-American relations has for the United States. Without the President's involvement, without his expression of interest, there can be no policy toward Latin America that can be effective.

This is fundamental. Without Presidential

participation in visible policy decisions and pronouncements, without Presidential presence in discussions with Latin American leaders, and without the Presidential mantle clearly placed on the more continuous and hopefully more frequently activity of the Secretary of State in the area, a significant foreign policy toward Latin America cannot be formulated. Without these, neither those sizable segments of our own public who perceive a vacuum in our hemispheric relationships nor the world at large will be convinced that a policy for the United States really exists at all.

Whereas our relations with Latin America are wide ranging, the most determining issues are economic. The basic drive in Latin America today is economic development and the main political issues internally hinge around development policies. Nationalism is on the rise and is pervasive throughout Latin America regardless of the type of government. Control over the economic destiny of the country, the generation of a higher standard of living with a better distribution of income are the key issues facing Latin America's political leadership.

For the United States our economic relationship with Latin America is changing rapidly. Always an important market for our products and traditionally a preserve for U.S. foreign investment, rising nationalism and increasing scarcity in natural resources are now changing the political dimensions of our economic relations in this hemisphere. Our need for their resources—whether it be oil, copper, coffee or fishmeal—is growing while constraints are increasingly felt on the supply of these commodities. U.S. ownership and control of enterprises in Latin America are increasingly seen as liabilities both by our government and our corporations. Having been on the short end of the bargaining stick for so many years, Latin American governments are now taking advantage of their new bargaining leverage derived from world resource scarcities and the vulnerability of foreign ownership.

All this, it seems to me, calls for a new approach of reciprocity to hemispheric economic issues based on real economic interests. This new approach must be a two way relationship in which both sides have to give in order to get. There is no way that this can be a one way street. We are no longer living in a world in which we give and everybody else gets. We are now as pressed by our own needs as other nations are by theirs. Inflation, unemployment, economic slowdown and energy shortages are of major concern to us. The energy crisis in particular has made us aware of how foreign policy actions by other nations affect internal economic conditions in the United States. This is a new development. In the past foreign policies of others have affected our foreign policies and interests. Now internal conditions in the United States are affected by the actions and decisions of other nations. This creates a mood in the American people to use our economic weight to bring about results abroad which alleviate internal economic difficulties at precisely the moment when our people are also realizing how interdependent our interests in the world have become. All this means that casting U.S. relations with Latin America in cold terms of U.S. interests will be both more real and more reflective of the feelings of our people.

A necessary step in achieving this new approach would be to give increasing importance to trade and remove private foreign investment and aid from the center of our policy concerns with Latin America. For too long we have allowed private investment interests to overshadow our broader national interests with Latin America and aid to be the main thread of our government-to-government relations with Latin America. U.S. foreign policy concern for expropriation and for a favorable climate for our private investors

have gotten in the way of longer term public interests.

Business is important in our relations with Latin America but the promotion of the trade interests of American business is more appropriate for U.S. policy at this point than the promotion of investment. U.S. companies have come to realize that business can be done in Latin America without total U.S. ownership or control. Our government surely has an interest in encouraging the diversification of ownership and innovative licensing and contract arrangements which can keep the investment relationship ensnared by political conflicts.

These considerations should shift our public focus to trade. Trade, being a commercial exchange, is by its nature reciprocal. Over the years the Latin Americans have pleaded with us for access to the U.S. market especially in manufactures while we have taken them for granted. Now access to sources of supply of basic raw materials and natural resources—especially but not exclusively oil—can no longer be taken for granted. Now it is increasingly to our advantage to seek agreements which extend access to the U.S. market in exchange for access to Latin American sources of supply for the U.S.

The time has also come, I think, for us to re-examine our traditional resistance to international commodity agreements and see if it would not be in our mutual interests to enter into arrangements with Latin governments which would tend to stabilize both price and volume in crucial commodities. As we enter into international trade negotiations in the GATT we should at least try to see that neither U.S. nor Latin American trade interests are discriminated against through special preferential arrangements between Europe and North Africa and through stiff protectionist agricultural policies in the European Economic Community. If these practices cannot be changed, we should turn to Latin America for some of the goods we now get from Europe in exchange for U.S. agricultural exports to Latin America. We have some urgent domestic requirements which trade with Latin America can help meet. Our more strengthened economic position internationally in recent months should be used to obtain adjustments in the pattern of world trade and finance which can meet our domestic economic requirements for energy and lower priced goods.

The American people and their representatives seem generally fed up with foreign aid. The recent vote in the House of Representatives on the appropriations for the fourth replenishment of the International Development Association (IDA) signals, I think, a widespread disenchantment with foreign assistance in the country, especially as the old embargo and price rise have pinched our pocketbooks and transformed whatever aid we now give into payment to the oil producing countries for the added cost of oil. This argues for less emphasis on aid in our relations with Latin America and for a further revamping of aid concepts to stress energizing the efforts of others rather than funding accomplishments ourselves. Technical assistance, humanitarian relief and trigger money is more effective and more reflective of what the country will support than capital transfers.

What financial assistance we do provide is best channeled through multilateral development institutions. Especially expressive of our concern for human betterment and the life conditions of the common man in this hemisphere is our contribution to the Fund for Special Operations of the Inter-American Development Bank (IDB). The Congress has the responsibility to determine the funding of the IDB. My colleagues should be aware of how symbolic this appropriation for the IDB's Fund for Special Operations is of our interest in Latin America.

As a matter of U.S. policy we should also emphasize that priority be given in multilateral development lending to social progress for people in the lowest registers on the income scale. The Inter-American Development Bank and the World Bank are development institutions not commercial banks, and they should do more than just facilitate commercial activity. It must be said, though, that a commitment to social progress in our relations with Latin America through the multilateral development agencies is less convincing if we don't allow this concern to govern aid decisions by these institutions and if we don't assure that bilateral and private pressures do not override development considerations. Recognizing the internal pressures in this country and in the Congress for economic sanctions and other punitive measures when there are expropriations, it would be more in our best interests and in the long run interest of the recipient countries if we could persuade our multilateral lending partners to require a satisfactory arbitration mechanism as a condition to and applying to any new loan commitments.

While I support the notion that we should treat governments in Latin America evenhandedly and take them as they are without playing favorites, a successful foreign policy, as you have said, is one which gives full expression to the values of our people. The people of the United States have a deep concern for human rights, freedom and democratic values in the broadest sense which has over the years been a strong underlying current in U.S. relations with Latin America. In fact, one of the reasons for the special relationship of Latin America to the United States I think has been the degree to which our foreign policy toward Latin America has given fuller expression to these human and democratic values than has our foreign policy toward other areas. These values continue to provide a significant basis among our citizens for foreign policy especially as they see militarism grow in Latin America and democracy increasingly challenged by the intense and urgent demands for accelerated development. Violence, repression, torture and denial of fundamental freedoms in Latin America are of growing, not diminishing, concern among our people.

U.S. foreign policy is one important channel for the expression of these traditionally American concerns. While diplomatically it may be easier not to emphasize human rights, it wouldn't be a fair representation of our feelings to not reflect the strong concern for human rights in the United States. Any major policy statement, such as you will give in Mexico, that left out the concerns for human rights would not ring true and would not meet the test of frankness and truth which hopefully will be the cornerstone of the new relationship. Such an expression of our national concern in a major policy address seems to me preferable to imposing economic sanctions. Nevertheless, I would be less than candid not to say that human rights issues will affect Congressional attitudes toward programs and policies dealing with Latin America.

Even with an espoused policy of taking governments as they are, we have nevertheless indicated preferences in the way that we conduct our policy. I would strongly suggest as we turn now to give more policy priority to Latin America that these country-to-country ties be broadened to include a wider spectrum of countries.

Democracy is very much on trial in Latin America in the several countries where it still survives. There is a tremendous challenge to democracies which operate largely by consensus politics to reach out and absorb the social unrest that arises due to the economic depravity that many people live in in Latin America. In these highly politicized

societies it is extremely difficult for leaders to generate a clear mandate and then to govern without taking decisions in power which inevitably create opposition and undercut their political base. This makes it hard for democratic leaders to get enough done in one direction to satisfy anybody, even their own supporters. This is one reason why we see leaders like Eduardo Frei in Chile and Carlos Lleras Restrepo in Colombia begin their terms with a strong sense of direction and end with seriously diminished public support and highly volatile political opposition.

Given this background of the recent past, the elections in Venezuela, Colombia and Costa Rica are of great interest to the United States not so much in terms of who is elected but in how successful the newly elected leaders are in carrying out the mandates from their people. I am greatly encouraged by the decisiveness of the election of Carlos Andres Perez in Venezuela and feel, as I have said publicly, that he has a tremendous opportunity and responsibility to prove to his people that democracy can really function for them and produce the results they want. This combined with the fact that Venezuela is our single most important source of oil argues for priority attention to our relationship and policies with that country.

If we are serious about our own democratic traditions, we in the United States cannot help but feel an identity with the values that underlie the political process as it is being lived out in Venezuela. I have the same feeling about the election of Daniel Oduber in Costa Rica and feel that we have a stake in watching events unfold in Colombia and Guatemala also. While Guatemala faces some real difficulties, there is a great aspiration of their people for fuller democracy. Hopefully, coming elections will be a step toward this goal.

With these kinds of concerns, and with much of the world watching events in Chile, future U.S.-Chilean relations cannot help but become a visible signal and even a symbol of the thrust of our overall policy toward Latin America. There can be no doubt that the policies of Allende were heading Chile for disaster and that a coup was inevitable. But there also can be no doubt that the coup by the military and subsequent events and actions in Chile are cause for real concern for fundamental freedoms and human rights. American concern comes from many sectors of U.S. opinion. Given this, our policy toward Chile should give adequate expression to these concerns.

While we want to do things to encourage and benefit the people of Chile, we also want to express concern about fundamental human rights. We need to be mindful of the long democratic tradition of the Chilean people and that theirs is a heritage of a free press and a strong Congress. Taking the long view and focusing on the people of Chile rather than their government will best preserve the strong ties and sense of shared values that have been the underlying basis of U.S.-Chilean relations. We should realize that the junta will not be there forever and that we need to determine what our posture will be with the Chilean people at the time power is transferred. This approach I am sure will make the most sense as history judges our actions in the future.

Where I see the possibility for a decisive breakthrough is in U.S. relations with Peru. Here is a situation where economic difficulties exist but economic management capacity has manifested itself. Peru is making considerable effort at social reform and is addressing the problems of more marginal people. This is not without some real tensions between social mobilization on the one hand and authoritarian rule on the other. The military is reform minded and has some progressive outlook, but there is also oversensi-

tivity to criticism and no political opposition.

An unresolved investment dispute which has gone on for years has restricted the flow of credit, both bilateral and multilateral, to Peru since the present government took power in 1968. With the exception of the nationalization of the International Petroleum Company (IPC), Peru is doing many of the kinds of things we deem important. I think that a negotiated settlement to this dispute and the normalization of relations with Peru could be a significant means of dramatically demonstrating a renewed interest of the United States in Latin America as a whole. I strongly urge your attention to the resolution to this outstanding question.

U.S. relations with Argentina, Brazil and Mexico are of importance to us if for no other reason than the sheer size and economic weight they have. Our relationship with these countries should be mostly focused on trade rather than aid as they become increasingly able to competitively produce goods of commercial interest to us. Given the economic boom in Brazil, it is unclear to me why so much multilateral aid is going there. Despite rapid economic growth in both Mexico and Brazil and despite the election of Juan Peron in Argentina, dissent and social unrest are serious problems in all three countries. More emphasis on trade and social reform in our overall policy toward Latin America would be appropriate as these countries seek to better balance social and economic policies, and income distribution and growth, in an attempt to address these undercurrents of disenchantment.

It seems to me we could well reap some good results by looking for ways to relate more to Argentina. The people in Argentina are well disposed toward the United States even though recent governments have been sharply critical of the U.S. This anti-Americanism is a feeling I in no way find among the people of Argentina. I interpret the anti-Americanism more as a call for attention and a feeling among them that they are our equals without a sense of inferiority. A little attention on our part to Argentina and to Peron I think could be very beneficial to the United States.

So, I think that diversified but deep bilateral relations with a variety of Latin American countries with different orientations is an essential dimension of an active U.S. policy toward Latin America. My travels to each of these countries lead me to believe that there are sufficient bases for such strong bilateral ties with them.

But as I indicated at the outset we must have an overall policy toward Latin America as a whole. As we work to pursue this policy we need to work in concert with the other nations of the hemisphere through the Organization of American States. It has been suggested by some that we withdraw from the O.A.S. I disagree. By our lack of attention to Latin America we have already put ourselves in an observer status in the O.A.S. To withdraw would be to confirm Latin America's suspicion that we really don't care. I feel we need a political forum to work on problems within the Western Hemisphere family without the distractions and posturings which usually take place when other nations outside the region are involved. Nevertheless, there is a need to restructure the O.A.S. and the inter-American system comprising various institutions to more clearly relate organizations to clear and specific purposes. We should work with other governments in this task. Adjusting institutions to new policies should be part of the process of breathing new life into U.S.-Latin American relations.

Mr. Secretary, you have said that "no foreign policy has any chance of success if it is born in the minds of a few and carried in the hearts of none", and that "our foreign policy cannot be effective if it reflects only the

sporadic and esoteric initiatives of a small group of specialists. It must rest on a broad national base and reflect a shared community of values . . . It expresses our ideals, our purposes and our hopes for the world. It must fulfill the best in America."

In these remarks you have well emphasized what might be called the public dimension of foreign policy which reaches and reflects the people and the Congress. This is a vital dimension. The broader the participation in foreign policy, the more the people are involved and the stronger the role of the Congress, the better our foreign policy will be. I feel that the Congress of the United States must not just be informed and consulted on important matters of foreign policy but that key Executive decisions which require the concurrence of the Congress, such as the IDA replenishment and certain trade decisions, actually await action by the Congress. I strongly support this openness in the conduct of foreign policy and the spirit of comity between the Executive and the Congress which you have brought to it.

Mr. Secretary, in summary form, my conclusions are the following:

1. That the President's participation in and projection of U.S. foreign policy toward Latin America is essential to the very existence of such a policy.

2. That we recognize the changes in economic conditions both at home and internationally manifest greater interdependence among nations and the greater needs and interests that we have at stake with the countries of this hemisphere.

3. That our policies be based on interests and that our approach to Latin America be in a spirit of reciprocity in which there is equal give and take providing a realistic rather than rhetorical basis to inter-American relations; and that a new style of frankness and truth characterize the relationship.

4. That we give increasing importance to trade in U.S.-Latin American relations and remove private investment and aid from the center of our policies.

5. That our trade policies seek assured access for us to Latin American sources of vital raw materials and natural resources like oil in exchange for access for them to our market in product lines of interest to them especially manufactures; that we reexamine the usefulness of international commodity arrangements as a means of stabilizing supply and price in crucial goods; and that we shift our trading pattern increasingly toward Latin America if we don't get the kind of trade concessions we want from the Europeans and Japanese.

6. That we fit our policies toward Latin America according to our needs at home as we fight inflation, spur growth, and deal with energy shortages by recognizing that dramatic changes in the world economy brought on by the energy crisis leaves us in a stronger leadership position relative to other industrial countries than three years ago giving us more leverage.

7. That in the Congress and the Executive we recognize the disenchantment the American people feel toward foreign aid and seek to further revamp foreign aid concepts.

8. That as we emphasize multilateral finance that social progress for lower income people be given priority in our policies toward the international financial institutions and that while recognizing pressures in this country and in the Congress when American property is expropriated we also recognize that allowing development considerations to be overridden by bilateral or private pressures in the allocation of international credit makes our emphasis and policies less convincing.

9. That our foreign policy toward Latin America give adequate expression to values of the people of the United States and reflect their concern for violations of human

rights and fundamental freedoms and that this be done through public pronouncements rather than exercising economic sanctions.

10. That we broaden the emphasis we give in our country-to-country ties to include a wider set of relationships with other Latin American countries.

11. That we convey the identity the American people feel toward democratic countries and recognize the degree to which democracy is on trial in Latin American countries by strengthening our ties with Venezuela, Colombia, Costa Rica and Guatemala as they each go through elections and changes in governments.

12. That we realize that with much of the world watching events in Chile, future U.S.-Chilean relations cannot help but become a visible signal and even a symbol of the thrust of our overall policy toward Latin America and that we take a long run view focusing on our relations with the Chilean people emphasizing our common traditions rather than identifying too closely with the present government.

13. That the Secretary of State seek to resolve differences between the United States and Peru over the expropriation of the International Petroleum Company and normalize relations with the government of Peru as a means of demonstrating renewed interest in better relations with Latin America.

14. That more emphasis on social reform and trade in our overall policy toward Latin America set the tone of our relations with the three largest countries in the hemisphere, Argentina, Brazil and Mexico, as they seek to better balance their economic and social policies and that some imaginative attention be given to Argentina.

15. That the United States breathe new life into its role in the Organization of American States and move with other nations in restructure of the inter-American system along more functional lines.

16. I support the open style you have brought to foreign policy and, finally, I feel that the Congress of the United States must not just be informed and consulted on important matters of foreign policy but that key Executive decisions which require the concurrence of the Congress, such as the IDA replenishment and certain trade decisions, actually await action by the Congress.

#### TWENTY-SIXTH ANNIVERSARY OF THE STATE OF ISRAEL

Mr. MATHIAS. Mr. President, yesterday, the Greater Washington Council of Pioneer Women held a donor luncheon meeting in honor of the 26th anniversary of the State of Israel. Mrs. Mathias was among those privileged to be present on that occasion, and she was so much impressed by the address of the chairman of the Committee for the Donor that she brought a copy home for me to see. I am equally impressed by the pertinence and the importance of Mrs. Laden's message and feel that it should command wide attention.

Mr. President, I ask unanimous consent to have a copy of Mrs. Laden's speech printed in the RECORD.

There being no objection, the speech was ordered to be printed in the RECORD, as follows:

#### ADDRESS BY MRS. LADEN

Members, friends, honored guests, welcome. It is my pleasure to welcome you to our annual donor luncheon held in honor of the 26th anniversary of the State of Israel and as the culmination of a year of fund raising efforts on behalf of our sister organization, Moltzet Hapoalot in Israel.

We meet here today with feelings of mixed emotions due to the recent course of events in Israel. We are happy because the donor signifies to us another year of work accomplished. Yet we cannot help but be saddened by the Yom Kippur war and its resulting consequences upon the State of Israel. Together with Israel we mourn the loss of the 2,600 men who lost their lives in that war. Almost every family in Israel was touched in some way by these losses. The Israeli economy has suffered a tremendous setback. The government seems to be in a state of upheaval. But at the same time life in Israel has continued quite normally. During and after the war there were art exhibits, newspapers, and the Israeli philharmonic continued to play to packed houses. Schools remained open and cultural life of all sorts continued.

It is true that economic life in Israel is not easy. In fact it is said if you want to make a small fortune, bring a large one to Israel. However, economists indicate that Israel's economy is resilient enough to recover after a recession to pre-war volume and beyond. That recovery process was already noticeable in some instances by November. Industrial exports, for example, rose from \$74 million in October 1973 to \$86 million in November 1973. Tourism is up substantially. In addition the people of Israel hold a deep personal commitment to the future of their country. Almost 3 million Israeli citizens contributed some \$1 billion from their own pockets, while American philanthropy from a community twice as large and with considerably more wealth donated approximately the same amount.

The post war politics in Israel gave rise to sharp political re-evaluation protests and outspoken criticism of the government and must be understood as a strength and not a weakness of the only democracy which exists in the Middle East. The war has accelerated the process of a change in leadership and new reforms in their government.

This year more than ever before it became apparent that Israel needs something far more important than only the financial resources of world Jewry. Both Ephraim Katzir and Golda Meir pointed out that if Israel had numbered 6 million or more instead of 3 million, the Arabs would have been far more reluctant to begin a new war. A campaign was launched to encourage western aliya to Israel and emissaries were sent out from Israel to speak on this vital issue all over the U.S. It was pointed out that if only 1% of the nearly 6 million Jews estimated to be in the U.S. and Canada would go on Aliya annually, there would hardly be a change in the size of the American Jewish community and Israel's aliya needs and goals would easily be fulfilled.

It is in connection with Aliya that I would like to mention to our young guests who are with us today. We have representatives from the Baltimore Washington Union of Jewish Students, the Jewish Activist front at George Washington University, the Jewish Youth Assembly, B'nai Akiva, and last, but not least, our own habonim, labor Zionist youth. We hope that a portion of these young people and the groups that they represent will make aliya and build their lives in Israel. For those who remain in the United States, we look forward to their committed leadership in the American Jewish Community.

And now let us look at pioneer women's role in the U.S. and Israel this past year. A new project entitled LIFE (Link to Independence for the Elderly) was undertaken in the United States. This program provides aid to the Jewish elderly in a 5 point social service program. In Israel our membership was activated to provide all types of assistance to stricken families and men in uniform. Moetzet Hapoalet sponsored legal ad-

vice bureaus for bereaved families in all the major cities of Israel. Chaverot with suitable training were mobilized to help rehabilitation workers in making home calls and psychologists were mobilized to help the medical service. Day care center facilities were expanded to include children whose fathers were wounded or whose mothers were needed to fill in essential services.

A volunteer work force made up of the organization of working mothers and students from our vocational schools were organized to help in each of the children's institutions.

In shops, stores, hospitals and businesses Chaverot worked in all types of jobs to replace mobilized personnel.

Our Arab women clubs set up snack bars for the soldiers and knitted woollens for the soldiers at the front.

Families of the New Olim were visited in their homes and absorption centers and provided with clothes and household goods. As usual, wherever the need arose, Moetzet Hapoalet was there to meet it.

In Abraham Hechel's book, "Israel, an Echo of Eternity" he states that we Jews had begun to take the State of Israel for granted. We had ceased to wonder at the marvel of its sheer being. We had forgotten the labor, courage and the daring of the pioneers. People came to visit Israel as only a place of tourism and pleasure. We saw the Tel Aviv Hilton, but forgot Tel Hai. Many people assumed the condition of the state was absolutely assured, as if the effort of building had ended and the task completed. We must realize that the economic political and spiritual development is still in a stage of beginning. The achievements are impressive, but the tasks are still immense.

A supreme test in Jewish history has been imposed upon us. The eyes of all our martyrs of the past, the eyes of all Jewish generations of the future are upon us.

We face a decisive hour in Jewish history as well as a trial of our character and integrity as Jews today let us rededicate ourselves to the challenge that lies ahead.

#### A MATTER OF INDIFFERENCE

Mr. PELL. Mr. President, I believe a recently produced film, "A Matter of Indifference," merits our attention. This film portrays the paradoxical situation which confronts elderly Americans, many of whom wish to remain as active and contributing members of our society, but all of whom suffer from the discrimination against the elderly which is so much a way of American life.

Through the use of a series of interviews with persons active in the emerging senior action and senior advocacy movements, and through the use of cinema-verite techniques, "A Matter of Indifference" dramatically brings home the waste of human energy and talent which we, as a nation, suffer by excluding our older members from a full role in our culture.

A member of my staff, Ms. Meridith Herrick, attended the New York premiere of the film. Her report to me on the film concluded that it strongly depicts the "reality of fear and oppression among the aging." Ms. Herrick's sister, Ms. Lydia Bragger, is a co-convenor of the New York Network of the Gray Panthers, a "coalition of old and young activists committed to social change" which figures prominently in the film.

I am pleased to note that this fine film

was supported in part by a youth grant from the National Endowment for the Humanities.

Mr. President, because I believe that the content of this film deserves our attention, I request unanimous consent that the "Film Notes" prepared by Leonardo Dacchille, the film's director and producer, be printed in the RECORD.

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

#### FILM NOTES ON "A MATTER OF INDIFFERENCE"

(By Leonardo Dacchille)

The following is a synopsis of the film, "A Matter of Indifference." It is directed toward an interested public and more specifically, to all those concerned with, or working in the field of aging.

"A Matter of Indifference" requires a commitment from those who view it. It is a critique of our society's ambivalence toward its aged.

We are, at the present time, living in a state of paradox as concerns the social reality and societal values which inform American life. The socio-political process is engulfed by bureaucracy and a rhetorical rationale that is more dysfunctional than efficient as concerns the everyday welfare of the people it proposes to serve. This is true, particularly in the case of older people, who are—more than ever before—those most dependent upon its services in matters of income, housing, medical care, nutrition, transportation, etc. They are the ones most made to suffer the system's bungling inconsistency. At the human level, the system has managed to create a definite climate—not the sense of well-being one would hope for. On the contrary, the mood is one of fear, anxiety, shame and frustration felt by many older Americans—even if it is not readily admitted.

It is in this context that the film serves as a critique. With this motive, an attempt was made to document the testimony of older people with diverse life styles and personal orientations.

The result was a series of high-key interviews, verite analysis, and montage sequences that hold in sharp focus a microcosm of social thought and human feeling. For fifty minutes of film time, we have access to the psycho-social, physical and emotional realities of aged people, who face a society in transition and a complex of personal problems brought about as a result of living in a technological society. Identity, loss of social status, the nuclear family, sexuality, death, and social action are some of the topics discussed.

In the course of production, locations in Boston, New York, Philadelphia, and Washington, D.C. were visited. During a research period that lasted six months, a number of organizations, social action groups, neighborhood-based centers, public agencies and private individuals were approached. Most gave their cooperation. The following is a list of those who were particularly helpful: Patricia Scott, Director of Information, the Office for the Aging, New York City; the Bronx Office for the Aging, Bronx, New York; The National Archives, Washington, D.C.; Max Manes, Chairman, Seniors for Adequate Social Security, New York City; The Shelter Care Center for Men, New York City; The New York Daily News, New York City; Fucci-Stone Production, Inc., New York City; Hope S. Bagger, Lydia Bragger, and Maggie Kuhn, the Founder of the Gray Panther movement, whose interview is so integral to the structure of the film. Also, there were many other persons and groups too numerous to list, whose contributions were invaluable.

The project was initially conceived by Jack M. Hanick, in his senior year at Harvard. His proposal to do a film on the aged was submitted to the Youth-grants Program of the National Endowment for the Humanities, Washington, D.C. After some review, the proposal was awarded a small grant. My involvement in the project began early in the fall of 1972, when I was asked to collaborate as technical director for the film.

"A Matter of Indifference" is a 16 mm, black and white film. The popular and commercial advantages of working in colour did not apply. The integrity of good black and white cinematography served very well to evoke the variant moods, images and drama of life as it unfolded.

It is a worthwhile and provoking film, and we feel that the public deserves to see it.

#### THE GREATER WILMINGTON AIRPORT

Mr. ROTH. Mr. President, since 1965, the citizens of Delaware and users of the Greater Wilmington Airport have come before the Civil Aeronautics Board four times to prevent the discontinuation of air service.

The Greater Wilmington Airport has been conducting an active campaign to attract more users and retain an already inadequate air service. This aggressive campaign which includes terminal renovations, new runways, and advertising—costing more than \$1 million—has not deterred the airlines who insist on discontinuing service.

On June 3, representatives from Delaware will once again approach the Civil Aeronautics Board to appeal a March 27, 1974, CAB decision that would permit every certificated carrier to discontinue serving Greater Wilmington Airport. And because Greater Wilmington is the only airport in the State of Delaware that had received certificated air service, it would become the only State in the entire Nation without certificated air service.

I recently received a letter from Ross E. Anderson, Jr., the executive vice president of the Delaware State Chamber of Commerce, which opposes the decision of the CAB and offers several constructive comments on why the airport should continue to have certificated air service. I also received a letter and statement from Robert Land, the administrative director of the Greater Wilmington Development Council, which reaffirms the need for better service and not less service.

Mr. Chairman, I ask unanimous consent to have the letters from the Delaware Chamber of Commerce and the Greater Wilmington Development Council printed in the RECORD.

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

DELAWARE STATE CHAMBER OF  
COMMERCE, INC.,

Wilmington, Del., April 26, 1974.

Hon. WILLIAM V. ROTH, Jr.,  
U.S. Senator, New Senate Office Building,  
Washington, D.C.

DEAR BILL: On behalf of the Delaware State Chamber of Commerce, I would like to solicit your support and direct action in emphasizing to the Civil Aeronautics Board concern for maintaining responsible and adequate air service at the Greater Wilmington Airport.

The recent ruling by Administrative Law Judge, John E. Faulk, in the C.A.B. case docket 25009 (Wilmington Service Investigation) if allowed to take effect would place the State of Delaware in a class by itself, that is, the only state in the Union not served by scheduled airline service. Senator, the citizens of Delaware do not deserve this distinction and it is our hope that the "weight" and knowledge of your office intervening could and should have some effect in preventing this occurrence.

Currently, the Civil Aeronautics Board's Bureau of Operating Rights position is to allow Eastern to leave, (as well as TWA and American) requiring Allegheny to stay, providing Washington, Wilmington, and Boston service. It is our feeling that this would be a mistake as there is minimal demand for that service and it cannot be supported.

Our position without regard to current certificate holdings, historical facts or legal qualifications is:

1. Greater Wilmington Airport needs a morning, non-stop flight to Atlanta with a return in the evening.
2. Greater Wilmington Airport needs a morning, non-stop flight to Chicago with a return in the evening.
3. Develop during the day a viable commuter airline schedule.

With the rapid movement by local service carriers to drop medium and low density routes in favor of higher density routes that will justify their use of jet equipment, we must create an environment that will fulfill those guidelines. By following objective #1 and #2 above we could create a market that in this case, both Allegheny and Eastern do not presently enjoy. It would not divert passengers from their present patterns at Philadelphia, and would, in fact, give each a 100% capture rate of an available market with a combined population of Five Million (5,000,000) people. This would include all of Delaware, as well as Cecil, Kent, Queen Anne and Carolina Counties in Maryland; Salem and Cumberland Counties in New Jersey; and one half of Chester County in Pennsylvania.

The contention by Judge Faulk that Philadelphia Airport is "easily accessible" is not valid for your constituents. In fact the Deputy Director of Commerce for Aviation at Philadelphia Airport, Mr. W. Burns, in a talk earlier this year to the Greater Philadelphia Chamber of Commerce, stated that his airport (Philadelphia) was already "too big for the highway." That fact, of course, would be obvious to anyone who has driven to the airport and had to park his car.

We must also consider the National Aviation System Plan of the Department of Transportation (FAA) of March 1973, which develops a program of improving the efficiency of our present system by relieving congestion at large airports as well as the need for reliever airports to spread peak hour operations as well as improve ground access.

There is considerably less opposition to airport development and expansion by the smaller cities and towns than as found in larger metropolitan areas as borne out by the experience of the first 2½ years of the Airport Development Aid Program (ADAP). So it would be in the best interest of the system to utilize, whenever possible, an airport such as Greater Wilmington.

Now take into this the current automotive gasoline situation and it became more apparent the need is definitely for service at Greater Wilmington. In Dover, Delaware for example; approximately 2,500 people a month use air transportation. All must drive to Philadelphia (65%) or Washington/Baltimore. Passengers from Wilmington alone used in excess of 51,000 trips in 1973 by the limousine shuttle to Philadelphia. The DuPont Company alone estimated surface transportation costs to Philadelphia last year were in excess of \$500,000, and that does not cost out the 50,000 hours of extra travel time involved

in getting to Philadelphia's as opposed to Wilmington's airport.

While we can become (as a state) emotional with regard to my opening statement, in fact, conditions of our environment actually dictate the necessity of having adequate airline service at the Greater Wilmington Airport.

We fully intend to pursue this course of action with the assistance of various civic groups as well as our major corporations, but feel if we are to be truly successful your cooperation is not only desired but is required.

Very truly yours,

ROSS E. ANDERSON, Jr.,  
Executive Vice President.

GREATER WILMINGTON DEVELOPMENT  
COUNCIL, INC.,  
Wilmington, Del., May 3, 1974.

Hon. WILLIAM V. ROTH, Jr.,  
New Senate Office Building,  
Washington, D.C.

DEAR SENATOR ROTH: We at GWDC wish to inform you of our support of current efforts to retain and improve commercial airline service at Greater Wilmington Airport. The attached statement was adopted by GWDC last September and it is still our official position.

We want to reiterate our support of your efforts to resolve this matter in a way that will give Delawareans a chance to prove that commercial airline service can be a successful venture for this community and the airlines alike.

Sincerely,

ROBERT W. LANG,  
Administrative Director.

STATEMENT OF THE GREATER WILMINGTON DEVELOPMENT COUNCIL BEFORE THE CIVIL AERONAUTICS BOARD HEARING SEPTEMBER 25, 1973, CONCERNING THE PETITION OF EASTERN AIRLINES AND ALLEGHENY AIRLINES TO SUSPEND SERVICE AT GREATER WILMINGTON AIRPORT

The Greater Wilmington Development Council, a bipartisan, not-for-profit, public interest organization whose primary aim is to develop solutions to community problems for the long-range good of its citizens, opposes the petition by Eastern Airlines and Allegheny Airlines to suspend passenger service at the Greater Wilmington Airport. GWDC membership and support comes from hundreds of influential citizens and the leading businesses and industries in the Greater Wilmington Area.

We regard the proposal by the two airlines to have serious negative impact on the interests of the people of the Greater Wilmington region. Based on information in hand, it is difficult to justify such an action when one considers that: (1) the airport is strategically situated in one of the fastest growing regions of the Northeast Corridor, a future major market for air transportation; (2) in excess of 300,000 air trips are made by New Castle County citizens annually, (3) Delaware would be the only State without regularly scheduled trunk airline service; (4) the suspension of these flights will add to the seriously overcrowded conditions at Philadelphia International, both on the ground and in the air; (5) value in use will be diminished of a \$6.5 million investment made in the facilities at this airport, about half of which was financed by Federal matching funds; and (6) the CAB denied a similar request in 1966.

We believe that CAB approval of this petition would be an act contrary to the interests and expectations of the many residents of the Greater Wilmington region, Lower Delaware, and the neighboring states of New Jersey and Maryland. There is some evidence of a need to increase flights at Greater Wilmington to better serve the increasing population and support industrial development

in the immediate vicinity. We recognize the difficult situation the airline companies face trying to provide each and every community with adequate air service. Therefore, we offer our assistance and cooperation to both airlines in an effort to build a more economically viable passenger flight schedule at Greater Wilmington.

A balanced transportation system is the lifeline of the commerce, industry and tourism of any locality and the loss of passenger air service at the Greater Wilmington Airport would be a serious blow to the future economic well-being of the Greater Wilmington region and the State of Delaware.

**INCOME TAX CUTS SINCE 1960 HAVE MORE THAN OFFSET INFLATION BITE, BUT SOCIAL SECURITY TAX INCREASE IS MUCH HEAVIER**

Mr. PROXMIRE. Mr. President, one of the most persistent arguments for a tax cut, which all of us would happily welcome, has been that inflation has swept families into a higher income-tax bracket. The argument has been that this effect was not intended by law and that, therefore, at whatever cost to the Federal Government, and, however inflationary the consequence might be, we should enact a tax reduction to restore that income.

Mr. President, a recent calculation by the Treasury Department reported in the Wall Street Journal refutes that argument. It points out that a family that enjoyed a 1960 income of \$12,000 would have to make more than \$18,000 in 1973 to continue to be able to buy what \$12,000 would buy in 1960.

While it is true that the \$18,000 would fall into a higher income-tax bracket than the \$12,000, tax reductions the Congress has passed since 1960 have more than offset that higher bracket impact.

The result: A 1960 income of \$12,000 for a family of three filing a joint return on an adjusted gross income basis would have paid 16.1 percent on that \$12,000 income.

The same family would pay taxes of 15 percent on an \$18,007—the 1973 equivalent of \$12,000 in 1960—income in 1973. So for income taxes the bite is not getting worse.

It is true however that this better break on income taxes is more than made up in the colossal increase in social security taxes.

The employee's share has soared from \$144 in 1960 to \$632 in 1973. And here is where the real bite is.

Mr. President, I ask unanimous consent that the article and table from the Wall Street Journal be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

**TAX REPORT: A SPECIAL SUMMARY AND FORECAST OF FEDERAL AND STATE TAX DEVELOPMENTS**

Taxes getting worse? Not true for federal income taxes, the Treasury says.

The Treasury worked up some figures to show that the federal income tax bite has dropped a good bit over the last decade or so. Its figures cover a family of three filing a joint return on an adjusted gross income of \$12,000:

	1960	1970	1973
AGI.....	\$12,000	\$12,000	\$12,000
Standard deductions.....	1,000	1,100	1,800
Exemptions.....	1,800	1,925	2,250
Taxable.....	9,200	8,975	7,950
Tax.....	1,928	1,594	1,370
Percent of AGI.....	16.1	13.3	11.4

The apparent flaw, of course, is that the figures don't allow for inflation, which sweeps families steadily into higher tax brackets. Here's what happened to the same family if it maintained exactly the same real income over those years (adjusted by the consumer price index). Surprisingly, the tax bite in 1973 is still lower than in 1960:

	1960	1970	1973
AGI.....	\$12,000	\$15,734	\$18,007
Standard deductions.....	1,000	1,100	2,000
Exemptions.....	1,800	1,925	2,250
Taxable.....	9,200	12,709	13,757
Tax.....	1,928	2,437	2,699
Percent of AGI.....	16.1	15.5	15.0

Social security taxes are where Uncle Sam's tax bite is so much sharper. The employee's share has soared from \$144 in 1960 to \$374 in 1970 and to \$632 last year. Employers pay an equal sum.

**FINANCIAL STATEMENT BY SENATOR MATHIAS**

Mr. MATHIAS. Mr. President, for a number of years I have advocated disclosure by Members of Congress of the nature of their property and business interests which might be in conflict with their public trust.

In an effort to practice what I have preached, I have submitted a summary of all the pertinent information in a report to the Committee on Standards and Ethics, and I now offer a copy of that information for the RECORD.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

MAY 8, 1974.

HON. JOHN STENNIS,  
Chairman, Select Committee on Standards and Conduct, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Senate Rules 42 and 44, I have submitted the information required.

In addition to that disclosure, Mrs. Mathias and I wish to follow the practice that we established when I was a member of the House of Representatives of informing the public of what we own and what we owe. We have listed our assets, our liabilities, taxes paid and our income over and above Congressional pay. A copy of this voluntary report is enclosed for your information and an additional copy will be submitted for publication in the CONGRESSIONAL RECORD.

Sincerely yours,  
CHARLES MCC. MATHIAS, Jr.,  
U.S. Senator.

**DISCLOSURE OF FINANCIAL INTERESTS**

- Assets:
- Equity in Federal Retirement System.
- Life Insurance.
- Livestock and Farm Machinery.
- Real Estate:
- House: RFD #2, New Design Road, Frederick, Maryland, Liber 623, Folio 80 Frederick County, Purchased 1958.
- House: 3808 Leland Street, Chevy Chase,

Maryland, Liber 3328, Folio 060 Montgomery County, Purchased 1965.

Half interest in Farm: 41.66 acres, Frederick Election District, Liber 587, Folio 339 Frederick County, Purchased 1957.

Half interest in House: 306 Redwood Avenue, Frederick, Maryland, Liber 577, Folio 489, Frederick County, Purchased 1956.

Lease and option in Farm: 370 acres, Kabetown District, Jefferson County, West Virginia, Liber 196, Folio 337, Jefferson County, Leased 1963.

Stocks:

- Farmers and Mechanics National Bank, 1034 shares.
- Capitol Hill Associates, 4 shares.
- Citizens Bank of Maryland, 18 shares.
- Frederick Medical Arts, 15 shares.
- G. D. Searles & Co., 90 shares.
- First Pennsylvania Corporation—common, 137 shares.
- First Pennsylvania Corporation—preferred, 2 shares.
- Massachusetts Investors Growth, 136,271 shares.
- The Detour Bank, 7 shares.
- The Great Atlantic & Pacific Tea Company, 6 shares.
- Warner Lambert Pharmaceutical Company, 152 shares.
- Maryland National Corporation, 258 shares.
- Farmers Cooperative Association, 3 shares.

Liabilities:

- Debts due on mortgage, collateral and personal notes to:
- Farmers & Mechanics National Bank, Frederick, Maryland: \$40,880.96.
- First National Bank of Maryland, Baltimore, Maryland: \$38,000.00.
- Frederick County National Bank, Frederick, Maryland: \$3,200.00.
- Walker & Dunlop, mortgage 12/31/73: \$26,329.31, 3808 Leland Street, Chevy Chase, Maryland.
- Walker & Dunlop, mortgage 12/31/73: \$1,462.74, 306 Redwood Avenue, Frederick, Maryland.

Total interest paid: \$7,608.06.

Interests in Trusts or Remainders:

- Trust established under the Will of Grace Winebrener Trail, Circuit Court for Frederick County, Maryland, Equity No. 7707.
- Trust established under the Will of Charles McC. Mathias, Sr., Orphans Court, Frederick County, Maryland, Estate No. 8983.
- Trust established under the Will of Fanny Gore Cutler, Suffolk County Court, Boston, Massachusetts, No. 046024572.

Year, 1973; Investment Income, \$2,168.80; Interest, \$209.16; Honorariums, \$18,080.00; Net Rents, \$242.91; Federal Income Tax Paid, \$15,394.81; State & Local Taxes Paid, \$8,573.37.

THE BEVERAGE MADE TO ORDER: WHEY SOY

Mr. HUMPHREY. Mr. President, the March issue of "Farm Index" describes an important innovation in our Public Law 480 program.

Last year, our stockpile of nonfat dry milk had diminished to the point where it was necessary that it be stricken from the list of donated commodities under the Public Law 480 program. This action proved devastating to the poor countries whose pregnant and nursing mothers, as well as their young children, have been dependent upon the nonfat dry milk they received under the food for peace program.

The administrators of the program have recently arrived at a solution to the problem: whey-soy drink mix. This beverage was produced at the request of the Agency for International Develop-

ment by the U.S. Department of Agriculture and private industry, thereby providing a striking example of the potential for cooperation between the public and private sectors in responding to world food problems.

Whey-soy can effectively feed the millions of undernourished infants formerly dependent upon our nonfat dry milk. The new product has the same nutritional value as milk, being an outstanding source of protein, vitamins and minerals. Yet the product is less expensive to produce and export overseas than nonfat dry milk.

In addition to the product's meeting the special nutritional needs of those recipients of food for peace commodities, the use of a whey-soy beverage on a large scale is attractive to the U.S. dairy industry. The industry is eager to obtain a market for whey, the hitherto discarded byproduct of cheese production, and the use of it in this beverage offers a market for a formerly useless product.

Mr. President, I ask unanimous consent that this informative article be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

#### THE FARM INDEX

Mountains of farm surpluses can quickly melt into molehills, and so it went with our stockpile of nonfat dry milk.

The burdensome surplus of the fifties and sixties has literally dried up with the steady falloff in milk production.

It came as a blow to dozens of poor countries who through the years had counted on our surplus of nonfat dry milk to feed millions of malnourished infants.

#### NO CHOICE

But the options were few for the administrators of the Food for Peace programs. Due to the shortage situation and the fact that nonfat dry milk was priced out of reach for overseas distribution, they had no alternative but to strike nonfat dry from the list of donated commodities.

That was in the spring of 1973. Now, less than a year later, a new beverage has come to the rescue. Dubbed "whey-soy drink mix," it will soon arrive on foreign shores, eventually to reach over 10 million preschoolers, pregnant women, and nursing mothers in some 50 countries.

Whey-soy drink mix was made to order in a matter of months.

In early 1973, the Agency for International Development (A.I.D.) asked USDA and private industry to come up with a product that offered the same nutritional qualities as whole milk but which would cost less than nonfat dry to produce and to send overseas.

#### ORDER FILLED

Whey-soy, a version of which USDA dairy scientists had developed years before, more than filled the bill when it was presented to A.I.D. officials in July of 1973.

ERS researchers who were involved in this project report whey-soy costs less than 15 cents a quart in reconstituted form, including the charges to ship it overseas. From a nutritional standpoint, whey-soy is judged to be an excellent source of protein, vitamins, and minerals. Water added, whey-soy looks like rich milk with lots of cream. It has a slight soybean flavor.

The beverage also got the nod from the U.S. dairy industry. The industry is searching for outlets for whey, the chief byproduct of cheese production.

Sweet whey makes up 41 percent of the whey-soy formula, the other main ingredi-

ents being full fat soy flour (37 percent), soybean oil (12 percent), corn syrup solids (9 percent), and added vitamins and minerals (1 percent).

A growing proportion of fluid whey output is finding a market in livestock feeds and human food. Demand from bakeries in particular has been surging due to the nonfat dry milk shortage.

Yet according to the Whey Products Institute, less than 45 percent of fluid whey—totaling over 30 billion pounds in 1970—actually gets used. The rest presumably ends up in the sewer or in lakes, rivers, and streams, or on the land. Whey is so nutritious that in water bodies it leads to eutrophication—the growth of unwanted plants that rob the water of oxygen and eventually choke other plants and fish life.

#### PLENTIFUL PROTEIN

As for the soybean, the other main ingredient in whey-soy, its virtues have been widely acclaimed. Soybeans provide the most plentiful and least expensive source of high quality vegetable protein to be had.

Whey-soy performed well in the laboratory. After a number of private firms had refined the original USDA formula, the beverage got the green light from technicians and nutritionists.

Among other tests on nutritional value, Johns Hopkins gave whey-soy beverage to convalescent malnourished children in Peru, and found that it exceeded the specifications. Whey-soy was also fed to animals to determine its Protein Efficiency ratio and Net Protein Utilization ratio, two measures of protein quality. Whey-soy passed with flying colors.

There were experiments to assure whey-soy could withstand typical storage conditions overseas. The product had to be kept for at least a year without significant deterioration or loss of nutritional value.

But would kids like whey-soy beverage?

#### TESTED ON THE SCENE

In what was perhaps the most extensive series of tests ever run for a product introduced in the Food for Peace programs, Natick Laboratories of the U.S. Army and two consultants of USDA were commissioned to try whey-soy on location. The object was to serve the beverage in a variety of geographic areas with a variety of cultures. Selected for the projects were Chile, the Dominican Republic, South Vietnam, India, Pakistan, and Sierra Leone.

After conducting over 4,000 tests with children and 2,000 with parents and staffs of feeding centers, the test team concluded there was a "high probability" that preschool feeding programs would take to whey-soy.

The criterion of acceptability was that, at the minimum, a certain percentage of the children would voluntarily drink at least 8 ounces of the beverage each day during the test periods lasting from 1 day to more than 2 months. The minimum percentages, determined by representatives of voluntary agencies serving in the various countries, ranged from 49 percent to 72 percent.

#### THE EXCEPTION

Only in Sierra Leone in Africa did whey-soy get an unfavorable reception. The test team reported this was probably because most children had been accustomed to eating nonfat dry milk in dry form in porridge, and the novelty of a beverage product may have turned them off.

Companies in the U.S. are now gearing up to make whey-soy in quantities that Food for Peace officials believe will be needed by poorer countries in years to come.

Beginning in April the plan is to ship 1 million pounds a month, then to work up to 120 million pounds a year over the next 2 or 3 years.

At the height of nonfat dry milk shipments, the volume ran some 300 million

pounds annually. Whey-soy may not fill this void entirely. Yet in its own right, as a food designed for infants and mothers who are the most susceptible victims of poor diet, it promises to stunt the growth of nutritional problems that have nagged the developing countries since we can remember.

#### WESTERN GOVERNORS' CONFERENCE ON AGRICULTURE

Mr. BUCKLEY. Mr. President, it is a fact that the management and improvement policies applied to the public lands of the West under Bureau of Land Management and Forest Service jurisdiction affect us all. Much of this land is used for the grazing of livestock—sheep and cattle—which provide the consumer with food and fiber. Last year, of the total cash receipts nationwide for the sale of livestock products, 18 percent, or \$8.2 million, came from livestock grazed on the public lands of the West.

On April 17, Senator CLIFF HANSEN spoke on the subject of public lands utilization and management at the Western Governors Conference on Agriculture in Salt Lake City, Utah.

Senator HANSEN noted in his remarks that sound multiple-use management of public grazing lands benefits all of us because a significant amount of the Nation's food and fiber is generated in this manner.

I believe my colleagues would be interested in Senator HANSEN's remarks, and I ask that his speech be printed in the RECORD.

There being no objection, the speech was ordered to be printed in the RECORD, as follows:

#### STATEMENT BY SENATOR CLIFFORD P. HANSEN

Rangelands in the Western States have the potential, if effectively managed, to produce increasing amounts of forage for consumption by livestock which is so necessary to meet the growing demand for red meat and fiber. The Western States traditionally have produced a substantial share of the livestock feeds and livestock to meet the Nation's food needs and will have an even more significant role in the future.

As long ago as 1936 the Forest Service, in a report to Congress, concluded that the forage depletion for the entire range was more than half. Little more than 5 percent of the range lands were in a thoroughly satisfactory condition.

Marion Clawson of Resources for the Future, a longtime Student of the Nation's land resources, writing in 1972 concludes that the authors of the 1936 Forest Service report on rangelands were unduly influenced by the severe drought conditions at the time. It is his judgment that the low point in range condition was probably reached about the same time as the low point in cropland condition, during the 1920's.

Clawson describes the new era in grazing land use as beginning in the 1930's with the passage of the Taylor Grazing Act, and the adoption of grazing management practices by the Forest Service. He concludes that since then, there has been substantial improvement in the management of both publicly and privately owned grazing land.

In considering the problems and opportunities for improving the range resources it is important to keep in mind that they include an area substantially greater than the area devoted to crop production. Currently, grazing by livestock involves more acres of land in the United States than any other single use. Of the total land grazed, there is 12 times as much rangeland as there

is improved pastures. About half of the rangeland is found on private farms and half on Federal lands managed by the Forest Service or the Bureau of Land Management.

Cash receipts in 1973 from the sale of livestock products in the 11 western States of \$8,223 million accounted for 18 percent of the national total, and exceeded the cash receipts from crop sales of \$7,967 million. While it is true that range forage was only a part of the feed supply that made these livestock product sales possible, it was an important part.

Forest-range comprises 1,202 million acres in the contiguous 48 States. The 14 Western States dominate in rangeland area with 685 million acres or 57 percent of the Nation's total forest-range. Returning to the broader view, 213 million animal unit months' of grazing are produced from forest-rangeland in the United States.

The range resource situation on national resource lands administered by the Bureau of Land Management demonstrates the importance of these lands for grazing. The BLM manages 172,448,000 acres of public domain. 150,000,000 acres of this total are grazed. This figure represents the present acreage grazed by livestock. Acreage not grazed includes unsuitable range, forest lands and withdrawals for wildlife, recreation, and other purposes. It is estimated that there are an additional 133,000,000 acres that are suitable for improvement through management.

To date the accomplishments on improving range resources are impressive. 3,206,000 acres are involved in competitive plant control. Water developments, which include springs, wells, and resources total 24,156. There are 28,000 miles of fencing for management of livestock alone. This does not include fencing for any other purpose.

The estimated capital investment in our range resources on public domain is \$142,894,000. While the federal government funds represents the largest part of the investment, stockmen have contributed \$16,788,000 and the states \$500,000. It should be noted that the breakdown for state funds was not available for all states and are included in the stockman contribution.

The total estimated cost for needed range improvements is \$397,532,000. This figure represents actual construction costs only. It does not include personnel costs which are estimated at 197.5 million dollars based on accomplishing the Allotment Management Plan by the year 2000. While these estimates may seem high, compared with other investments in our economy, they represent a sound investment.

Grazing not only predates environmental impact statements, but it predates environmental problems. It has to be one of the most environmentally sound practices because the resource is renewable. While it is certainly possible through overgrazing to bring about deterioration in the quality of forage as the more palatable plants are consumed and thereby given less opportunity to compete with those less palatable, the fact is economic forces usually remove this type of operator long before significant damage to the range results.

In addition, grazing can exist simultaneously with so many uses of the public lands, including recreation. The multiple use concept simply makes sense in order to achieve the greatest good for the greatest number from our natural resources.

The Bureau of Land Management has recently released a draft environmental impact statement on livestock grazing management on National Resources Lands. The statement analyzes "... the environmental impact of the program and the management of livestock grazing through the application of grazing systems to improve rangeland conditions for watersheds and wildlife habitat,

and provide a sustained yield of livestock forage consistent with environmental protection and enhancement."

Those of you that have ever had the occasion to study environmental impact statements know how comprehensive these statements must be. Regardless of what your position is, you can find at least some justification to support your viewpoint. For example, livestock operators will be inconvenienced by the livestock grazing management program and may have to increase their investments for supportive facilities. However, on the other hand, better forage production will result which will provide better economic benefits. Environmentalists have the promise of aesthetically more pleasing landscapes but also face unavoidable impacts. After everything is considered, I am confident that a plan will be adopted which will accelerate development of the range resources while increasing environmental protection.

Both the Forest Service and the Bureau of Land Management have improved their management practices in recent years. I am particularly impressed with estimates of possible improvement of the grazing potential on Federal lands. The University of Idaho and Pacific Consultants, inc., in a study contracted by the Public Land Law Review Commission, estimated that with improvement the carrying capacity of the range lands managed by the Forest Service could be increased 83 percent. With improvement the even larger acreages of rangelands managed by the Bureau of Land Management could be improved 73 percent. I am confident that the improvement potential on the privately owned range lands is comparable to that projected for the Federal lands.

Ranchers have an increased awareness and knowledge of the payoff from improved ranch land management practices. Many of them are college trained. Often they are as well trained as the professional range personnel in the Bureau of Land Management and in the Forest Service. In fact, as any rancher will tell you, particularly when he is involved in a dispute with our federal authorities, their training and background is superior. Seriously, the ranchers and the professional range personnel constitute a great team in effectively managing our range resources.

As indicated by the study for the Public Land Law Review, the possibilities of further improvement in the range lands are substantial. The need for more forage for increased production assures the continuation of economic incentives for range improvement. Many possibilities still remain for increased forage production by improvements such as reseeding, brush clearing and managed grazing.

The careful application of Management and facilities, collectively designed to meet the specific conditions and requirements of individual ecosystems will make it possible to increase the quantity of outputs without deterioration of environmental quality. The intensity of management must vary with the productive capability of individual sites. The efficient application of prescribed management to achieve increased grazing must recognize the limited availability of investment capital from both the private and public sector and therefore select the most effective opportunities for additional development. The simultaneous development of federal, State and private holdings is of extreme importance.

Federal land, administered primarily by the Bureau of Land Management and the Forest Service, is not only half of the grazing area but is also a fundamental element in the resource mix. Individual ranch units frequently and often a ranch community are dependent on the use of the Federal lands. Thus, if any one sector (State, private

or Federal) fails to effectively develop its rangeland the overall development of agricultural production and the regions growth is hindered.

On the local economies of the western states, the policy ranges in economic importance from substantial to total sustenance. Even land not under federal ownership is influenced by the neighboring acreage. The contribution to the local economy per AUM would be \$22.50 for cattle and \$15.75 for sheep. For small communities the contribution from grazing lands is essential. Each year we must meet increased consumer demand with a decrease of 1.4 million acres of rangeland. The effect of the range policy on the economic (\$390 million) and cultural development of the nation as a whole is substantial. However, when you notice that on the stockmarket McDonald Hamburgers has more equity than U.S. Steel, you know that somebody's buying meat. While the prices of meat and wool are still dependent on supply and demand, we hear much more about demand than supply. Sometimes it is as difficult to persuade a housewife that grazing on federal lands regulates her food budget or that public lands keep Ronald McDonald in business as it is to keep Watergate out of the 74 campaign.

Dr. A. F. Vass, late long time head of the Department of Agricultural Economics at the University of Wyoming, who is considered by many to be the foremost authority on western range management, concluded from detailed examination and years of study that the value of western land increased from three to five times when it passed from public to private ownership. His conclusions are easily understood. The fact is that with private ownership—the assurances that whatever land yields will redound to the exclusive benefit of its owner—great attention will be given the management of that land. All sorts of things happen. If the area is dry and water is available, the Mormons demonstrated more than 100 years ago the value of irrigation. Leveling, brush clearing, farming, replacing native vegetation with higher yielding, more productive crops are examples of effective management.

The relevance of Dr. Vass' findings to western range management is this: commensurate with the length of the term of use and the probability of renewal, management interest and investment in management practices and improvements will increase. Given assurances of continuity of use, the Forest Service and the BLM have found permittees on its lands willing to invest in fences, water hole development, sage brush spraying, reseeding, and a strict observance to the terms of the permit. As America's needs for food and fiber escalate, subject to a growing population demanding a higher standard of living insofar as food goes, more protein—red meat—will be needed in our diets. The western ranges can respond affirmatively. The way to stimulate the kind of cooperation which will assure the achievement of this goal was spelled out by Dr. A. F. Vass more than 40 years ago.

#### NEW YORK TIMES' LEWIS WRITES OF WHAT'S RIGHT WITH U.S. CIVIL RIGHTS

Mr. PROXMIRE. Mr. President, I have given a series of speeches on the floor of the Senate about what's right with our Federal Government. One of the subjects I discussed is the remarkable progress we have made in recent years with respect to civil rights.

That assertion is greatly buttressed by a recent column in the New York Times by Anthony Lewis, entitled "A Time To Celebrate" in which Lewis documents

further the great strides this country has made toward a harmonious integrated, multiracial society. This is one of the great moral achievements of any country in recent history. We are not home yet by any means—we have a way to go and a long way, but we have made great progress and we should recognize that.

I ask unanimous consent that the Lewis article be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

A TIME TO CELEBRATE

(By Anthony Lewis)

Looking back now on *Brown v. Board of Education*, we know that in just twenty years we have become a different country. Chief Justice Warren's opinion is the voice of a simpler age, when we had faith in the uplifting power of education and social reform. We have been bruised by experience since then, and we understand that the issues of race and poverty are much more complicated, more intractable, than we imagined.

But we must not let our present skepticism distort the meaning of what was done on May 17, 1954. That decision remains one of the great moments in American history, a symbol of the capacity for change and moral regeneration that makes this country like no other on earth.

It is important to remember the issue that faced the Supreme Court then. The Court was not deciding all the profound problems of inequality that arise among individual human beings because of their own abilities, prejudices, advantages, deprivations. It was passing on segregation imposed by law: a society's command that one group be treated differently on account of race, whatever individuals wanted or deserved.

In seventeen states and the District of Columbia, in 1954, black children were forbidden to go to public schools with white. Throughout the Deep South blacks could not vote, or use public facilities without the stigma of segregation. That was the reality that confronted the Supreme Court: not private prejudice, not a separate-but-equal life for blacks, but a pervasive inequality imposed by the force of law.

When the Supreme Court held that such a system denied what the Constitution guaranteed, "the equal protection of the laws," it expressed what evidently was an emerging moral consensus among Americans generally. For the decision inspired a succession of civil rights laws and administrative actions that transformed the law of race in America.

The results are more dramatic than we may realize. Blacks now vote in large numbers in every Southern state, and hold office. At lunch counters and filling stations they are spared the thousand daily humiliations of petty apartheid. Even the laws against sexual mixing of the races, which Gunnar Myrdal thought were the ultimate bastion of white Southern resistance, fell with hardly a murmur.

After the Supreme Court, American Presidents—Kennedy and Johnson—spoke out for the first time and told us that racial injustice was morally wrong. And of course the decision changed blacks' view of themselves, starting to free them from feelings of inferiority.

The *Brown* decision has had a wide impact beyond the issues of race. For its meaning lay not only in the result reached but in the process used—the process of law.

It was not government that pushed the issue to decision. It was private citizens and a handful of lawyers in one struggling organization, the N.A.A.C.P. Legal defense and Education Fund, Inc. The work of those law-

yers over many years—especially the dedication of successive chief counsels Charles Houston, Thurgood Marshall and Jack Greenberg—led to May 17, 1954. In the grinding, often discouraging effort of litigation they made the constitutional realities inescapable.

What the Fund did, using lawsuits as a process for the redress of grievances, opened up a new way to deal with the frustrations of a huge country that cannot be effectively governed from the center. Even more than in the past, lawsuits have become an American safety-valve. In environmental matters especially, but in a dozen others, too, local groups have found that they can focus more persuasively on urgent problems by bringing them to the courts.

That trend has inevitably had large implications for the Supreme Court, and for judges generally. The Court's willingness to face the momentous issue of segregation made it natural to take on other great questions. For one, if the *Brown* case had not come first, I do not believe the Supreme Court would ever have agreed to deal with legislative apportionment. The strength acquired on such issues has helped judges to face the current problem of Presidential power.

None of this remotely justifies anyone in being a Pollyanna about the prospect for race and law in this country. The issues have become so hard that there are good arguments on all sides. Affirmative action, quotas, busing: They are code words for problems we seem unlikely to solve soon, to the general satisfaction, in terms of either law or politics.

The trouble is that we have come now to the discontents of inequality going beyond race. And distributive justice—evening out incomes, or living conditions, or even opportunity—is something we cannot expect courts alone to provide. But awareness of that looming difficulty cannot cancel out what we all gained, and learned, on May 17, 1954.

#### THE NEED FOR A MORAL EDUCATION

Mr. BAKER. Mr. President, on May 12, 1974, our distinguished colleague from New Mexico (Mr. DOMENICI) delivered a commencement address at the College of Santa Fe in Santa Fe, N. Mex. I believe that Senator DOMENICI's remarks, entitled "The Need for a Moral Education," are particularly appropriate in an era in which we see the moral fiber of our governmental processes under the most serious scrutiny. Consequently, I commend this speech to my colleagues and ask unanimous consent that it be printed in the RECORD.

There being no objection, the speech was ordered to be printed in the RECORD, as follows:

#### ADDRESS BY SENATOR DOMENICI

Almost 70 years ago, in a time we now have deemed in our arrogance to have been simpler, less demanding, Woodrow Wilson said, "Patriotism, properly considered, is not a mere sentiment; it is a principle of action or rather in a fine energy of character and of conscience operating beyond the narrow circle of self-interest. Every man should be careful to have an available surplus of energy over and above what he spends upon himself and his own interests, to spend for the advancement of his neighbors, of his people, of his nation."

That belief has marched millions of American men to battle; has moved this nation to spend billions of dollars in foreign aid to needy countries; and has prompted private

and public acts of charity unmatched by any nation. Historically, Americans have believed that every one has a social responsibility, a duty, if you will. We have believed that one ought "to love one's brother as oneself."

I suspect that not everyone in this seventh decade of the 20th Century would agree anymore that we each have a duty to society and to our neighbors. And among those who might agree that some sort of duty to others was appropriate, I feel certain that we would not reach a consensus on what that duty entailed. Whatever our formal system of education offers, it seems not to offer anymore the kind of spiritual training, the moral atmosphere, upon which our educational system, and political system, was found. We see, therefore, a situation in which the brightest persons in our nation, to whom we have entrusted the guidance of our young, no longer feel confident to provide spiritual leadership. We have seen the underpinning of this nation's philosophy weaken. We in society produce a crop of educated, but spiritually drifting, citizens.

Undoubtedly our educational system bears some of the blame for this decline in, for want of a more precise term, "community sense." But, society, we bear the bigger burden. It has become socially graceless to talk about "duty," "love," or the two great Rules or the Ten Commandments. The loss we suffer as a nation, and as a society, from this spiritual drift is not confined to a rhetorical loss, or a personal loss. Into the vacuum created by the "new relativism" has come this nation's almost demonic obsession with quantifying. "Science" has become mythical, if not positively the new religion.

You are all products of this new (in the sense a historian would use the word "new") force. The scientific method—observation, data collection, thesis—has changed the face of American education. We have reached the point where we believe we can, and should, quantify everything. We have demanded of even philosophy that it be based on "scientific" principles and facts verifiable in an empirical sense. And because it is easy to measure, analyze, and gather statistics, we have succumbed too much to the lure of "quantification." In the process, what cannot be quantified—morals, beliefs, the marrow of human spiritual life—has been ignored.

Let's face it: it has been easier for us to set and meet some scientific goal, like putting a man on the moon, than it has for us to raise the spiritual quality of our lives. And the reason for this irony should be clear to us. While we have been willing, inside the educational system, to encourage experimentation in physics and chemistry, we have been unwilling to try a greater experiment. We have been unwilling to see if those immutable moral laws will work. We have said, "We know about the unchangeable laws of physics, so let's try this new approach to a problem." We have failed to say, "Let's try the moral laws we are taught to see if they will work in the real world, too." In our educational system, as in our society, we have given only lip-service to the second experiment.

I was impressed by the book, "Future Shock." And of all the concepts Alvin Toffler offered, I was taken most by his idea of a "safe landing." You will recall, perhaps, his analogy. He reminded us that in the multi-billion dollar project that finally landed a man on the moon, most of the money was directed towards powerful rockets, life-support systems, and inflight techniques. Very little attention, in terms of resources actually went to the problem of landing the men on the moon when they reached the lunar surface. And yet, if one looks back with that perfect 20-20 vision hindsight gives us, one would say, "Well, the most important thing

was a safe landing. After all, all that money will be wasted, and the astronauts' lives lost, if we get the ship to the lunar surface, but cannot land the craft safely." I look upon this society's journey into the future in much the same way. We have devoted too much of our resources toward developing the big motor, the technical survival systems. We have neglected the basic question, "When we get wherever we are going, are we going to be smart enough to make a safe landing?"

I have no answer to that question, but I have some intuitions about the answer. Recent events in this nation's political history, if we need reminding, teach us one thing if they teach us anything: the end does not justify the means. You probably haven't heard that in four years of attending classes. Not because the College of Santa Fe has been derelict, but because the concept itself is under fire. A lot of people have implied that, indeed, the end does justify the means: you can be cruel and disruptive now, if in the future it will make you more generous and harmonious. The fallacy of that thinking would have been painfully obvious to those men who founded this nation, or our earliest educators, and even to our early social critics. They would have replied, "Ah, yes, but one cannot separate means and ends. Very often the means become ends in themselves and one is left with very shabby means evolving into very shabby ends." We seldom reply so forcefully today.

You are going to be part of whatever landing this nation has. I don't say that in the sense that the "future is yours." It is yours, but only because the mortality of your elders prevents the future from being theirs. You will hold the future because no one else will be alive to do so for you. Whatever landing we have will be your responsibility, whether you will it or not. That landing is your landing. To make it as safe as possible, let me ask you to think about some things. We now have the means to destroy every living thing on this earth. Period. That's a fact. Whether we indeed do destroy this earth will depend not upon our scientific expertise, but upon our moral priorities. Science is neither bad nor good. The ends to which science is put are bad and good. And those ends are within our control. We have the means to rape the landscape, harness the waters and oceans, eliminate the ozone from the atmosphere. But to what end? If we have a firm belief that the end of our energies should be to make a better community for our neighbors, and for those who follow, then we will not rape the landscape, we will not destroy our air, we will not annihilate the populations of this globe. But if we do not believe that the ends of our energies are to make the world better, and if we question the whole notion of "better," then we are quite likely to logically, following a perfect syllogism, remove life from our planet in our moral imbecility.

What you have learned in the past 16 years of formal education is very little measured against what you will learn in the next 16 years of your lives. Even as you read your textbooks, the knowledge there is becoming, or is already, obsolete. Even the best school in the world can only give you the basic facts you need for a career. But even the tiniest school can train you to prepare for a safe landing. Each school can train you to think, to make judgments based on fact and philosophy, and can help you apprehend the immutable laws of nature and man that will ultimately determine what kind of landing our spaceship faces.

Not only will you soon find your textbooks inadequate, but you all too soon will find that our society (the system) has failed to offer you any real guidance on what path you should follow. You will find that you have been told to question assumptions, but you have not been told against what benchmark you should frame your questions. The

failure is that we have not provided you with a moral anchor. The result has been a deep cynicism that threatens to destroy the institutions that harbor the hopes of our future. And the institution that has suffered most in these uncertain times has been education. As you listen to the complaints of parents, you will find a common theme: why aren't the schools teaching our children "right" any more? The irony is that we have asked our educational system to do what we as parents and leaders haven't had the courage to do—provide moral guidance.

Like Polonius, let me give you some advice that you may not particularly want. Remember to save some energy for others. Let's call that extra energy "Love." It is more important than all the facts in the world. Remember, too, to save some energy for your community. Let's call that extra energy "Patriotism." It is the energy that we use to take the institutions of our society stronger, more responsible, more able to help us have our safe landing.

And remember, too, that in charity you should be slow to pass judgment on others. But, in justice, you should pass harsh judgment on yourself, hold yourself up to the highest standards.

One would hope that the healthy skepticism our educational system has given you will not turn into a bitter cynicism. One would hope that you will recognize that the failings of institutions reflect the failings of society, and each individual inside that society. One would hope, at the end, that viewing those blemishes you would see, too, the great opportunity in our society—the opportunity to do something to make institutions better, to make the failings less frequent. If we have taught you that men can be evil, I hope we have taught you that men can be good; if we have told you that politics is corrupt, I hope that we also told you that politics is moral; if we have shown you, unfortunately, that we all have feet of clay, I hope we have shown you, fortunately, that men can have spirits of purest flame. It's a tough world out here. You don't have any lock on the future. But, then, neither does anyone else. We are in this thing together, equally powerless and powerful. If we remember our essential oneness, for each falling, we will have success; for each fear, courage; for each neglect, attention. So my advice would be to remember the greater community of which we are inextricably, in light and in darkness, partners.

Let me conclude with a question for you to take home and play around with. Throughout history very rich and powerful men, who had little to gain in society's eyes, have forsaken their personal businesses and gone into politics. The most conspicuous examples were our Founding Fathers. The question I pose to you is, "Why?" Why did Thomas Jefferson give up his idyllic life for one of abuse and scorn? Why did George Washington allow himself to be badgered into accepting the Presidency, against his best judgment, when he was already the most honored of men? I will tell you only, when you devise your answer, to recall Woodrow Wilson's remarks. When the history of this nation is written, it will be written on the deeds of those men who were "careful to have an available surplus of energy over and above what he spends upon himself and his own interest, to spend for the advancement of his neighbors, of his people, of his nation." And you will be part of that history.

Thank you.

#### WORLD POPULATION AND FOOD SUPPLIES

Mr. HARTKE. Mr. President, there are no more important subjects before us

than the two issues of world population and world food supply. Too many people are hungry and malnourished; too many are without decent housing and proper clothing; too many people are simply without hope.

Recently, the distinguished Ambassador of Iran to the United States, His Excellency Ardeshir Zahedi, addressed the United Nations on these vital matters.

Mr. President, I ask unanimous consent that his brief but eloquent remarks be printed in the RECORD.

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

COMMENTS BY HIS EXCELLENCY ARDESHIR ZAHEDI, THE AMBASSADOR OF IRAN TO THE UNITED STATES, AT THE UNITED NATIONS

Mr. Secretary-General, Excellencies, Distinguished Guests, It is a great pleasure to be with you this morning on this important occasion.

My country is pleased to join in the efforts to find solutions to two of the most important problems of our day.

As an indication of our concern, I have the high honor to read to you the following message which has been sent by my august sovereign, His Imperial Majesty, the Shahanshah Aryamehr:

"I have learned with pleasure of the Declaration on Food and Population signed by a group of distinguished people which will be submitted to the Secretary General of the United Nations Organization on the 25th of April, 1974.

It is my sincere hope that this declaration will create a sense of urgency and contribute to a greater awareness among nations of the grave problems facing mankind in view of the rapid population growth on the one hand and the precarious state of the world food production on the other.

Priority must be given by governments to implementing sound population control and environmental protection policies, to devising methods of increasing food production especially that of grains, to encouraging increased cooperation between developing and developed countries in order to provide aid for population control and food production programs and to making provisions for sufficient food reserves to guard against famine.

I earnestly hope that the world population conference and the world food conference organized by the United Nations and to be held in August and November respectively will help to promote a concerted effort on behalf of all the nations of the globe to seek wise solutions to these crucial issues which will have a vital bearing on the future of mankind."

JOE SPORTS, FORMER ASSISTANT TO SENATOR DAVID GAMBRELL, HAS FORMED NEW PUBLIC RELATIONS FIRM IN ATLANTA

Mr. NUNN. Mr. President, I am always pleased to read of the success of former Capitol Hill staffers who have gone on to achieve prominence in their chosen fields.

Joe Sports, formerly administrative assistant to Senator David Gambrell, has formed a new public relations firm in Atlanta, and has already established a statewide reputation.

An excellent article describing Joe's career and his new venture appeared in the April 1974 issue of Southern Advertising magazine and I ask unanimous consent to print this article in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

**SPORTS IS THE NAME BUT PR IS THE GAME**

A new firm opened in sports-crazy Atlanta recently named Sports Associates . . . and one problem is to convince people that in public relations . . . not sports.

Adding to this problem is that the firm's "biggest" account is 375-pound strongman Paul Anderson, head of Paul Anderson Youth Homes in Vidalia and Dallas. Anderson as most sports buffs know was acclaimed as the "world's strongest human" after setting new weight-lifting records in international and olympic competitions.

Joe Sports heads Sports Association so the firm name is a natural. Before starting his firm, Joe had over 20 years of p.r. related experience ranging from working as a news reporter through being executive director of the Democratic Party of Georgia.

A jack-of-all-trades, Sports started in 1952 as a newspaper reporter on the Douglas Enterprise. Not only was he a reporter, sports editor and later associate editor . . . he also served as a photographer and was named as Photographer of the Year by the Georgia Press Association.

In 1959 he began an involvement in politics as special assistant to U.S. Representative Iris Blitch and served in this capacity until 1963 when he joined WALB TV in Albany as a newsman and promotion director. Projects initiated by Sports won three Prestige awards from the Georgia Association of Broadcasters for WALB TV.

In 1966, Sports left the news field to serve as staff coordinator of Bill Stuckey Jr.'s successful campaign to win a Congressional seat. Later Joe was named as executive director of the Democratic Party of Georgia. Under his leadership the party was bailed out of financial difficulty and became solvent. Named originally to the post by Lester Maddox, Joe was asked to stay on by Jimmy Carter . . . thus becoming the first man to hold the office under two governors.

After resigning as the party's executive director, Joe returned to Washington where he served as U.S. Senator David Gambrell's administrative assistant. In 1973, Joe joined the public relations firm of R. E. Sibley & Co., Atlanta, before deciding to launch his own agency with offices at 57 14th St.

Joe still maintains a connection with politics and continues to handle press work for U.S. Congressman Dawson Mathis, a long-time associate, and like Joe an alumnus of WALB TV.

An active person, Sports in addition to heading his own firm also participates in the Sibley Speaker's Bureau, making frequent civic club appearances, is a director of the Albany (Ga.) Advertising Agency, and of Georgia Business News, Atlanta.

Accounts handled by Sports Associates are varied. There are two from his hometown of Douglas . . . Southeastern Computer Service and Douglas Foods . . . Aromatics International, a flavor and fragrance manufacturer; and Classic Car Investments, which sponsored Atlanta's First International Antique and Classic Car Auction in early April.

With a varied background that has often seen him thrust in the middle of opposing sides . . . like at the 1968 Democratic Convention, where he gained national note as the state's sergeant-at-arms . . . Joe Sports is now looking forward to a less hectic life as a p.r. counselor.

**JAMES RESTON TRIBUTE TO MANSFIELD**

Mr. PROXMIRE. Mr. President, at a time when public officials—especially Federal officials—are under attack as never before, and when the public has

expressed a very low opinion both of the President and the Congress it is a great thing for the country as well as the Congress to have MIKE MANSFIELD as the majority leader of the Senate.

The distinguished New York Times columnist pays a remarkable tribute to the majority leader this morning to the patience, the concern, the dedication to constitutional processes, and especially to the rocklike integrity of Senator MANSFIELD.

I ask unanimous consent that this column by James Reston be printed in the RECORD.

There being no objection, the column was ordered to be printed in the RECORD, as follows:

**THE GENTLEMAN IN S-208**  
(By James Reston)

WASHINGTON, May 14—Senator Mike Mansfield of Montana is a reminder that there are still a lot of steady decent folk around here watching the store. Everybody in Washington is not crazy; it just seems that way.

Room S-208 in the Capitol Building, Mike's hideaway, is as plain and calm as a country lawyer's office. The door is always open. Inside, no fancy elegant people or heroic portraits of the majority leader. Some old amiable cartoons, and a big picture of Jack Kennedy throwing out the first pitch on opening day, with Mike in the background as usual. An atmosphere of cheerful and relaxed efficiency, coffee perking on the shelf and cookies on the table.

Mike is sad but not pessimistic about the present mess in Washington. He thinks it is wrong to press the President to resign, but he understands why the Republican leader in the Senate, Hugh Scott of Pennsylvania, condemned the President's private Watergate conversations, and why the Republican leader in the House, John Rhodes, suggests that resignation has to be considered. That's Mike's way: He tries to understand everybody's problems.

But pressuring the President to resign, he insists, would be unfair, evading rather than resolving the moral and legal issues. Give the President not only the presumption of innocence, he says, but every opportunity to have his lawyers in the House and Senate to argue his case, cross-examine witnesses, and appear on the floor of the House and Senate, if he chooses, to defend himself personally.

Let the system work, says Mike. It is not only the President but the Congress and the Constitution that are on trial. But—and here he is very tough—let it work all the way, not half way. Take the President at his word. Give him every conceivable opportunity to state his case, all the lawyers he wants to challenge the evidence, and all the time he needs to do so. But, he insists, "let's have the evidence."

Mansfield has a sense of pity about human folly and tragedy—and he sees it not in partisan terms. He is beyond all personal ambition now, even beyond his own party's battles. For example, he not only sees Watergate and Vietnam in moral terms, but also Chappaquiddick and Senator Kennedy, and admires Kennedy as a good Senator but is against him as the Presidential nominee of his party in 1976.

Mansfield, if I hear him right, is looking beyond the present turmoil in Washington. He fears the nation would be deeply divided for a long time if President Nixon were forced to resign by political or newspaper pressure.

He thinks the whole Watergate scandal could have been avoided if the President had been open and trusted the system, and had wondered about what was right or wrong and had said yes or no at the right time. But he is not worrying about the past now.

He agrees with the President that resignation is a bad idea and that the impeachment process should go to the end but not in the way the President means it. The Constitution, the courts, the House and Senate must decide, and nothing else.

By which Mansfield means: no fiddling, no holding back, not just the transcripts but the tapes. Open all the way. Full and complete disclosure, as the President claimed. Defense lawyers for the President in the Judiciary Committee and on the floor of the House to cross-examine witnesses, and in the well of the Senate, if the House votes to impeach.

Put it all to the test, he says, and bring the people into it all the way. He wants televised hearings in the House and Senate. He wants not merely the evidence the President wants to give but the best evidence, including the tapes; and if necessary, he wants them played, when relevant, in the chambers of the Congress and on radio and television.

There are many arguments against this procedure, set out in this space before, but Mansfield thinks we've had enough secrecy and enough deception. The President has asked for a fair trial under the Constitution, so let it begin with all the relevant facts out plain and clear.

This simple approach carries great weight here, for the importance of Mansfield is that his colleagues in both parties and in both houses believe in him. They watch him in S-208 and on the floor of the Senate, struggling to be fair, opposing the President on troops in Europe, opposing his own party on many issues, arguing for the thing he thinks is right.

So he has the power, even though he doesn't want it, maybe because he doesn't want it. Others here are jumping to conclusions, calling for resignation, shifting around. But Mansfield waits. He is in no hurry. He goes on with the business of the Senate. He won't even talk about whether he has made any preparations for a trial of the President. "That's not before us yet," he says.

He may be right or wrong in this procedure, but he has the influence of integrity, and in the end, that may be what the controversy is all about.

**DEVELOPMENTS IN AGING:  
A NEW ANNUAL REPORT**

Mr. CHURCH. Mr. President, the U.S. Senate Special Committee on Aging each year issues a report summing up major developments affecting older Americans during the prior year or so.

This year, the annual report pays due notice to the heavy toll that inflation is taking among older Americans, despite the best efforts of the Congress to keep social security benefits reasonably in line with the rising cost of living.

Attention is also given to such matters as gaps in medicare coverage, the effects of the energy crisis upon aging Americans, problems in providing good nursing home care, and persistent inadequacies in housing for the elderly.

Not all of its pages tell of problems. Many significant steps forward have been taken within recent months, and they, too, are recorded.

Mr. President, the report is too lengthy for inclusion in this RECORD, but I ask unanimous consent to have my preface and a summary printed for study and comment in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

## PREFACE

Inflation—always a threat to older Americans—has become even more of a daily problem since the last report of this committee was issued.

As described in this report, the elderly have been hard-hit by the irregular upward surges in prices.

It's more than the traditional impact of inflation upon persons with fixed income. It also means that prices are rising markedly in several budget areas of special importance to older Americans: food, shelter, and health care. A gasoline shortage, while alleviated greatly within recent weeks, has nevertheless left a legacy of concern to the elderly in particular: high gasoline prices, with the prospect of still higher prices to come.

Congress, which had approved a 20 percent Social Security increase in 1972 and an automatic cost-of-living adjustment mechanism to take effect next January, found it necessary in 1973 to enact a two-part, 11 percent raise for 1974. Increases in Supplemental Security Income levels were also voted.

Despite the congressional initiatives in response to inflationary pressures, much more remains to be done if we are to develop an overall income strategy worthy of a great Nation.

Part of our shortfall can be expressed in terms of average monthly Social Security benefits. Even with the new 11 percent increase, these levels will be:

- \$181 for the typical retired worker;
- \$130 for a retired couple; and
- \$177 for an aged widow.

Another measure of inadequacy is the extraordinarily high incidence of poverty among the elderly: about 3.5 million have incomes below the official poverty indexes. If the hidden poor were also counted, this number would swell to more than 5 million.

To deal with that problem and with the overall challenge of retirement income, I have my own set of goals:

First, I believe that we should end poverty once and for all among older Americans. It is intolerable that the elderly must pay so personal a price for vast economic changes not of their making. Many who have been poor most of their lives deserve help now. Those who were not poor until they became old must be rescued from economic despair. And so, our first priority should be to improve the Supplemental Security Income Program, which went into effect at the start of this year. It should be broadened and upgraded until it brings all older Americans who need it above bare poverty standards.

Second, the Nation should adopt a goal of "adequacy" for retirement income drawing upon Social Security, private pensions, and other sources for a reasonable "mix." At our hearings on "Future Directions in Social Security," we are paying special heed to the potential role of each of the components in this "mix."

Third, the Social Security system should be re-examined with a greater eye to social justice. The payroll tax now bears heavily upon low-income groups, and many minority members in that group don't live long enough to collect benefits. Proposals for greater equity are being considered at the "Future Directions" hearings, along with suggestions for more sensible treatment of women.

## HEALTH ISSUES

A second great challenge to the elderly of this Nation—and to the people who care about the elderly—is the need for comprehensive health care.

That, of course, is what many people thought Medicare was all about, when it was enacted in 1965. I supported Medicare then and I support it now. But I think that the Medicare of 1974 falls far short of what is needed. Coverage has dwindled, and the cost to the participant has gone up.

Look at what has happened. The monthly premium for doctor fees under Medicare was \$3 in 1966 and it now stands at \$6.30. The deductible—a kind of down payment on the hospital bill the patient must pay—was \$40 in 1966 and now it is \$84. Coinsurance, the part of the hospital bill the patient pays after 60 days, has gone from a daily rate of \$10 to \$21 for persons hospitalized from 61 to 90 days.

These charges make a deep dent in retirement budgets, but they reflect only a portion of the high costs of health care for older Americans. Uncovered by Medicare are such necessities as out-of-hospital prescription drugs, dental services, eyeglasses, and hearing aids. Today just about 40 percent of the cost of medical care for the elderly is covered by the Medicare program.

Another problem is the damaging effects caused by the drastic curtailment of in-home services. I'm speaking about carefully managed home health programs which can enable many ill or incapacitated persons to remain at home. There is reason to believe that in-home services, when appropriate, can save dollars. More important, in-home services can prevent family disruption and needless placement in an institution.

And yet, because of restrictive HEW policies since 1969, the number of home health agencies has declined and the percentage of Medicare funds for their services is now less than 1 percent.

It is unfortunate that the President's proposal for a Comprehensive Health Insurance Plan fails to counteract this trend. In fact, his proposal would actually reduce the number of allowable home health visits.

## OTHER ISSUES

Every year, new issues arise in the annual report of the United States Senate Special Committee on Aging.

The emergence of new issues can be healthy, a sign of growth in interest and support.

But often issues arise because of failures of policy or even contradictions in policy and actions.

The pages of this report provide facts on many such issues. They tell, for example, of the beginning phases of a new approach for service delivery under the Older Americans Act, as well as the start of the Nutrition for the Elderly program. Important questions are already emerging for these programs and others.

Such developments are described, and rightly so, as an uneven mix of progress and problems arising in Federal actions and policies affecting older Americans.

It will be the job of the Senate Committee on Aging—as well as other congressional units—to keep watch over these developments, to fight inflation in the face of administration drift, and to work toward the day when the positive aspects of aging in this Nation achieve at least as much attention as the negative aspects.

Many times in my travels around the Nation, I look over local newspapers and am surprised by the constant repetition of a headline which usually says: "Plight of Elderly Described."

It is almost a reflex action. An editor picks up a story related to aging and he immediately assumes that it must be a sad story. Quite often, he's right. But occasionally, he fails to spot the good news that is occurring more and more among older Americans.

My hometown newspaper in Idaho is a happy exception to the rule. It is constantly publishing stories about very affirmative actions taken by Idaho people who happen to be old. In Boise, a group called "Extra Years of Zest" has a very far-reaching program which allows older persons to help other elderly individuals in a wide number of inventive, and often cheerful ways.

In this report, there are other encouraging

accounts of progress and good works by and for older Americans. This committee—while recognizing the formidable challenges of aging—should also pay heed to the fortunate developments as well.

They are part of the story, too. And they help us to see there are many paths toward the goal we all seek: a Nation in which older persons enjoy their fair share of life's economic returns and life's satisfactions, as well.

FRANK CHURCH,  
Chairman, Special Committee on Aging.

DEVELOPMENTS IN AGING: 1973 AND JANUARY  
MARCH 1974

## INTRODUCTION

Once again in 1973, an uneven mix of progress and problems marked Federal actions and policies affecting older Americans.

The most significant fact of everyday life for many elderly persons was that inflation continued its dramatic rise, sharply reducing the effectiveness of a 20 percent Social Security rise voted by the Congress in 1972.

Steady cost-of-living increases impelled the Congress last year to vote a 2-part increase for 1974 instead of waiting for a later automatic cost-of-living mechanism (scheduled to become effective in January 1975) to reflect higher prices, as provided for under the 1972 legislation.

At the same time that inflation forced action on Social Security benefits, legislators in both Houses of Congress resisted an administration proposal which would have considerably increased costs of Medicare for the older persons who rely on that program for protection against disastrous medical bills. Early in 1974, a similar proposal—this time tied to the administration's Comprehensive Health Insurance Plan (CHIP)—was advanced by the President. It, too, was greeted skeptically by those concerned about its impact upon Medicare.

Instead of reducing Medicare effectiveness, said members of the Senate Committee on Aging, efforts should be made to improve it. Chairman Frank Church and Subcommittee on Health Chairman Edmund Muskie introduced legislation, for example, which would improve home health care services under Medicare.

On another front in the health care scene, administration regulations related to nursing home care came under sharp scrutiny and criticism throughout the year, raising far-reaching questions about administration intentions and strategies related to long-term care.

Perhaps the most dramatic—and the most negative—development of the year was the moratorium on housing and related programs put into effect early in 1973. The effect was disruption and uncertainty about housing programs which had been serving, even to a limited degree, the elderly. The uncertainty was not resolved by an administration plan, issued in September 1973, which may provide large scale housing allowances in conjunction with a leased housing program. Faced by what appeared to be an inadequate administration plan, members of Congress were advancing their own legislation to provide housing for the elderly.

Problems also arose in 1973 in the gearing-up and early implementation of a broadened and considerably revamped Older Americans Act, together with a Nutrition for the Elderly program. Early in 1974, it was difficult to assess whether these problems were the normal difficulties to be expected in the early months of major new programs, or whether fundamental questions were still unresolved. In addition, an energy crisis introduced new perplexities to the scene. At the same time, a sharply defined dispute between the administration and the Congress arose on another crucial issue: training for careers in

aging. The controversy—centering around administration intention to substitute short-term for long-term training and to stretch out over a 2-year period funds already provided by the Congress for 1 year—was not resolved as this report neared publication.

#### THE POSITIVE DEVELOPMENT

Complications and problems aside, 1973 was also a year in which important, positive developments took place.

A major step forward in the evolution of a national policy to assure retirement security for all began in January 1974 when the Supplemental Security Income program went into effect, replacing the old, inequitable old-age assistance program. Benefits were still too low, and serious administrative problems arose as the program took hold; but the principle of a nationwide floor under retirement income was established.

Congress also took major steps toward reforming private pension coverage, a vital requirement for improving the retirement income situation of this Nation.

Despite inflationary pressures, the work done by the Congress in improving Social Security within recent years now makes it possible to plan long-range actions to make the system even more useful than it now is. This possibility has led the Committee on Aging to examine "Future Directions in Social Security." That study will continue in 1974 and possibly beyond. Another significant development is the introduction of legislation intended to establish an independent Social Security Administration.

Troublesome as the implementation of the 1973 Older American Amendments and the nutrition program may be, the nation may finally be on the road toward development of a genuine social service delivery network of direct usefulness to the elderly and possibly other Americans as well. The way will not be easy, because program directors and strategists are working in largely uncharted territory. The United States has never had a "retirement revolution" before; something new is needed, in ideas and in actions.

Despite cutbacks in other areas, the administration has asked—two years in a row—for substantial sums for the Older American Amendments and the nutrition program. Thus, continuing support for the overall Older Americans Act seems assured at a crucial point in its development. (The nutrition program, Title VII, of the Older Americans Act, is up for renewal by June 30 of this year; the other components of the Older Americans Act will be up for renewal a year later.)

Another development was the appointment and confirmation of Dr. Arthur Flemming—former Secretary of Health, Education, and Welfare—as U.S. Commissioner of Aging in 1973. Dr. Flemming has taken several steps intended to encourage interdepartmental action and other high-level attention to aging.

Finally, the Congress remains firm in its support of the nutrition program and the Older Americans Act. Appropriations have been larger than requested by the administration; a 3-year extension of the nutrition program was passed by the House in March 1974 even though the Administration recommended only one year.

One of the most encouraging developments was the evident growth of interest in aging, not only in the United States but elsewhere in the world. One sign of concern was a United Nations survey calling for greater international attention to what it described as an "aging population" in developing nations, as well as the more industrialized nations.

#### SUMMARY OF MAJOR CONCERNS

This report discusses the developments briefly described in this introduction and also calls for:

A more comprehensive and more equitable retirement income system in the United States, with early action to end poverty among the 3.5 million elderly still below official poverty levels.

Actions to improve Medicare, not weaken it, in order to assure that the elderly will be well-served by whatever national health plan for all age groups may be adopted in the years ahead. Special attention must be paid to long-term care, now the subject of sharp debate about recent policy shifts expressed in proposed regulations.

Prompt action should be taken on congressional proposals to end the damage done by last year's housing moratorium by enacting broad legislation including programs designed to meet the real housing needs of older Americans.

Congress must maintain close watch over implementation of the Older Americans Act programs to assure flexibility and clear progress toward specific goals.

#### THE GENOCIDE CONVENTION

Mr. PROXMIRE. Mr. President, early this year the Subcommittee on International Organizations and Movements of the House Foreign Affairs Committee conducted an inquiry into international protection of human rights. One aspect of their inquiry was the failure of the Senate to ratify the Genocide Convention.

It was their conclusion that genocide was not simply a phenomenon of the past. Indeed, there have been several genocidal conflicts since this treaty was drafted in 1948.

Our inaction "jeopardizes U.S. leadership and influence in the field of international human rights," according to the subcommittee.

Mr. President, I urge my colleagues to give this report close attention. It is a guidepost for concrete action that the Congress can and must take.

I ask unanimous consent that the portion of "Human Rights in the World Community" which deals with the Genocide Convention be printed in the RECORD.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

#### THE GENOCIDE CONVENTION

The Genocide Convention which was adopted in 1948 has been ratified by 78 states. The Senate Foreign Relations Committee has recommended that the Senate give its advice and consent to ratification.

The convention defines genocide to mean certain acts committed with the intent to destroy, in whole or in part, a national, ethnic, racial, or religious group, as such. The acts include killing, causing serious bodily or mental harm, inflicting conditions of life calculated to bring about physical destruction, imposing birth prevention measures, and forcible transfer of children. The parties undertake to punish guilty persons and to enact the necessary implementing legislation. There is a provision for trial by a court of the state where the act is committed or by such international penal tribunal as may have jurisdiction. (There is no such international tribunal in existence or presently contemplated, and Senate advice and consent would in any event be necessary to accept jurisdiction.) Extradition is provided for in accordance with laws and treaties, with genocide not to be considered a political crime.

Regrettably the practice of genocide is

not simply a phenomenon of the past. Several genocidal conflicts have occurred since World War II.

U.S. ratification of the convention would help to enforce the terms of the convention and discourage those governments who might be tempted to commit genocide. The United States cannot be persuasive in urging other governments to respect the terms of a convention which we have failed to ratify.

The Senate's failure to ratify the Genocide Convention means that we have yet to accept international legal responsibility for the most heinous of human rights violations. It jeopardizes U.S. leadership and influence in the field of international human rights.

#### SUPPORT FOR A NATIONAL CENTER FOR THE PREVENTION AND CONTROL OF RAPE

Mr. TUNNEY. Mr. President, I would like to bring to the attention of the Senate a series of articles written by Margaret McKean of the Star Free Press on the crime of rape.

As a cosponsor of S. 2422, a bill to create a national center for the prevention and control of rape, I believe Ms. McKean should be commended on her very incisive reporting on a subject which is extremely important and yet ill-understood by the American public.

I request unanimous consent to have the series of articles printed in the RECORD.

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

TRAUMA: THE ULTIMATE DEGRADATION, SEXUAL ASSAULT, PRESENTS A DILEMMA FOR BOTH VICTIM AND LAW—I

(By Margaret McKean)

She sensed someone was in the room with her.

She looked up from her bed and standing next to her was a man, his face covered by a ski mask. He had a gun in his hand.

He said to her, "You scream and I shoot. Do what you're told and you'll live." He ordered her then to strip off all her clothing, and he fell on top of her.

He raped her twice before he left.

She submitted.

She told police later, "I knew he'd kill me if I didn't."

Rape is defined in the California Penal Code as "an act of sexual intercourse, accomplished with a female, not the wife of the perpetrator." Section two of the code further defines rape as "where she resists, but her resistance is overcome by force or violence."

Debbie (not her real name) was fortunate among rape victims. Her account of the crime was believed, her attacker was later arrested after terrorizing another woman and raping a teen-ager. He was tried and convicted.

His was one of only nine convictions in 106 rape reports filed in Ventura County in 1972.

The arrest record also is lopsided. Fewer than half of the allegations of rape made in 1972 were followed by arrest, said Mal King, executive director of the Criminal Justice Planning Board, Ventura region.

"If a rapist is sick he must be removed from the community for treatment," said King. "If he is one of those who simply must have what he wants when he wants it, then he must be disciplined, which means his removal from the community. One of the thrusts of this office will be to help train local law enforcement on apprehending the dark figure of this crime."

Rape, called the ultimate degradation for a woman, increased in incidence by 1,300 per cent in this county in the past 13 years.

A state legislature committee study reports that in California a rape is committed every 12 minutes.

Nationally, more than 50,000 sexual assaults will be reported to police this year, the FBI states.

Reporting a rape sometimes means further degradation.

In the words of one police officer, "We assume everybody is lying."

His statements are a part of a Ventura County Criminal Justice Planning Board (VCCJPB) study commissioned by King. Principal analyst of the study which took more than four months is Ivan Jankovic, a doctoral student of criminology at the University of California at Santa Barbara.

The study and interviews with local law enforcement and criminal court officers indicate, however, that a new light is dawning on rape's demeaning aftermath—the report, interrogation, medical examination, nude photographs, court processes, publicity, stigmatization, possibility of venereal disease or pregnancy, the trauma of the remembrance, the sometimes overwhelming guilt the victim feels.

One woman said, "I felt like I had been unfaithful to my husband." Her attacker held a knife and threatened to kill her. Still her imagined guilt tore at her married relationship and nearly destroyed it.

Her anxiety might be less today when the heretofore whispered tragedy of rape has become persistent public concern. Rape is now a subject "nice" people talk about.

The old attitude was generally that nice people don't get raped, or even discuss it.

"We must talk about it and create awareness," said King.

The needs of the victim no longer can be hushed up.

The rights of the accused cannot be endangered.

"Rape is the easiest crime to allege, the hardest crime to prove," a judge stated in the Carol Bohmer report, an analysis of judicial attitudes which has received widespread approval nationwide and is included in this county's criminal justice report.

Judges themselves have been known to refer to rape as "assault with failure to please."

That attitude has never been manifested by judges sitting on Ventura County court benches, said King.

But the public's increasing awareness of the rape victims' problems arises perhaps out of indignation.

Public outcry is loud and persistent following news stories such as the outcome of a trial of three men in Boston. They were accused of blindfolding and raping three women but were acquitted because the blinded women could not prove who had done what to whom.

Despite what one judge called "farces" like this the number of women who are prepared to face the ordeal of rape's aftermath is growing.

The feminist movement, the women's liberation quest, the increased value placed on human dignity, all are helping women to find the strength to report the crime and face interrogation, said King.

There are helping agencies when the law is not enough. Rape hotlines and counseling units exist in Isla Vista, Los Angeles, San Francisco, Berkeley and Boston for raped women to use in what used to be considered a shameful hour of need.

Physical degradation is only a part of it. The emotional suffering of the raped woman is deep and long-lasting. In-depth follow-up counseling should be available but usually isn't.

Instead the rape victim's story is met sometimes with smirks, disbelief and ordinarily

the question, "Couldn't you have fought him off?"

Could Debbie?

She was the girl, alone in her beach apartment and surprised by the ski-masked intruder.

"Even before he took the mask off—he wanted me to see his face while he had intercourse with me—I knew he was sick and besides the gun was always right there," she told police.

She is sure she saved her life by allowing him to do what he wanted to do.

"He left after he raped me the second time only because I played it cool and made him think I'd never tell the police," she said.

She did go to the police and was interviewed by Detective Ida Spellman, a veteran of the rape investigation detail. Spellman said, "The girl is alive because she did what she was told to do."

Debbie has her master's degree in English from the University of Minnesota. She came to California hoping to get a teaching job. When she found none, she went to work as a cocktail waitress at the Holiday Inn. Pretty, with a great figure and personality to match, she soon was a popular member of her beach set. But the man who raped her apparently had never seen her before. Police theorize that he may have learned a woman lived alone at the beach address through casual conversation with Debbie's neighbor.

She came home early from work that night because she had the flu. She was lying on her bed watching television when the man appeared.

Her account of the rape was intelligent cohesive, especially cohesive. It hung together so well that Detective Spellman said she had no doubt it was a bona fide rape.

It is not always that easy, said the detective, to believe every woman who cries rape.

"A woman has a fight with her boyfriend and then out of vindictiveness sometimes files a rape report," she said.

Another policeman reported in the county study "So this married woman is out drinking it up someplace and she gets scored. So it's six o'clock in the morning and she can't go home 'cause her husband's going to be mad. So she says she's been raped."

Law officers skepticism may be understandable, especially if the woman is known to drink too much, to be promiscuous, or has a prior arrest record, the VCCJBB study reports.

Debbie was believable and helped police in the investigation which followed. Her assailant later that same week terrorized a Ventura woman who answered a knock at her posh apartment door and found him standing there, a gun in his hand.

She fell to the floor screaming blood-curdling screams which alerted everybody within hearing. He fled but was arrested running nude through the streets of Santa Paula a few nights later. He had raped a teen-ager in her home. He ran from the house when her parents returned just as he completed the act. He was identified in a lineup by both women and the child. Dale Werdin, 21, was convicted in April 1973 on two counts of forcible rape, was deemed to be a mentally disordered sex offender, and sent to Atascadero State Hospital for treatment and incarceration.

Convicted, too, was the rapist of two little girls, aged 10 and 11, raped in a park near their home. Robert Cruz McLain held a gun in one hand and a knife in the other when he accosted the youngsters. Deputy District Attorney Peter Kossoris said they are alive only because they submitted.

A 67-year-old woman was pistol-whipped and raped in the house she shares with her grown children. Police still seek her attacker. The case is similar to the still open file on an 91-year-old Ventura woman, raped and murdered.

There is no typical rape victim. Many of them are young, under 25, many of them are waitresses, barmaids or nurses whose working hours are not the ordinary 9 to 5 daytime stint. More than 77 per cent of them are "clean"—have had no police record. About 22 per cent had an arrest record, 7 per cent of them for drug charges. Only 30 per cent were attacked by a man they had never seen before.

Sometimes a rape victim learns that she will be treated like the guilty party, that she will have to prove her innocence beyond a reasonable doubt. Her sex life from the time of her first kiss will become an open book if the case goes to court. Her attacker's past, including prior arrests and/or convictions, is protected, however, by law.

"Every woman is potential rape victim," said Detective Spellman. "It makes no difference if she's only 11, if she's 91, if she dresses provocatively, if she's got a good figure, if she has no figure. Even the most pristine, pure-looking girl can be the kind that sets a guy off. One convicted rapist said he got his kicks from the look of astonishment on a child's face when he undressed her and touched her."

THE RAPIST: SICK OR SINNER, HE'S UNDISCOVERABLE IN A CROWD—II

(By Margaret McKean)

(Rape is the fastest-growing crime in Ventura County and in the nation. Its incidence has increased 1,300 per cent in this county in the past 13 years. Public awareness has grown more slowly but as it has grown, so has the public's indignation about the crime and its aftermath—Editors.)

What does a rapist look like?

See one in court and he looks a lot like the guy waiting to pay a traffic ticket.

"He's not at all the dirty-old-man looking type," said Detective Ida Spellman, Ventura Police Department.

The public's image of a rapist—strong, forceful, hostile, aggressive—is so often wrong that it is easy to understand how women can be fooled tragically by appearance.

A mild, easy going, unassuming man of average build is as likely to be a rapist as the man who looks menacing.

"It's the good-looking Joe College-type sometimes," said Spellman. "The kind who looks like he could easily find a cooperative sex partner and wouldn't need to resort to rape."

He's the kind who said during interrogation that "Sex is no fun unless I have to fight for it."

Despite the court-proved fact that appearances are deceiving, appearance still figures heavily in some litigation.

"If the victim is young and attractive, then it's more helpful to the prosecution if there are young, attractive women on the jury, or that it be an all-male jury," said Peter Kossoris, Ventura County deputy district attorney who often presents the people's case against an accused rapist.

A composite description of 106 men accused of rape in Ventura County in 1972 is that "he is white, but black men are considered most likely to become suspect, he is just over 23 years old, is single and has a prior arrest record." The word picture comes from the prodigious 120-page study authorized by Mal King, executive director Ventura County of the Criminal Justice Planning Board (VCCJPB). In many cases, the accused had an active, marital sex life.

Calvin Reed is white, 5 feet 5 inches tall, weighs 144 pounds, has an ascetic looking face and evidenced a curiously intellectual expression when he was arrested.

He was convicted in 1964, when he was 22, of twice raping and murdering Joyce Caranza, a 12-year-old Santa Paula girl.

He said he choked her three times, pounded

her head with a log, raped her the second time when he was not even sure she was alive, and made sure her face was submerged in water when he left her body in a Santa Paula irrigation ditch.

He was arrested eight days later after a Santa Paula woman told authorities she had seen him visiting the girl's grave, and an investigation ensued.

He was sentenced to life imprisonment at Ohio state prison in October 1964. He had a 16-year-old wife, mother of two children and pregnant when her husband was arrested. Both Reed and his wife told police that sex was an important part of their lives and that intercourse was an every night affair.

Earnest Aikens is a 6 foot 2 inch tall Negro who was 20 years old when he was convicted in 1965 of raping and murdering two Ventura women, Kathleen Dood and Mary Eaton. The crimes, his trial and death sentence are among the county's most widely remembered shockers. Aikens has occupied a cell on San Quentin's death row for seven years, his life spared by the Supreme Court's ruling disallowing the death penalty.

It was brought out in court testimony that Aikens knew Mrs. Eaton as a neighbor and mother of two children just a few years younger than himself. He had been a visitor to the Eaton home and yard and apparently knew the family well enough so that when he stopped to borrow some tools when Mrs. Eaton was home alone, she was not frightened. The tragically-fated 60-year-old home-maker apparently never imagined Aikens would be her rapist and murderer.

In 45 per cent of the rapes committed in Ventura County, the rapist was known to the victim. The criminal justice study reports that in nearly half the cases the rapist was an acquaintance, a neighbor, a boyfriend or a relative of the victim.

He was somebody accepted by and well-known to the victim.

Authorities agree that many rape cases involving a relative—stepfather grandfather, uncle, father, or brother—are never reported to the police. Families, frightened of the consequences to both parties, figure they will handle it themselves. In some cases of repeated rape of a child, mothers fear their boyfriends will leave them unless they provide their daughters for sexual variety, said detective Spellman. Some men are spared arrest and possible conviction because small girls are warned they must not even let a school nurse examine them, a schoolteacher stated.

Violence is a part of every rape, said Kosoris and King.

But here again the appearance of the victim figures heavily in the accusation, trial and possible conviction of a suspected rapist.

As one attorney in a television movie stated, "I'll never prosecute a guy again unless his victim is a 90-year-old nun with four stab wounds."

He might be persuaded to prosecute the rapist-murderer of a 91-year-old Ventura woman dead in her home on Feb. 17, 1972. That rapist-murderer is still at large.

Four months after those crimes were committed a 60-year-old woman was raped and pistol-whipped in the basement apartment of a Ventura home she shares with her married children. She survived. Police still search for her attacker.

It would seem these women's cases dispel the attitude that "rape doesn't happen to nice people" or that "rape is only an attitude," or as one eastern judge put it, "rape is felonious gallantry."

Jay Eddy Greenberg, 26, once accused of being the man nicknamed by the police as the "Pierpont rapist" and committed two years ago to Atascadero State Hospital for treatment as a mentally disordered sex offender, looks like the kind of a man a woman would notice in any gathering.

The description "tall, dark and handsome" could have been coined for him, said one woman, who described him further as personable, articulate and the type who would never seem to have any trouble finding a cooperative date.

Although he was indicted by a grand jury on six counts of rape and two of forbide sex perversion, the only charge of which he was convicted was one to which he plead guilty—that of attempting an act of sexual perversion with a 19-year-old woman.

Rape is most common during weekends, and during the hours from 8 p.m. to 2 a.m. Fifty per cent of the time, it is accomplished behind closed doors (usually the victim's home), and 22 per cent of the time in fields, groves, beaches or streets, and perhaps 13 per cent of the time in vehicles.

Statistics on the number of rape committed in vehicles are small indication of its incidence, the CJPB study reports.

Some hitch-hikers and runaway girls may have been forced into unlawful intercourse but the accusation is seldom leveled at the driver of that van who stopped to pick up the hitch-hiker or runaway, the CJPB study reports.

The mobility of people today figures heavily in the clearance or arrest record of suspected rapists. Unless law enforcement has strong evidence of a bona fide rape, the effort to track down a man who reportedly committed a rape six months ago in another state is not going to be as vigorous as the rape reportedly committed last night locally.

It is not in the interest of police to "work" cases which are unlikely to result in prosecution and/or conviction, the CJPB study states.

"With runaways, the immediate, stronger concerns have to be returning her to her home, the possibility of venereal disease or pregnancy, and her adjustment to some authority," said detective Spellman.

What constitutes a good or bad case as far as police are concerned?

"It's certainly not the case where the woman comes in during May to say she got raped and pregnant in January," she added.

#### MYTHS COMPOUND INJURY DONE TO RAPE VICTIMS—III

(By Margaret McKean)

The myths surrounding rape are ancient, some of them ludicrous, but many still accepted.

Among them are:

Rape is impossible.

All women have a secret desire to be raped.

Men's sex drive is so hard to control that women ought not to provoke it with their dress or demeanor.

Rape is merely "boys being boys" to excess. Women who scream "Rape!" actually enjoyed it while it was happening.

One woman, who volunteered an interview, said she was confronted with all these myths when she told police, her friends, and people in the medical and legal professions about what she considered the "most traumatic experience of my life."

She said she was raped in her home by a man she had met at a business conference. He came to her door on some pretext at a time he knew she would be alone. While he did not force his way in, she said he was not invited in, either.

He did not carry a gun or a knife but his strength was all the force he needed, she said. She was bruised but not beaten or bleeding.

"It would have been better if I had been. You have to look near dead to be believed, and my age, 29, was against me," she said.

She heard a doctor telling the investigating officer, "Well, there's no doubt there was a sexual encounter, but whether it was rape or not is her word against his."

Her lawyer suggested that since a court trial would publicize an affair she'd had a few years earlier it would be better to drop the case.

Her friends said "Why go through that humiliation?" And several asked smirkingly, "What was it really like?"

As soon as she dropped the case, her rapist telephoned her to offer to buy her a drink in congratulations for handling the "episode" with "some maturity." She refused.

So her case is not among those counted in the 1,300 per cent increase in the crime of rape in Ventura County during the past 13 years.

The question is asked, of course, if the statistics represent increased activity of criminals or of the police.

"Crime rates tell us about societal reactions and a lot about the professionalism of law enforcement," states the rape report authorized by Mal King, executive director (CJPB), Ventura region. The 120-page study of the Criminal Justice Planning Board gives this county a head start over many other areas in trying to deal with the problems of the raped while protecting the rights of the accused, said King.

The more professional police departments record the highest number of rapes, the study shows. The Ventura County Sheriff's Department—labeled "highly professional" by the analysts—recorded 214 rapes in five years. The least professional departments—named as the Ojai and Fillmore departments by the analysts—recorded only two and one rape cases respectively in eight years.

Sometimes it's the way the rape is reported which decides whether or not the law will pursue the alleged rapist.

One police officer said, "If a girl comes in, hand on hip, and says 'Hey, fella, I was just raped,' she may not be taken too seriously."

In what law enforcement considers a true case of rape, the victim must show injury, signs of struggle. Other implicit criteria are the woman's sexual reputation, her drinking habits or as one detective said, "We have to try to determine if she's been trying to give it away or sell it."

One woman withdrew the complaint when a detective asked "What about the night you were so drunk that the bartender kicked you out? She was amazed that I knew these things and wasn't surprised when I said 'You really want to go on with your rape story?'"

It becomes a negotiation process, with unequal distribution of power, and a questioning known in police vernacular as "working the victim over," the CJPB analysis states.

If the case goes to court, the complainant can expect that her life will become an open book for judge or jury, but that the prior arrest or conviction record of the accused will be a closed book. She must prove her innocence beyond a reasonable doubt.

That famous inequity may be equalized in California if Senate Bill 1678 is approved by the legislature. It would make evidence of specific instances of the victim's sexual contacts with persons, other than the defendant, inadmissible in rape or unlawful intercourse cases.

It would be one revision of the rules governing rape cases. Those rules are 300 years old, said David Minier, Santa Barbara County District Attorney, when he asked Friday that Assemblyman W. Don MacGillivray introduce bills "to correct the degrading and unjust treatment of rape victims at trial."

"Public opinion has finally caught up with the deplorable status of today's rape victim. This bill should have easy passage," said Minier.

The 300-year-old rules are based on a commentary by Sir Matthew Hale who said in 1678 in his "pleas to the crown" that judges must instruct jurors to view the victim's testimony with caution. The American Civil

Liberties Union has just completed a long study on rape laws and is urging revision, said attorney Jack Childress.

It is a puzzlement as to why, when imprisoned men are forced into sex acts by other men they are considered tragic victims, but women forced into an act are not always considered tragic, said Ida Spellman, Ventura police detective.

Yet some supposed rape victims tell the police unbelievable stories.

"This woman insisted that she was grabbed off a street corner and pulled into a car by a man who never got out from behind the wheel," one detective stated for the CJPB report. "I had to take her outside, get in my car, and prove to her it couldn't have happened that way."

Police are not anxious to work on cases which will be "laughed out of court," Detective Spellman said.

Neither are doctors anxious to work on rape cases, the CJPB report states. "It's unpleasant, it may mean court appearances for the doctor. One physician in Ventura does rape examinations as a personal favor to policemen he knows, but when that doctor's out of town, I can't even get the doctor covering for him to talk to me," a policeman stated.

The mother of a raped 11-year-old and the child had to wait three hours in the emergency room of County General Hospital, Ventura, before her family doctor would come to examine the youngster, she said. He told her during her repeated phone calls that it was a matter for "the doctor on duty."

If King has his way, there will be better correlation of all jurisdictions which handle rape, its victims, its accused.

The responsibility rests though on government, King said, to eliminate some of the trauma from rape's aftermath without sacrificing our system of justice.

The statement of one bewildered rape victim might sum up the dilemma:

"Did they (the police, the court personnel) actually think I would consent to lying flat on my back in a dark alley on a rainy January night?"

#### EPILOG: WOMEN CAN PROTECT THEMSELVES (By Margaret McKean)

Every woman is a potential rape victim, says policemen. But there are ways every woman can protect herself.

Ida Spellman, Ventura police detective, lists some of the ways women can guard against the possibility.

At home:

Don't advertise that you live alone by using your given name in the telephone book, on the mailbox or door. "M. L. Larson" does not indicate that the telephone, mailbox and door belong to Mary Lou. Use initials.

Draw the shades after dark.

Don't undress in front of a window.

Change the locks when renting an apartment or home which has been formerly occupied.

Install a peephole in the door, and use it. Never open the door unless you know who's there. Demand identification.

Don't fall for the "Can I use your phone?" line.

Report anonymous, annoying or obscene telephone calls to the police.

If you should receive an obscene phone call, hang up immediately. Deny the caller the reaction he wants. Hang up and call the police.

If you suspect, upon returning home, that someone has been in your home or is in your home, don't go in. "Women have a sixth sense which warns them sometimes, but too often they ignore it," said Detective Spellman.

While walking:

Women's clothes, dangling purse, and inviting looks can be a come-on. Dress some-

what conservatively, hold your purse close to you and look like you're going somewhere.

Stay away from curbs, driveways, alleys, bushes—any potential hiding place.

Stay near people, if possible. Don't accept rides from strangers.

If followed by someone in a car, change direction. Turn completely around, begin walking the other way, and be obvious about jotting down the license number.

If followed by a pedestrian, walk toward a lighted area, even if you must change direction.

While driving:  
Keep car doors locked.

Keep your purse out of sight. If you believe that you are being menaced

at an intersection where you must stop for a red light, keep the car in gear, blow the horn, attract attention, and drive to a lighted area.

Never stop or slow down for a hitchhiker. Never stop to help anyone who appears to be having car trouble. Report it as soon as you can to some authority.

If you have car trouble, raise the hood, get back in your car, lock it, and if strangers stop to ask if they can help, tell them they can by reporting your problem to the California Highway Patrol or local police.

If you are followed by another car, don't go home and drive into a dark driveway. Drive to a fire station, the police department or an all-night restaurant.

While parking your car:  
If you must carry valuable items with you,

like cameras and luggage, lock them in the trunk of your car before you leave home. Do not wait until you get to a parking lot and then very obviously place the valuables in the car trunk. You may be watched, said Detective Spellman.

If you must leave your car at a service station or garage for repair, leave only the key to the ignition, and not your house or apartment keys.

Never leave keys in the ignition, even if you're going to be in the grocery store or at a friend's house for only a minute.

If you are physically attacked:  
Scream, scream, scream, make a scene,

swing your purse, carry on loudly, said Detective Spellman, even if it seems like you and your attacker are miles from anyone's hearing.

Never, never fight back if your attacker is armed. While sexual attack is degrading and traumatic, it is not as final as murder, the detective said.

Sometimes an attacker can be dissuaded if the woman tells him she is pregnant, has syphilis or cancer. This ploy has been effective, and so have other stalling tactics women may devise, said Detective Spellman.

Don't try to be a judo expert, unless you hold the black belt and are not immobilized by terror.

And, finally, if you are attacked, either verbally or physically, call the police immediately.

"Women tell their neighbor, their boss, their boy friend, their brother-in-law, and 72 hours later, somebody gets around to telling the police. We want to know immediately," said the woman detective.

Because she is a woman, Detective Spellman handles many rape investigations for Ventura Police Department and is considered expert and highly professional among police officers.

"She is eminently qualified," said Police Chief Richard Baugh, "not only because she is a woman, but because of her training and what she learned at the FBI Academy from where she just returned."

The public, the police, and the judicial system must take a "new, fresh look at such crimes as child abuse, child molest and rape," the chief stated.

Detective Spellman is available to discuss these crimes at meetings of both men's and

women's groups, he said, and arrangements for her appearance as a speaker may be made by telephoning the department, 643-5411.

#### FREEDOMS FOUNDATION AWARD TO IOWAN

Mr. CLARK. Mr. President, every year the Freedoms Foundation of Valley Forge, Pa., presents awards to Americans who have distinguished themselves in patriotic or citizenship-developing activities.

I will present one of the Foundation's 1973 awards to George T. Nickolas of Davenport, Iowa, next month. This is the third time Mr. Nickolas has been so honored by the Freedoms Foundation. He won previous citations in 1967 and 1969.

Mr. Nickolas' latest award is for a letter to the editor of the Rock Island, Ill., Argus. Written in observance of Constitution Day, September 17, the article explains what George Nickolas thinks is right about America. He writes, for example, about our right to vote freely, to do the type of work we choose, to have a prompt trial by jury if accused of a crime, to educate ourselves and our children in free schools, and to worship in the church of our choice. "What is needed is more people thinking and talking about what is right about America," he wrote.

Mr. Nickolas, a Navy veteran who served in Korea, is active in the Disabled American Veterans, and he is a member of the Iowa Governor's Commission for Employment of the Handicapped. Mr. President, I ask unanimous consent that Mr. Nickolas' letter be printed in full in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

#### AN EXERCISE OF A RIGHT (By George T. Nickolas)

People keep trying to find what is wrong with the United States of America. It is easy to find fault with anything, if you look hard enough. There are few things in this world which are perfect in all respects. What is needed is more people thinking and talking about what is RIGHT with America.

September 17th is the day on which we, as Americans, celebrate Constitution Day. This day commemorates the Constitution which extends to us, as citizens, many rights and privileges. It is a day for American citizens to consider that no other country in the world allows their citizens the rights, privileges, and, yes, the freedoms that exist in the United States of America.

Just think for a moment—you have the right to think as your conscience permits. You can speak or even write as you want as long as you do not interfere with the rights of another individual. You have the right to vote in free public elections and thereby, select public officials who will represent you and your interests in city, county, state and national affairs. You have the right to select the type of work or profession to which your education, talents, experience and physical ability will permit you to successfully pursue. You have the right to improve your station-in-life by education, type of work and social activities. If you should be accused of a crime, you have the right to legal counsel and a prompt trial by jury. You have the right to seek justice in a court of law, where you have equal rights with other citizens, to recover your property or seek equity when you have been wronged. You have the privilege of sharing in the benefits of the many natural resources of your country. You

have the right to educate yourself and your children in free schools. You have the right to worship in any church of your choice or not to worship at all. And, to sum it all up, you have the right to "Life, Liberty, and the Pursuit of your Happiness".

These are a few of the things which are RIGHT with America. I challenge anyone to find another country which permits every citizen equal rights. For the right and privilege of being an American citizen it is the duty of every citizen to love the United States of America; to support and adhere to its Constitution and laws; to respect and honor its flag; and if necessary, to defend it against all of its enemies from without and within in order to preserve the benefits of our United States of America for future generations.

#### NATIONAL SUMMER YOUTH SPORTS PROGRAM

Mr. TUNNEY. Mr. President, on Thursday, May 9, I introduced the National Summer Youth Sports Program (S. 3480). Inadvertently, the entire bill was not printed in the RECORD. I request unanimous consent that the bill appear in its entirety in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 3480

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That this Act may be cited as the "National Summer Youth Sports Program Act of 1974".

#### STATEMENT OF PURPOSE

SEC. 2. The Congress finds that disadvantaged youth benefit from participation in a program concentrated in the summer months, with an opportunity for continued activities throughout the year, which provides sports instruction and competition in a context of high quality facilities and supervision and includes instruction concerning employment and study and career opportunities, regular association with college instructors and athletes and exposure to college and university campuses. Such a program creates an opportunity to help equip these youth with new skills, enhanced appreciation of their abilities and a broader perspective on the educational and employment opportunities available to them. The Congress further finds that such a program has been successfully conducted in recent years by the National Collegiate Athletic Association and various participating colleges and universities in cooperation with the President's Council on Physical Fitness and Sports, that the combination of Federal funds and college resources offers leaders in education and athletics an opportunity and a challenge to perform a needed service which they are uniquely qualified to provide, and that this program should be authorized on a permanent basis.

#### PROGRAM AUTHORIZED

SEC. 3. (a) (1) The Secretary of Health, Education, and Welfare (hereinafter referred to as the "Secretary") shall make grants or enter into contracts for the conduct of an annual national summer youth sports program concentrated in the summer months, with opportunity for continued activities throughout the year, designed to offer disadvantaged youth living in areas of concentrated poverty an opportunity to receive educational instruction, sports instruction, and health and nutritional services, and to participate in educational programs and sports competitions.

(2) No assistance may be provided under this section unless satisfactory assurances are received that (A) not less than 90 per

centum of the youths participating in each program to be assisted under this section are from families with incomes below the poverty level, as determined by the Secretary, and that such participating youths and other neighborhood residents, through the involvement of the appropriate community action agency or otherwise, will have maximum participation in program planning and operation, and (B) all significant segments of the low-income population of the community to be served will be served on an equitable basis in terms of participating youths and instructional and other support personnel.

(b) Programs under this Act shall be administered by the Secretary, through grants or contracts with the National Collegiate Athletic Association or any other qualified national organization of colleges and universities. Each such grant or contract shall contain provisions to assure that the program to be assisted will—

(1) expand educational opportunities for disadvantaged youths, designed to provide an opportunity to engage in competitive sports and benefit from sports skills instruction;

(2) help young people learn good health practices and become better citizens by utilizing the personnel and facilities of higher education;

(3) enable the contractor and institutions of higher education located conveniently to areas of concentrated poverty and their personnel to participate more fully in community life and in the solution of community problems;

(4) provide a combination of employment and on-the-job training in sports instruction and administration; and

(5) serve major metropolitan centers of the United States as well as other areas, within the limits of program resources. Local projects under any such program will be conducted under approved contracts between the principal contractor or grantee and selected institutions of higher education qualified to carry out a program under this Act.

#### PAYMENTS

SEC. 4. (a) Except where the Secretary determines that unusual circumstances make a larger percentage necessary to effectuate the purposes of this Act, a contract or grant under this Act with respect to any program may not provide for payment of more than 80 per centum of the direct costs incurred in carrying out the total program. The non-Federal share may be cash or in-kind contributions.

(b) Payments under this Act may be made in advance or by way of reimbursement, and in such installments and on such conditions as the Secretary deems necessary to carry out the purposes of this Act.

#### LIMITATION ON ADMINISTRATIVE EXPENSES

SEC. 5. (a) No principal grantee or contractor under this Act may charge any fee for general and administrative expenses of supervising a program assisted under this Act. Each such grantee or contractor shall be responsible for financing all of its own expenses from sources other than this Act.

(b) No institution of higher education with which the principal grantee or contractor enters into a contract under this Act may charge any fee for general and administrative expenses incurred in operating a program assisted under this Act.

#### APPROPRIATIONS

SEC. 6. There is authorized to be appropriated \$5,000,000 for each of the fiscal years ending June 30, 1975, June 30, 1976, and June 30, 1977.

#### REPEALER

SEC. 7. Effective at the close of June 30, 1974, or the date of enactment of this Act,

whichever occurs later, section 227 of the Economic Opportunity Act of 1964 (42 U.S.C. 2814) is repealed.

#### FAMINE AND MALNUTRITION FOR WORLD'S CHILDREN

Mr. HUMPHREY. Mr. President, the New York Times yesterday included an article, "Peril to 400 Million Is Seen by UNICEF," which gave further evidence of the world food shortage.

Mr. Henry Labouisse, Executive Director of UNICEF, warned that 400 million to 500 million children faced malnutrition or even starvation. For children in the poorest and most populated countries, "living conditions may well slip from the barely tolerable to the desperate."

Mr. President, this is one more word of warning on the food peril we face. I ask unanimous consent that this informative article be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

#### PERIL TO 400 MILLION IS SEEN BY UNICEF

The threat of severe malnutrition—or even starvation—faces 400 million to 500 million children in poorer countries, Henry R. Labouisse, the executive director of the United Nations Children's Fund, warned today.

Mr. Labouisse, speaking at the opening of a UNICEF board meeting here, said that the situation was sufficiently grave for the 30 board members to consider declaring an emergency—which would be something new for the 27-year-old agency.

Mr. Labouisse said that any given time there are some 10 million children in the world who are suffering from severe malnutrition and in danger of dying, and added that this number was bound to rise in times of greater shortages. This, he said, has come to be accepted as a fact of life.

But even this "shameful stability," he said, is now threatened by the acute economic difficulties that many countries are now experiencing.

#### TOLERABLE TO DESPERATE

"Now," he said, "with the costs of food and notably of fertilizer rising sharply, there is the serious threat of an increasing number of recognized famines and, more generally, of a widespread deterioration of nutrition among young children of lower-income families."

For children in the poorest and most populated countries, he said, in an apparent reference to Southern Asia and Africa, "living conditions may well slip from the barely tolerable to the desperate."

The UNICEF board is certain to approve a \$137.9-million assistance program for which \$57-million is still being sought from contributors. Mr. Labouisse also said he would be seeking \$40-million to \$50-million a year more for the next few years to help the Asian and African countries that are facing new economic stress. The somber tone of his report and speech to the board were echoed by a number of representatives.

Michael N. Scelsi, the United States member, emphasized that the critical food situation required a realistic family-planning program throughout the world, as "a major, overwhelming concern, priority and activity of UNICEF and us all."

Mr. Scelsi also approved Mr. Labouisse's recommendation that future aid programs in oil-producing countries and some others with new affluence should require the governments of those countries to shoulder the costs, thereby freeing money for other activities.

## FOLLOW-UPS SUGGESTED

The board did not act immediately on Mr. Labouisse's suggestion that it declare that an emergency exists, but it was not expected to be opposed.

The executive director suggested three follow-up moves to the declaration: an intensified reporting effort on the condition of children in the most affected countries, with the help of private relief organizations; stepped-up contributions for aid to children, which donors could give through the United Nations or directly; a conference in the fall at which governments would be asked to make two contributions, one for long-range UNICEF planning, one for emergency assistance over the next few years.

## WHEN BABIES GO HUNGRY

Mr. McGOVERN. Mr. President, as chairman of the Senate Select Committee on Nutrition and Human Needs, I have had occasion during the last several months to hear extensive testimony covering the WIC—women, infants, and children—program.

This program is designed as a humane and economical approach to health care. We know that too many low-income mothers and infants receive poor nutrition, and that the result is a disproportionate number of them suffer from high infant mortality rates, high maternal mortality rates, plus increased chances for mental retardation and learning difficulties.

We also know that diet supplementation can help prevent these kinds of social and personal tragedies.

As the WIC program has grown, I have watched an outpouring of support for it, from across the Nation. Both professionals and nonprofessionals have high hopes for its success and expansion.

But WIC's early months have not been without hardship.

The following article, entitled "When Babies Go Hungry," by Joseph Bell, appears in the June issue of *Good Housekeeping*.

It, I believe, accurately describes both the hopes and the frustrations of this very valuable program.

I ask for unanimous consent that the attached article be printed in its entirety in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

## WHEN BABIES GO HUNGRY

"Although this report relates primarily to the malnourishment of impoverished mothers and the babies they bear, it is important to remember that the problem is equally grave for any woman who fails to feed herself sensibly during pregnancy and to provide good nutrition for her infant child. A great number of studies have shown that many Americans—even those at middle and upper income levels—have dangerously inadequate diets. Sound nourishment is essential to the growth and health and happiness of every member of our society. Let's make sure it is available to all."

Hubert H. Humphrey, Senator from Minnesota:

If \$60 could save a baby from mental retardation, would you pay it?

Of course you would. And in 1972, you did—or at least committed yourself to paying it by way of your elected representatives in Washington. At that time Congress appropriated \$40 million in an attempt to salvage

some half a million high-risk newborn babies and rescue many of them from the tragedy of lifetime dependency, if not actual hospitalization.

The program, which went by the acronym of WIC (Women, Infants and Children) hinged on a vastly important scientific discovery: that there is a direct cause-and-effect link between diet and mental retardation, that malnutrition can actually stunt the human brain. Science has also learned that the damage is done way early in life, during the last months in the womb and the crucial first year of life when brain cells are grown. If a baby hasn't developed a full complement of cells by the time he's 18 months old, it is known now that he never will. Ill-nourished children have been found to have 40 percent fewer cells than those who've been well fed.

What all this means is that, although mental retardation is not curable, it is preventable—at least in a substantial number of cases. And what's needed to prevent it is not any wonder drug or magic bullet, but simply getting the right food at the right time to mothers and infants who might not otherwise get it.

Congress had all this in mind when it launched its war against mental retardation. Although its decision created scarcely a ripple among the public at large (\$40 million is, after all, not even a drop in the Federal budget and produced no headlines), it was greeted with cheers from the experts in a dozen fields. Now, at last, something was being done to break the vicious cycle of poverty and social problems, and to check, at very little cost, what scientists saw as a serious threat to the brainpower of future Americans.

Today those same experts are not cheering. For 18 months the WIC program was bogged down in the bureaucratic snarls and confusion of post-Watergate Washington. Now, although some funds are finally being disbursed, no one agrees on how much is left. And, at this writing, nothing has been done about renewing the appropriation. As of now, unless all of us—you and your husband and your friends—bring pressure on Washington, what WIC promised may turn out to be no more than a promise.

Here, then, are the facts.

Some 26 million Americans now live below the poverty line as defined by the Social Security Administration. One out of every four children under six years of age presently lives in a home where, according to Dr. Charles Lowe of the National Institute of Child Care and Human Development, "there is not enough income to meet the costs of many of the essentials of life." Including the most essential of all: proper food.

In 1971, a subcommittee of the U.S. Senate began looking into the relationship between poverty and mental retardation. The hearings were triggered by a remarkable four-year investigation by a team of doctors and researchers at St. Jude's Children's Research Hospital in Memphis, Tenn. Through a carefully chronicled supplemental feeding program in a low-income black neighborhood of Memphis, the St. Jude's team proved that the height, weight and intelligence distribution of these terribly poor children could be raised significantly through the proper practice of maternal and infant nutrition. A number of other medical experts corroborated the St. Jude findings.

What this adds up to for you and me is that the billions of dollars we now spend to care for people who cannot care for themselves might be materially reduced if the problem were attacked at its source. What it would cost, according to the experts, would be about \$20 for the right kind of supplementary food for each prospective mother during her pregnancy and about twice that amount for an infant during his first 18

months of life. As Senator Hubert Humphrey pointed out: "The total cost of this kind of supplemental feeding program would be less to a community than the expense of caring for only a few retarded infants over their lifetimes."

So positive action—for once—seemed clearly defined: The job was to see to it that every prospective mother in the United States unable to provide nutrition for herself and her unborn baby be given proper food. There were no grinding social or political issues involved. The need had been demonstrated. The means were at hand. The cost was relatively small. And the benefits—to mothers, infants, and every American taxpayer—were extraordinary.

Faced with such simple imperatives, even Congress can move quickly. In mid-1972, a Special Supplemental Food Program (later to be known as WIC) was passed. It provided \$40 million over the next two years to feed an estimated half million pregnant women and infants in low-income areas. Results were to be tabulated and carefully studied to determine how effectively the program was working.

Nutritionists and pediatricians in thousands of community public health centers were elated. Up to that point, all they had been able to offer had been advice—which the poor people they were counseling often couldn't afford to follow. Now they could give food, too. So they waited eagerly for the U.S. Department of Agriculture—which had been charged with administering the WIC program—to gear up and get started.

And nothing happened. Absolutely nothing—no application forms, no advisories, no food. After a year of that, interested citizens brought a class-action lawsuit against the Agriculture Department to force it to put the appropriated funds to work. The judge didn't mince words in his decision; he gave the USDA one month to draw up the regulations for WIC and request applications for funds.

At the same time, the outraged Senate subcommittee reconvened its hearings and blistered the USDA representatives summoned before it. When the USDA people insisted they understood WIC's job was one of medical evaluation, the Senators stressed again their intent that the \$40 million should be used immediately to feed hungry babies and expectant mothers.

The applications for supplementary feeding funds that poured in from all over the nation after the court decision were tangled for months in bureaucratic red tape. First approvals were granted late in 1973, and a month later, a few of the programs finally got under way—almost two years after the money had been appropriated.

The first statewide WIC operation was in Arizona, where the need was urgent and the machinery had long been readied by a dynamic young state nutrition director with snapping eyes and a no-nonsense approach named Anita Yanochik.

One of Anita's assistants—a tall, attractive graduate of the University of California named Carol Elchelberger, took me in hand when GH sent me to Arizona to see how the WIC program worked. For her demonstration, Carol chose the desert town of Florence, a place of adobe and brick and sand and dust where men wear boots and drive pickup trucks, where water makes acid soil productive, and billboards advertise rodent control. The population is a broad mix of native-born whites, blacks and Mexican-Americans.

On that morning there was a birth control clinic at the health center. Later the WIC mothers began arriving—a stream of pregnant women and new mothers applying for food vouchers for the first time or picking up new ones.

I listened as field nutrition worker Sally Lewis—effervescent and friendly—inter-

viewed two WIC applicants. The first was Maria, 23, Mexican-American, with huge, luminous brown eyes, who was married to an unemployed agricultural worker. She had two small children with her and was expecting her third in five months. The second, Billie Sue, was American-born, heavy-set, 24. She had recently married a widower ranch hand with 12 children. She had three small children in tow and was visibly pregnant.

Sally checked their blood for anemia and took detailed personal information. She learned that Maria and her husband had recently moved from her parents' home into their own apartment, but that then her husband had been unexpectedly laid off. Although he hoped to be working soon, there was no income meanwhile and Maria had to use what cash they had to buy food for the family rather than the special foods she had been told she needed. Billie Sue was scarcely better off. Her husband was earning less than \$500 per month, from which she had to feed the ten children still at home, he, too, had to think of stretching food for the family rather than of special foods for herself and her unborn child.

Both women were obviously within the scope of the WIC program, and Sally Lewis provided them with food vouchers on the spot. The voucher looks like a blank check, but on the bottom of the form is a list of vital foods—iron-fortified formula, fruit juices, whole, skimmed or low-fat fluid milk, nonfat dry milk ("Some of these people," explained Sally, "don't have refrigerators"), and so on. The nutritionist prescribes an individual diet for each mother and infant, then indicates it on the form. The recipient can exchange the voucher in any food store for the precise nutrition she needs—and for nothing else.

Several dozen expectant mothers had been provided with food vouchers by late afternoon. When the lines of patients began to dwindle, the staff—two public health nurses and three nutritionists—had a few minutes to breathe and talk to me. From them I learned about some of the people WIC had come along too late to help. Fifteen-year-old Brenda, for example, who had been abandoned by her father and beaten by her stepfather and made pregnant by a schoolmate from a wealthy family that refused help when they found they were not legally obligated. Brenda had shown up on Sally Lewis' doorstep one night, huddled against the cold, and eight months pregnant. Sally had taken her in and done what she could for her—and later for her baby. The child, who is now two and being raised by Brenda's grandmother, already shows signs of subnormal intelligence. WIC might have saved her.

There were dozens of similar stories, told with a kind of compassionate detachment. Cases of mental retardation are tragically familiar to the people who work with the poor. (A recent seminar of the American Medical Association reported that "three-fourths of all retarded children come from impoverished families; and seven percent of all children from poverty appear mentally retarded. Thus countless children become handicapped simply because they were born to poor families.")

The distance between WIC field workers in Florence, Ariz., and the Washington bureaucrats who delayed WIC for so long is more than geographic. Community nutritionists take violent exception, for example, to the Department of Agriculture's contention that WIC wastefully duplicates the two supplementary feeding programs already in existence: food stamps and commodity distribution. Sally Lewis told me: "Buying food stamps requires accumulating money once or twice a month. It may seem like a pittance to you and me, but for a lot of these people

it is simply impossible. They literally live from day-to-day and from hand-to-mouth."

Another shortcoming of the food-stamp program is that millions of Americans in desperate need do not apply for stamps at all because of ignorance, fear, language barriers, lack of transportation, helplessness—or pride. (One young mother in Florence told me sadly how her husband had hidden in humiliation outside when she had been forced to cash food stamps at their local grocery.)

But, according to WIC staff members, the most serious shortcoming of both the food-stamp and commodity programs as far as expectant mothers and babies are concerned is the dubious nutritional value of the food the poor will obtain. Under the commodity program, a person can be given only what food is in surplus and therefore available. Under the food-stamp system, a woman may select whatever food she wants, but her own requirements must be weighed against a lot of competing family needs. By contrast, WIC specifies foods required for each mother and infant and provides redeemable vouchers free for those foods alone. The mental and physical lifeline it offers is not available except to mothers and new babies.

Each WIC center must be approved by the Department of Agriculture before it can begin to serve the poor. Such approval has not been easy to come by. I visited a clinic in East Los Angeles—an area where there had been bloody riots a few years ago—that had been turned down for WIC funds. The nutritionists there—headed by a dark-haired, green-eyed, intensely dedicated young woman named Kathleen Kerrigan—are confused and angry over their rejection, and they plan to reapply. Meanwhile, they continue to do the best they can by providing nutrition advice. But they are full of frustration because they know there is WIC money to buy the food their mothers and babies need—but that it's out of their reach, mired down in Washington.

A social worker named Miryam Vierra took me to the home of an East Los Angeles mother we'll call Josephine. Josephine is 38 years old and lives in a four-room house, of sorts, with nine children and a husband who earns \$400 a month and drinks a lot of beer. There is no heat in the house, which rents for \$85 a month. Huge cracks around the front door and window casements let in constant drafts. Josephine has two children under two years of age, the last one born under clinic care. The East Los Angeles nutritionists know that neither Josephine nor her children are eating properly, and they try—a little helplessly—to urge her to set aside at least a portion of her tiny food budget (she feeds 11 people on \$40 a week) for fresh milk, fresh vegetables, citrus fruits, lean meats and whole-grain cereals. Josephine listens and says she will. The children—who have constant colds—watch, empty-eyed and apathetic.

I found the waiting room at the East Los Angeles clinic crowded with several dozen younger Josephines, sharing a common need for prenatal and postnatal nutrition help. There was a 12-year-old child named Rosa—frightened, obese, terribly withdrawn—raped, apparently, by a man visiting her mother, and delivered to the clinic five months pregnant. And a 15-year-old named Maria, sitting patiently in line with her eight-month-old baby who is spectacularly fat, the result of eating heavy foods—flour tortillas, beans, greasy pasta—off the family table. Ms. Kerrigan shook her head in disapproval. "Overweight," she said, "can be just as indicative of poor nutrition as underweight."

All the nutritionists with whom I talked repeatedly made this distinction between hunger and malnutrition, referring to the Institute of Human Nutrition bulletin that says: "Malnutrition comes from not eat-

ing enough of the *right kind of foods*. You can eat just about anything and hunger will go away. But you have to eat the right kind of foods for malnutrition to go away."

We all know that malnutrition is not confined to the poor. The potato-chip-and-cola diet of many middle-class teen-agers can also add up to malnutrition that can be passed along to their progeny. So can the emphasis—for the sake of appearances as well as for mistaken health reasons—long put on holding down weight during pregnancy.

But even though affluent mothers are vulnerable, current research shows that malnutrition is 15 times higher among poverty mothers. As Senator Charles Percy pointed out: "Many of the well-to-do have poor dietary care in spite of their affluence. . . . So malnutrition isn't entirely a matter of dollars available. But the low-income woman has to be a very, very good shopper, while higher income people tend to get better nutritional balance simply because they have more money to spend."

And of course the problem of nutritional balance is compounded many times over for the low-income mother and her baby because they are frequently hungry as well as malnourished.

All that might have been changed by WIC, but, as we've seen, the WIC program, barely launched, is seriously threatened. The Agriculture Department has little enthusiasm for it. One USDA official told me: "The program is in the wrong place. It should have gone to Health, Education and Welfare. It deals primarily with medical evaluation, and we don't have a single medical doctor. It also involves state agencies with which we have no rapport."

Whether by design or bureaucratic reflex then, the USDA is entangling the program in skeins of red tape. And even though most of the WIC field operations didn't get under way until the spring of 1974, all of them will have to reapply for funds before the first of July. The nutritionists are furious about this time-consuming paper-pushing. But they are even more fearful that after they reapply, there won't be enough money to continue the program so painfully started.

One angry state nutritionist told me: "The need is urgent, and it would be criminal to let this program die now that we've finally got it under way."

The danger is imminent. There is a good deal of confusion between the USDA and the Senate Nutrition Committee as to how much money is still available to run WIC. About the only thing certain is that funds are committed for two dozen special medical evaluation programs of WIC, but that unless Congress acts, some—or possibly many—of the other programs, like the one I watched in Florence, may have to be suspended next year for insufficient funds. Given their lack of enthusiasm thus far, there is little hope that either the USDA or the Nixon Administration will request such funds. So it seems up to Congress to make sure WIC continues.

The potential benefits are great and the price is low—an unusual combination these days. Says Dr. Paulus Zee, director of nutrition at St. Jude's in Memphis: "It is ironic to be spending up to \$150 a day on hospital care for a baby that has been damaged by a disease—malnutrition—that can be prevented for a \$1.50-a-week."

That \$1.50-a-week will buy a fighting chance for the baby of Jean, a \$250-per-month waitress with a sixth-grade education, two small children, and a husband who abandoned her when she got pregnant again. Or the child of a woman widowed by an agricultural accident while she was pregnant for the ninth time. Or the child of 14-year-old Celeste, who was raped by a man who offered her a ride after school, then was dragged—shamed, humiliated and preg-

nant—to the public health clinic by her parents when it was too late even to consider an abortion.

To most of us in our middle-class homes, these people are invisible. But they are out there, hundreds of thousands of them. They need and deserve compassion and help. And we can only speculate how many future problems might thus be prevented.

The knowledge and facilities to accomplish this are close at hand. Only a push from a determined public and a relatively small investment of Federal funds are required to extricate the program from official indifference and red tape, and get it firmly established in the business for which it was designed: feeding mothers and infants who desperately need decent nutrition to save them, and all of us, from the horrors that flow from their neglect.

#### DEMOCRATS AND RESPONSIBLE GOVERNMENT

Mr. HUMPHREY. Mr. President, as a former mayor and as the liaison between the executive branch and the Nation's Governors and mayors during the Johnson-Humphrey administration, I was interested to read the analysis by John G. Stewart of the important new role being assumed by Governors and mayors in recasting the governing ideology of the Democratic Party. Mr. Stewart's article appeared in the Washington-Star News of Sunday, May 12.

Mr. Stewart suggests that the public has not turned its back on the role that Government, even the Federal Government, must play in dealing with the country's most critical social and economic problems. But it is equally certain that the Federal Government must produce visible, understandable, and effective results on the community level. This will require a variety of new approaches on a host of governing issues. And it will also require the knowledge and experience of Governors, mayors, and other local officials if Congress is to find workable answers.

This persuasive analysis was drawn from Mr. Stewart's recent book, "One Last Chance: The Democratic Party," 1974-76. I commend both the article and the book to my colleagues on both sides of the aisle.

Mr. President, I ask unanimous consent that the article, "Democrats Must Invent Better Ways to Govern," from the Washington-Star News of May 12, 1974, be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Washington Star-News,  
May 12, 1974]

#### DEMOCRATS MUST INVENT BETTER WAYS TO GOVERN

(By John G. Stewart)

After years of languishing in the political backwoods, Democratic governors and mayors once again have emerged as significant factors in the party's quest to recapture the White House in 1976. This development, moreover, offers a solid clue as to what generally will constitute winning Democratic politics for the balance of the 1970s.

This does not necessarily mean that a governor will win the next Democratic presidential nomination (although the odds on this have improved). But it does suggest that governors and mayors are the most reliable sources of the political insight and govern-

ing experience that the next Democratic candidate will need to win the nomination and general election.

For the past generation, it has been almost a truism that only politicians operating near the country's major centers of mass communication—New York, Washington, and California—had a realistic chance of acquiring the stature and influence that are prerequisites to national party leadership. This bit of conventional wisdom arose from the habit of equating national party leadership with a politician's standing in the presidential sweepstakes. If an elected public official was deemed not to be a presidential contender (a category reserved for politicians who could appear regularly on network shows), his potential for influencing the national party was assumed to be nil. And this was generally the case.

It also was agreed that the political power that mattered most was to be found in Washington, home of the money, expertise, and muscle associated with the federal government. States, cities, and counties were governing units to be alternatively bludgeoned and patronized by the heavy rollers from the nation's capital.

These patterns have now changed in several important respects. Even though this shift has been overshadowed by the preoccupation of the national news media with the impeachment inquiry and the labors of the special prosecutor, the most sensible and far-sighted thinking about the future of the Democratic party is coming largely from the hinterlands instead of Capitol Hill. This development—an interesting although irrelevant fact unless linked in some manner to new sources of political leverage—must also be viewed from the perspective of the role that governors and mayors are likely to play in nominating the Democratic presidential candidate in 1976.

Voters today are looking for political leadership with the guts and common sense to restore some purpose and direction to our national life. This process is heavily dependent upon fashioning workable solutions to problems encountered in day-to-day living. Several curious paradoxes in the public attitude illustrate why this is so:

Despite considerable popular cynicism toward government and politics, there remains a solid base of support for the country's constitutional and political system, a popular faith in the ability of government to function effectively and a belief that first-rate people can still be brought into government. For example: a recent survey of public attitudes conducted by Louis Harris and Associates for the Senate Subcommittee on Intergovernmental Relations discovered that fully 90 percent of Americans believe that government can work "effectively and well."

Although most Americans remain staunchly conservative on such general ideological questions as "government spending" and the individual work ethic, they strongly support increased government spending when it is tied to specific operational problems of real consequence to everyday living, such as health care, aid to the elderly, education, and housing.

Most Americans also subscribe to the conservative ideology condemning "big government" in favor of "returning power to the people," but they simultaneously recognize that the federal government must take the lead in solving such problems as poverty, health care, pollution, and consumer protection.

Even those Americans who were most opposed to the government's civil rights efforts of the 1960s largely support the proposition that the only way to solve the problems of blacks and other minorities is for the federal government to make an all-out effort by spending much more money on domestic problems affecting all Americans, such as

health, education, housing, and improving things in our cities.

These are not the feelings of an electorate that has turned its back on the role that government, even the federal government, must play in dealing with the country's more critical social and economic problems. But these attitudes do reveal clearly the absolute importance of the federal government producing visible, understandable and effective results on the community level. This, in turn, requires far more flexible and imaginative use of federal power in equipping subnational units of government to do the job. And it is here where the knowledge and experience of governors, mayors and other local officials are desperately needed if answers are to be found.

These circumstances bear directly on the Democratic party's future. The electorate's anger toward Republican candidates—as revealed in the recent special elections for the House of Representatives—arises from two sources: outrage over what is seen as Nixon's perversion of the presidential office, and the Nixon administration's failure to meet the people's legitimate expectations as to what constitutes competent and responsive government. There is little evidence that the voters are making an affirmative choice on behalf of the Democratic candidates, or the party itself.

The longer-run pitfalls for the Democratic party are obvious (at least to most governors and mayors); the electorate's antagonism toward the GOP can rebound as soon as Nixon vacates the presidency (by whatever route) or is exonerated by Congress unless Democrats are seen as coming to grips with sources of popular discontent unrelated to Watergate.

This popular reaction, moreover, is likely to be intensified by three other factors: (1) the hefty Democratic majorities in Congress that are forecast for the November elections, (2) guilt feelings millions of Republicans and conservative Independents may experience for voting or thinking Democratic in protest against Nixon's presidential conduct, and (3) the good feelings likely to abound for Gerald Ford if he assumes the presidency prior to 1976 or if he becomes the GOP's nominee. At this writing the Democrats have no one who can match Ford's appeal in terms of perceived integrity and low-key respectability.

In any event, the Democrats will be running a grave risk if they assume that the White House can be captured by outdrawing Ford on the basis of personal popularity. Their chance for victory in 1976 depends on making the most of an unexpected, perhaps even undeserved, opportunity to seize the political and governing initiative in ways that can survive the ultimate disposition of Richard Nixon's presidency. Since governors and mayors live with the political and governing pressures that preceded and that will survive the drama of Watergate, they have been articulating this position at every opportunity, such as the recent conference of Democratic governors in Chicago.

Figuring out better ways of applying the federal government's leverage in achieving everything from better health care to safer streets is at the core of the Democratic opportunity. Despite more real progress than critics are willing to recognize, the Great Society became muscle-bound and overextended by the late 1960s. The Nixon administration's ballyhooed shift to general and special revenue sharing, including the consolidation of certain categorical programs into bloc grants, turned out to be little more than a fiscal shell game, with the states and cities unable to find the pea, no matter how diligent their search.

What the Democrats must devise is a governing ideology that puts into actual practice much of the Republican rhetoric about strengthening state and local governments,

without abandoning the commitment of using federal resources to the fullest. It must be an ideology grounded in neither the outworn precepts of the New Deal nor the counterculture of the New Politics. It will require designing a new generation of political institutions that can insure the responsive application of governmental power at all levels of American society. It will call for using the federal government's power in flexible and often indirect ways.

Some examples: The federal tax code can be used more effectively to foster social and economic objectives. Mixing monetary rewards and sanctions to encourage greater attention by state and local governments to the needs of individual citizens is another approach. Ways must be explored of preserving the uniqueness of neighborhoods, of strengthening family ties, and of bringing the words of work and home more closely together. Revenue sharing must be given a fair trial by a national administration not seeking to use it as a cover for eliminating the federal role in a host of domestic areas, such as housing and community development.

This evolution in the role and posture of the federal government cannot go forward without the direct involvement of governors and mayors in setting the priorities of Congress and in helping write the necessary legislation. Through the good offices of Democratic National Chairman Robert Strauss, Democratic governors and mayors have been invited to meet with Speaker Albert and Senate Majority Leader Mansfield. But sporadic consultation will not effectively tap the wealth of governing experience that is to be found outside of Washington.

One additional factor is likely to force greater appreciation by congressional Democrats, at least those with presidential ambitions, of the new importance acquired by their non-Washington brethren. The emerging organization of Democratic governors and mayors into tightly-knit caucuses—equipped with competent staffs at the Democratic National Committee headquarters—and the critical role governors and mayors are likely to assume in the scramble for presidential delegates on the basis of proportional representation, will open doors on

Capitol Hill that have been closed for decades.

Those Democrats in Congress who go out of their way to listen and help Democratic governors and mayors with their governing problems can expect a more cordial reception in the search for delegates than those Democrats in Congress who don't. It is worth noting in this regard that fully 25 percent of each state's delegation can be appointed in 1976—a provision that was specifically added to increase the representation of elected officials at the next Democratic National Convention.

For lack of a better term, this broad-scale opportunity now open to the Democrats can be labeled the "Governing Issue." The party's post-1974 prospects will be determined largely by the degree to which this issue is recognized, developed, and brought forcefully to the people prior to the 1976 presidential campaign. And governors and mayors hold the key to unlocking this treasure chest of political riches.

**SENATOR CRANSTON'S FINANCIAL DISCLOSURE**

Mr. CRANSTON. Mr. President, yesterday, in compliance with rule 41, I filed with the Secretary of the Senate for public view a statement of my outside income from honoraria. Unfortunately, this is the only disclosure required by law of Members of Congress.

I have long been a supporter of full disclosure of financial information for elected officials, so that the public can know what they are up to financially while holding positions of public trust. I have acted in accordance with this belief and, way back in 1965 when I was State controller of California, I became the first elected state official ever to make public his tax returns and balance sheet.

Now during the Watergate years, full disclosure is even more essential if we are to restore the seriously eroded public confidence in people who hold public office.

Therefore, I am making a full disclosure of my statement of financial conditions as of this date, as well as of my Federal and California State income tax returns for 1973.

I ask unanimous consent that they be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

*Financial statement—Alan Cranston*

Bank accounts:	
Commercial:	
Wells Fargo, San Francisco, Calif.....	\$267
First Western, Los Angeles, Calif.....	2,387
Savings:	
Wells Fargo, San Francisco, Calif.....	10,240
Westdale Savings & Loan, Los Angeles, Calif.....	3,796
Westdale Savings & Loan, Los Angeles, Calif.....	20,064
Total .....	36,754
Receivable—Loans and accounts:	
Lee Fairbrother (sister-in-law).....	7,500
Bernard and Patricia Snyder (niece).....	4,550
Cecil Weintraub (sale of ranch).....	34,545
Jeffrey Edmonds (trust, sale of lot and building).....	17,526
Total .....	64,121
Beneficial interest in a blind trust.....	
Personal property .....	10,500
Art objects .....	7,500
Retirement funds:	
State of California.....	10,500
U.S. Government.....	15,000
Total .....	25,500
Cash value of insurance policies.....	7,500
Total .....	154,375
Payable—Personal loan:	
Eleanor C. Fowle (sister).....	13,200
Total .....	141,175
Net value of real estate.....	419,624
Total net value.....	560,799

**REAL ESTATE OWNED, ALAN CRANSTON**

Description and address	Title	Market value	Mortgage due to	Mortgage amount	Net value
Lot and building, 501 San Mateo, San Bruno, Calif.....	Self, wife.....	\$67,500	Wells Fargo, San Francisco.....	\$30,000	\$37,500
Lot and building, 215 Main St., Los Altos, Calif.....	Self.....	65,000	do.....	31,750	33,250
Lot and building, 163 Main St., Los Altos, Calif.....	1/2 self, wife.....	37,500	.....	.....	37,500
Lot and building, 206 Redwood Ave., Fort Bragg, Calif.....	1/2 self, wife.....	20,000	.....	.....	20,000
Lot and building, 318 University Ave., Palo Alto, Calif.....	1/2 self.....	62,500	.....	.....	62,500
Lot and building, 482 San Mateo Ave., San Bruno, Calif.....	do.....	50,000	.....	.....	50,000
Ranch, Star Route, Smartsville, Calif.....	1/2 self, wife.....	25,000	.....	.....	25,000
Subdivision No. 2, Thornwood Dr., Sacramento, Calif.....	Self, wife.....	34,500	.....	.....	34,500
Co-op apartment No. 112, 2700 Virginia Ave. NW, Washington, D.C.....	do.....	114,000	Watergate, Inc., care of Cafritz, Washington, D.C.....	44,000	70,000
Land, Vineyard Properties, Sherman Oaks, Calif.....	1/60 self, wife.....	9,456	.....	.....	9,456
Land, Simi-Moorpark Properties, Sherman Oaks, Calif.....	1/100 self, wife.....	22,518	.....	.....	22,518
Land and building, Wilshire Properties, Los Angeles, Calif.....	1/40 self.....	4,400	.....	.....	4,400
Land, 5-Area Properties, Los Angeles, Calif.....	1/100 self.....	5,000	.....	.....	5,000
Condominium, 1147 La Verne Way, Palm Springs, Calif.....	Self, wife.....	35,000	Keystone Savings & Loan, Westminster, Calif.....	27,000	8,000
Total.....	.....	552,374	.....	132,750	419,624

**U.S. INDIVIDUAL INCOME TAX RETURN—TAXABLE YEAR 1973**

(Alan and Geneva Cranston)  
Occupation: yours—U.S. Senator; wife's—housewife.

**FILING STATUS**

2. Married filing joint return (even if only one had income).

**EXEMPTIONS**

- 6a. Yourself, regular.
- 6b. Spouse, regular.
- 7. Total exemptions claimed: 2.

**INCOME**

9. Wages, salaries, tips, and other employee compensation: \$42,500.00.

- 11. Interest income: \$4,536.37.
- 12. Income other than wages, dividends, and interest: \$11,525.83.
- 13. Total (add lines 9, 10c, 11 and 12): \$58,562.20.
- 14. Adjustments to income: \$6,329.49.
- 15. Subtract line 14 from line 13 (adjusted gross income): \$52,232.71.

**TAX, PAYMENTS AND CREDITS**

- 16. Tax, check if from: Tax Rate Schedule X, Y or Z: \$9,213.10.
- 18. Income tax: \$9,213.10.
- 19. Other taxes: \$864.00.
- 20. Total (add lines 18 and 19): \$10,077.10.
- 21(a). Total Federal income tax withheld: \$11,059.20.
- 22. Total (add lines 21a, b, c, and d): \$11,059.20.

**BALANCE DUE OR REFUND**

- 24. If line 22 is larger than line 20, enter amount OVERPAID: \$982.10.
- 25. Amount of line 24 to be refunded to you: \$982.10.

**INCOME OTHER THAN WAGES, DIVIDENDS AND INTEREST**

- 28. Business income or (loss): \$11,069.27.
- 29. Net gain or (loss) from sale or exchange of capital assets: \$842.67.
- 30. Net gain or (loss) from Supplemental Schedule of Gains and Losses: (\$7,188.61).
- 31. Pensions, annuities, rents, royalties, partnerships, estates or trusts, etc.: \$6,215.77.
- 37. Other (Magazine articles and miscellaneous): \$586.73.
- 38. Total (add lines 28-37): \$11,525.83.

**ADJUSTMENTS TO INCOME**

- 41. Employee business expense: \$6,329.49.
- 43. Total adjustments (add lines 39-42): \$6,329.49.

**TAX COMPUTATION**

- 44. Adjusted gross income: \$52,232.71.
- 45. (a) If you itemize deductions enter total from Schedule A, line 41 and attach Schedule A: \$17,415.80.
- 46. Subtract line 45 from line 44: \$34,816.91.
- 47. Multiply total number of exemptions claimed on line 7, by \$750: \$1,500.00.
- 48. Taxable income: \$33,316.91.

**OTHER TAXES**

- 55. Self-employment tax: \$864.00.
- 61. Total: \$864.00.

**FOREIGN ACCOUNTS**

Did you, at any time during the taxable year, have any interest in or signature or other authority over a bank, securities, or other financial account in a foreign country (except in a U.S. military banking facility, operated by a U.S. financial institution)? No.

**Schedule A: Itemized deductions**

**MEDICAL AND DENTAL EXPENSES**

- 1. One half (but not more than \$150) of insurance premiums for medical care: \$100.38.
- 2. Medicine and drugs: \$128.55.
- 5. Enter balance of insurance premiums for medical care not entered on line 1: \$100.38.
- 6. Enter other medical and dental expenses: a. Doctors, dentists, etc.: \$189.61.
- c. Other (Contempo Hip Cycle): \$12.98.
- 10. Total: \$100.38.

**TAXES**

- 11. State and local income: \$3,651.00.
- 12. Real Estate: \$2,256.52.
- 13. State and local gasoline: \$74.00.
- 14. General sales: \$347.19.
- 17. Total (add lines 11-16): \$6,328.71.

**INTEREST EXPENSE**

- 18. Home mortgage: \$2,805.38.
- 19. Other (See Schedule): \$2,108.00.
- 20. Total (add lines 18 and 19): \$4,913.38.

**CONTRIBUTIONS**

- 21. a Cash contributions for which you have receipts, cancelled checks, etc.: \$152.50.
- 24. Total contributions (add lines 21a-23): \$152.50.

**MISCELLANEOUS DEDUCTIONS**

- 33. Other (See Schedule): \$5,920.83.
- 34. Total (add lines 30-33): \$5,920.83.

**SUMMARY OF ITEMIZED DEDUCTIONS**

- 35. Total medical and dental: \$100.38.
- 36. Total taxes: \$6,328.71.

- 37. Total interest: \$4,913.38.
- 38. Total contributions: \$152.50.
- 40. Total miscellaneous: \$5,920.83.
- 41. Total deductions: \$17,415.80.

**Schedule C: Profit or (loss) from business or profession**

- A. Principal business activity: Honoraria
- E. Method of accounting: (1) Cash
- F. Were you required to file Form W-3 or Form 1096 for 1973? No.
- G. Was an Employer's Quarterly Federal Tax Return, Form 941, filed for this business for any quarter in 1973? No.
- H. Method of inventory valuation: N/A.

**INCOME**

- 1. Balance: \$11,069.27.
- 3. Gross profit: \$11,069.27.
- 5. Total income: \$11,069.27.
- 21. Net profit of (loss) (subtract line 20 from line 5): \$11,069.27.

**Schedule D: Capital gains and losses**

**Part II: Long-term Capital Gains and Losses**

**Assets held more than 6 months**

- 6. Land—Thornwood Estates
- Installment Sale—Black Ranch
- Principal Received: \$2,381.22 × 55.28% gross profit = \$1,358.34.
- 8. Gain, if applicable, from line 4(a)(1), Form 4797: \$135.00.
- 9. Your share of net long-term gain or (loss) from partnerships\* and fiduciaries: \$192.00.
- 11. Net gain or (loss), combine line 6-10: \$1,685.34.
- 13. Net long-term gain or (loss), combine lines 11, 12(a) and 12(b): \$1,685.34.

**Part III: Summary of Parts I and II**

- 14. Combine the amounts shown on lines 5 and 13, and enter the net gain or loss: \$1,685.34.
- 15. If line 14 shows a gain—
- (a) Enter 50% of line 13 or 50% of line 14, whichever is smaller: \$842.67.
- (b) Subtract line 15(a) from line 14: \$842.67.

**Form 4797: Supplemental schedule of gains and losses**

**Part I: Sales or Exchanges of Property Used in Trade or Business and/or Involuntary Conversions**

- Section B:
- 3. Freeway Vineyard Properties Partnership: \$135.00.
- 4. Combine the amounts on line 3, enter here and also the appropriate line as follows: \$135.00.

**Part II: Ordinary Gains and Losses**

- 8. Subdivided land
- (b) Date acquired: 1959
- (c) Date sold: 1973
- (d) Gross sales price: \$23,706.36
- (f) Cost or other basis, cost of subsequent improvements and expenses of sale: \$23,169.97
- (g) Gain or (loss): \$536.39
- Rental house demolished, 3819 Thornwood, adjusted basis plus demolition costs Section 165(a)
- (g) Gain or (loss): (\$7,725.00)
- 9. Combine lines 5 through 8, enter here and also on the appropriate line as follows: (\$7,188.61)
- (b) (2) Redetermine the gain or (loss) on line 9, excluding the loss (if any) entered on line 9(b)(1): (\$7,188.61)

**Schedules E & R: Supplemental income schedule and retirement income credit computation**

**RENT AND ROYALTY INCOME**

- (a) Kind and Location of property; if residential, also write "R": From 4831.
- (b) Total amount of rents: \$35,323.26.
- (d) Depreciation or depletion: \$4,787.02.
- (e) Other expenses: \$25,610.79.
- 1. Totals:

- (b) Total amount of rents: \$35,323.26.
- (d) Depreciation or depletion: \$4,787.02.
- (e) Other expenses: \$25,610.79.
- 2. Net income or (loss) from rents and royalties: \$4,925.45.

**Part III: Income or losses from partnerships, estates or trusts, small business corporations**

- 1. Totals: \$1,290.32
- 2. Income or (loss). Total of column (d) less total of column (e): \$1,290.32.
- Total of Parts I, II and III: \$6,215.77.
- Form 4831: Rental income—Page 1.

**RENT INCOME**

- 1. Kind and Location of Property:
  - Property A.: 3819 Thornwood, Sacramento, California. (residential)
  - Property B.: 215 Main Street, Los Altos, California.
  - Property C.: 501 San Mateo Avenue, San Bruno, California.
  - Property D.: 206 Redwood Avenue, Ft. Bragg, California.
- Property E.: From 4831, Page 2.
- 2. Rents received:
  - Property A.: \$345.00.
  - Property B.: \$8,410.05.
  - Property C.: \$5,635.90.
  - Property D.: \$1,386.00.
  - Page 2 Total: \$19,546.31.
  - 3. Total: \$35,323.26.

**EXPENSES**

- 9. Insurance:
  - Property B.: \$938.00.
  - Property C.: \$478.00.
  - Property D.: \$316.90.
- 10. Interest:
  - Property A.: \$120.40.
  - Property B.: \$2,579.50.
  - Property C.: \$2,247.32.
- 13. Management fees:
  - Property B.: \$595.93.
  - Property C.: \$285.06.
  - Property D.: \$282.15.
- 15. Repairs:
  - Termites.
  - Property B.: \$90.00.
  - Property D.: \$38.86.
  - Roofing, etc.
  - Property C.: \$1,958.62.
  - Property D.: \$411.26.
- 18. Taxes and licenses:
  - Property A.: \$513.23.
  - Property B.: \$3,726.51.
  - Property C.: \$1,581.27.
  - Property D.: \$349.67.
- 21. Other:
  - Bond for Sewer, Street:
    - Property A.: \$167.21.
    - Property D.: \$10.73.
  - City Association Dues.
  - Attorney.
  - Miscellaneous.
  - 22. Total expenses:
    - Property A.: \$800.84.
    - Property B.: \$7,929.94.
    - Property C.: \$6,550.27.
    - Property D.: \$1,409.57.
    - Page 2 Total: \$8,920.17.
  - 23. Total expenses: \$25,610.79.

**Schedule for depreciation claimed on schedule E, part II, column (d)**

- 27. Other depreciation:
  - A. 3819 Thornwood
  - B. 215 Main Street
  - C. 501 San Mateo Avenue
  - D. 163 Main Street
  - E. 318 University Avenue

**Form 4831: Rental income—Page 2**

**RENT INCOME**

- 1. Kind and Location of Property:
  - Property A.: 163-65 Main Street, Los Altos, California.
  - Property B.: 318-24 University Avenue, Palo Alto, California.
  - Property C.: 482, 484, 486, 490 San Mateo Avenue, San Bruno, California.
  - Ownership:

Property A:  $\frac{1}{8}$ .  
 Property B:  $\frac{1}{2}$ .  
 Property C:  $\frac{1}{2}$ .  
 2. Rents received:  
 Property A: \$1,341.51.  
 Property B: \$11,580.52.  
 Property C: \$6,624.28.  
 3. Total: \$19,546.31.

## EXPENSES

9. Insurance:  
 Property A: \$70.29.  
 Property B: \$797.17.  
 Property C: \$585.34.  
 13. Management fees:  
 Property A: \$64.71.  
 Property B: \$583.96.  
 Property C: \$331.22.  
 15. Repairs:  
 Property B: \$105.74.  
 Property C: \$1,499.67.  
 18. Taxes and licenses:  
 Property A: \$492.29.  
 Property B: \$2,626.44.  
 Property C: \$1,497.84.  
 21. Other  
 Dues  
 Property B: \$144.38.  
 Attorney  
 Property B: \$39.26.  
 Miscellaneous  
 Property B: \$81.86.  
 22. Total expenses:  
 Property A: \$627.29.  
 Property B: \$4,378.81.  
 Property C: \$3,914.07.  
 23. Total expenses: \$8,920.17.

*Form 1914: Computation of allowable depreciation deduction on items changed*  
 (A) Description of Property: 3819 Thornwood.  
 Date acquired: 1958.  
 Cost or other basis: \$17,500.  
 Depreciation allowed or allowable in prior years: \$10,500.  
 Method: SL.  
 Rate (%) or life (years): 20.  
 Depreciation allowable, tax year ending 1973: \$437.50.  
 Date acquired: 1963.  
 Cost or other basis: \$199.  
 Depreciation allowed or allowable in prior years: \$190.  
 Method: SL.  
 Rate (%) or life (years): 10.  
 Depreciation allowable, tax year ending 1973: \$10.00.  
 Date acquired: 1963.  
 Cost or other basis: \$1,293.  
 Depreciation allowed or allowable in prior years: \$769.  
 Method: SL.  
 Rate (%) or life (years): 16.  
 Depreciation allowable, tax year ending 1973: \$40.50.  
 Demolished 7/1/73.  
 (B) 115 Main Street:  
 Date acquired: Various.  
 Cost or other basis: \$12,846.  
 Depreciation allowed or allowable in prior years: \$7,492.  
 Method: SL.  
 Rate (%) or life (years): 30.  
 Depreciation allowable, tax year ending 1973: \$428.00.  
 Improvements on property.  
 Date acquired: Various.  
 Cost or other basis: \$4,533.  
 Depreciation allowed or allowable in prior years: \$4,533.  
 Method: SL.  
 Improvements on property.  
 Date acquired: 1970.  
 Cost or other basis: \$2,506.  
 Depreciation allowed or allowable in prior years: \$1,503.60.  
 Method: SL.  
 Rate (%) or life (years): 5.  
 Depreciation allowable, tax year ending 1973: \$501.20.  
 (C) 501 San Mateo:

Date acquired: Various.  
 Cost or other basis: \$31,500.  
 Depreciation allowed or allowable in prior years: \$21,945.  
 Method: SL.  
 Rate (%) or life (years): 25.  
 Depreciation allowable, tax year ending 1973: \$1,260.  
 Date acquired: Various.  
 Cost or other basis: \$13,290.  
 Depreciation allowed or allowable in prior years: \$10,723.  
 Method: 200 DB.  
 Rate (%) or life (years): 15.  
 Depreciation allowable, tax year ending 1973: \$342.  
 Date acquired: Various.  
 Cost or other basis: \$3,000.  
 Depreciation allowed or allowable in prior years: \$1,729.70.  
 Method: 200 DB.  
 Rate (%) or life (years): 15.  
 Depreciation allowable, tax year ending 1973: \$169.  
 (D) 206 Redwood Avenue, Ft. Bragg:  
 Fully Depreciated.  
 (E) From Page 2, Form 1914: Depreciation allowable, tax year ending 1973: \$1,598.82.  
 163-65 Main Street, Los Altos, California (From Trust— $\frac{1}{8}$  interest;  $\frac{1}{8}$  sold to sister):  
 Date acquired: 3-26-69.  
 Cost or other basis: \$6,075.  
 Depreciation allowed or allowable prior to 6-30-71: \$455.75.  
 Remaining cost or other basis to be recovered after year ending 6-30-71: \$5,619.25.  
 Method: SL.  
 Rate (%) or life (year): 28.  
 Depreciation allowable, tax year ending—7-1-71 to 12-31-71: \$100.34. 1972: \$200.69. 1973: \$200.69.  
 318-24 University Avenue, Palo Alto, California:  
 Date acquired: 10-57, 3-26-67.  
 Cost or other basis: \$23,205.50.  
 Depreciation allowed or allowable prior to 6-30-71: \$2,990.14.  
 Remaining cost or other basis to be recovered after year ending 6-30-71: \$17,215.36.  
 Method: SL.  
 Rate (%) or life (years): 28.  
 Depreciation allowable, tax years ending—7-1-71 to 12-31-71: \$307.42; 1972: \$614.83; 1973: \$614.83.  
 Improvements:  
 Date acquired: 1960.  
 Cost or other basis: \$333.25.  
 Depreciation allowed or allowable prior to 6-30-71: \$314.42.  
 Remaining cost or other basis to be recovered after year ending 6-30-71: \$18.83.  
 Method: SL.  
 Rate (%) or life (years): 10.  
 Depreciation allowable, tax years ending—7-1-71 to 12-31-71: \$16.67. 1972: \$2.16. 1973: —  
 Improvements:  
 Date acquired: 1965.  
 Cost or other basis: \$167.  
 Depreciation allowed or allowable prior to 6-30-71: \$127.72.  
 Remaining cost or other basis to be recovered after year ending 6-30-71: \$34.28.  
 Method: SL.  
 Rate (%) or life (years): 5.  
 Depreciation allowable, tax years ending—7-1-71 to 12-31-71: \$16.22. 1972: \$32.40. 1973: \$32.40.  
 Improvements:  
 Date acquired: 1966.  
 Cost or other basis: \$187.50.  
 Depreciation allowed or allowable prior to 6-30-71: \$110.32.  
 Remaining cost or other basis to be recovered after year ending 6-30-71: \$77.18.  
 Method: SL.  
 Rate (%) or life (years): 5.  
 Depreciation allowable, tax years ending—7-1-71 to 12-31-71: \$18.75. 1972: \$37.50. 1973: \$37.50.

482, 484, 486, 490 San Mateo Avenue, San Bruno:  
 Date acquired: 10-57, 3-26-69.  
 Cost or other basis: \$20,113.25.  
 Depreciation allowed or allowable prior to 6-30-71: \$3,163.36.  
 Remaining cost or other basis to be recovered after year ending 6-30-71: \$16,949.89.  
 Method: SL.  
 Rate (%) or life (years): 28.  
 Depreciation allowable, tax years ending—7-1-71 to 12-31-71: \$302.00.  
 1972: \$605.35.  
 1973: \$605.35.  
 Improvements:  
 Date acquired: 1967.  
 Cost or other basis: \$250.  
 Depreciation allowed or allowable prior to 6-30-71: \$50.  
 Remaining cost or other basis to be recovered after year ending 6-30-71: \$200.  
 Method: SL.  
 Rate (%) or life (years): 10.  
 Depreciation allowable, tax years ending—7-1-71 to 12-31-71: \$12.50.  
 1972: \$25.  
 1973: \$25.  
 Improvements:  
 Date acquired: 2-1-68.  
 Cost or other basis: \$125.  
 Depreciation allowed or allowable prior to 6-30-71: \$18.75.  
 Remaining cost or other basis to be recovered after year ending 6-30-71: \$106.25.  
 Method: SL.  
 Rate (%) or life (years): 5.  
 Depreciation allowable, tax years ending—7-1-71 to 12-31-71: \$12.50.  
 1972: \$25.  
 1973: \$25.  
 Air Conditioning:  
 Date acquired: 10-1-68.  
 Cost or other basis: \$205.50.  
 Depreciation allowed or allowable prior to 6-30-71: \$15.42.  
 Remaining cost or other basis to be recovered after year ending 6-30-71: \$190.08.  
 Method: SL.  
 Rate (%) or life (years): 10.  
 Depreciation allowable, tax years ending—7-1-71 to 12-31-71: \$10.28. 1972: \$20.55. 1973: \$20.55.  
 Air Conditioning, Los Altos, California:  
 Date acquired: 7-70.  
 Cost or other basis: \$375.  
 Depreciation allowed or allowable prior to 6-30-71: \$50.  
 Remaining cost or other basis to be recovered after year ending 6-30-71: \$325.  
 Method: SL.  
 Rate (%) or life (years): 10.  
 Depreciation allowable, tax years ending—7-1-71 to 12-31-71: \$18.75. 1972: \$37.50. 1973: \$37.50.  
 Depreciation from 1-1-71 to 6-30-71 from page —: \$632.24.  
 Total depreciation deduction allowable on items changed—7-1-71 to 12-31-71: \$1,447.67. 1972: \$1,600.98. 1973: \$1,593.82.  
*Schedule SE: Computation of Social Security Self-Employment Tax*  
 COMPUTATION OF NET EARNINGS FROM NONFARM SELF-EMPLOYMENT  
 5. Regular method:  
 (a) Schedule C, line 21: \$11,069.27.  
 (e) Other (magazine articles and miscellaneous): \$586.73.  
 8. Adjusted net earnings or (loss) from nonfarm self-employment: \$11,656.00.  
 9. Nonfarm optional method: (a) Maximum amount reportable under both optional methods combined: \$1,600.00.  
 COMPUTATION OF SOCIAL SECURITY SELF-EMPLOYMENT TAX  
 12. Net earnings or (loss): (b) From nonfarm: \$11,656.00.  
 13. Total net earnings or (loss) from self-employment reported on line 12: \$11,656.00.

14. The largest amount of combined wages and self-employment earnings subject to social security tax for 1973: \$10,800.00.

15. Total "FICA" wages and unreported tips: 0.

16. Balance: \$10,800.00.

17. Self-employment income (line 13 or 16, whichever is smaller): \$10,800.00.

18. If line 17 is \$10,800, enter \$864.00; if less, multiply the amount on line 17 by .08: \$864.00.

20. Self-employment tax: \$864.00.

SCHEDULE OF CONGRESSIONAL REIMBURSEMENTS AND EXPENSES

Reimbursements:

Travel: \$3,313.57.

Official Expenses: \$9,551.79.

Total: \$12,865.36.

Expenses:

Travel: \$8,593.06.

Official Expenses (deductible under Section 62 (2) (A)): \$7,601.79.

\*Cost of Living, Washington, D.C.: \$3,000.00.

Total: \$19,194.85.

Excess expenses: \$6,329.49.

I hereby certify that I was in a travel status in the Washington area, away from home, in the performance of my official duties as a Member of Congress, for 181 days during the taxable year, and my deductible living expenses while in such travel status amounted to \$3,000.00. Alan Cranston.

MISCELLANEOUS DEDUCTIONS

Safe deposit box: \$35.00.

Washington, D.C. office expense, non-reimbursed: \$1,506.24.

Home office expense, non-reimbursed: \$4,375.84.

Management fee (Sunnyvale): \$3.75.

Total: \$5,920.83.

OTHER INTEREST

Eleanor Fowle: \$750.75.

John LunBeau: \$168.00.

Westdale Savings: \$197.82.

Subdivision Bonds: \$298.14.

IRS (Sunnyvale): \$693.29.

Total: \$2,108.00.

SCHEDULE E, PART III

(A) Partnership: Cranston & Cranston EI #: 95-6152318; Income (loss): (\$301.74).

(B) Partnership: Simi-Moorpark Prop. LTD. EI#: [redacted] Income (loss): (\$3,067.00).

(C) Partnership: Freeway Vineyard Prop. EI#: [redacted] Income (loss): (\$1,274.00).

(D) Partnership: Wilshire Blvd. Gr. Prop. EI#: [redacted] Income (loss): (\$282.00).

(E) Partnership: Five Area Prop., LTD. EI#: [redacted] Income: \$900.00.

Trusts: Estate of Carol D. Cranston EI#: [redacted]

[redacted] Income: \$5,315.06.

Total: \$1,290.32.

INDIVIDUAL CALIFORNIA INCOME TAX—TAXABLE YEAR 1973

(Alan and Geneva Cranston)

Occupation: yours: U.S. Senator; spouse's: housewife.

FILING STATUS

2. Married filing joint return.

EXEMPTION CREDITS

6. Personal exemption: \$50.00.

9. Total exemption credits: \$50.00.

INCOME

10. Wages, salaries, tips and other employee compensation: \$42,500.00.

12. Interest: \$4,536.37.

13. Income other than wages, dividends and interest: \$11,778.62.

14. Total: \$58,814.99.

15. Adjustments to income: \$6,329.49.

16. Adjusted gross income: \$52,485.50.

17. Deductions: Itemized: \$13,817.80.

18. Taxable income: \$38,667.70.

\* See attached affidavit

TAX AND CREDITS

19. Tax: \$2,503.45.

20. Total exemption credits: \$50.

21. Tax liability: \$2,453.45.

23. Net tax: \$2,453.45.

24. Special tax credit: \$444.59.

25. Net tax liability: \$2,008.86.

27. Total tax liability: \$2,008.86.

RENTER'S CREDIT

37. Did you, on March 1, 1973, live in rented property which was your principal residence? No.

38. Was the property you rented exempt from property tax? No.

39. Did you live with any other person who claimed you as a dependent for income tax purposes? No.

40. Did you or your spouse claim the homeowners' property tax exemption or receive public assistance? No.

OTHER INCOME

41. Business income (or loss): \$11,069.27.

42. Net gain (or loss) from sale or exchange of capital assets: \$1,095.47.

43. Net gain (or loss) from supplemental schedule of gains and losses: (\$7,188.61).

45. Rents and royalties: \$4,925.45.

46. Partnerships: \$1,290.32.

49. Miscellaneous income (magazine articles): \$586.73.

50. Total (lines 41-49): \$11,778.62.

ADJUSTMENTS TO INCOME

53. Employee business expenses: \$6,329.49.

56. Total adjustment (lines 51-55): \$6,329.49.

ITEMIZED DEDUCTIONS

57. Total deductible medical and dental expenses: \$100.38.

59. Total taxes: \$2,730.71.

60. Total interest expense: \$4,913.38.

61. Total contributions: \$152.50.

62. Total miscellaneous deductions: \$5,920.83.

63. Total itemized deductions (lines 57-62): \$13,817.80.

SPECIAL TAX CREDIT

67. Taxable income from line 18: \$38,667.70.

68. Amount of gain or loss (if any) entered on Schedule D(540), line 14: \$1,095.47.

70. Combine lines 68 and 69 and enter total here: \$1,095.47.

71. Adjusted taxable income: \$36,572.23.

72. Adjusted tax: \$2,272.95.

73. Add lines 20 and 22, and enter total here: \$50.

74. Adjusted net tax: \$2,222.95.

75. Special tax credit: \$444.59.

SENATOR RANDOLPH STRESSES IMPORTANCE OF JOINT INDUSTRY EFFORT IN BOLD PROGRAM FOR COAL GASIFICATION—WEST VIRGINIA AND ILLINOIS WILL BE PROVING GROUND FOR COLUMBIA GAS—EXXON PROJECT—VITAL STEP TOWARD ENERGY SELF-SUFFICIENCY

Mr. RANDOLPH. Mr. President, it is timely to call attention to the agreements signed today in Wilmington, Del., between the Columbia Coal Gasification Corporation and the Carter Oil Co. These agreements provide for the early development of certain low sulfur coal reserves in West Virginia by Monterey Coal Co., a Carter subsidiary, and a future gasification opportunity for certain Carter coal reserves in Illinois. Recently it was my privilege to receive a briefing from Columbia Gas System Chairman John Partridge, formerly of West Virginia,

on this significant and innovative undertaking.

Columbia Coal Gasification Corporation is a subsidiary of the Columbia Gas System, Inc. and the Carter Oil Co. is a subsidiary of Exxon.

The agreements, which are subject to approval of governmental agencies, are:

First, an agreement under which Columbia will exchange a 50-percent undivided interest in 43,400 acres in Wayne and Lincoln Counties out of its some 300,000 acres of West Virginia coal lands, in return for a 50-percent undivided interest in 35,000 acres of Carter's Illinois coal lands located in Clinton, Bond, and Madison Counties.

Second, a West Virginia operating agreement under which Monterey Coal Co. will develop and operate two underground mines capable of a combined total annual production of 4.4 million tons for a 30-year period.

Third, an agreement under which the Illinois coal reserves included in the exchange will be held in their entirety for gasification for Columbia, pending the development of an economically desirable and technically sound gasification process for this coal. At that time, each company can elect whether or not it desires to participate in the ownership of the gasification plant or the supporting coal mines.

Each company will provide one-half of the initial capital investment for the West Virginia mines, which is estimated at \$20 per ton of annual production based on 1974 costs, and will separately market one-half of the coal produced.

The first West Virginia mine is now expected to begin production in 1976 and to achieve design capacity by 1978. Development of the second mine will closely follow the first. While definitive plans have not been finalized, the reserves are capable of supporting a third mine of equal size.

Columbia Coal Gasification President, R. F. Duemler, said:

The Illinois reserves are adequate to supply a gasification plant producing 300 million cubic feet of pipeline quality gas daily for 25 years, or the equivalent of 2.5 trillion cubic feet of natural gas reserves. We estimate that such a plant would require an investment of roughly \$635 million and employ 700 people. It would use approximately eight million tons of coal per year which, in accordance with Monterey's estimates, would call for the development of three Illinois mines at a total capital cost of over \$75 million and employing about 1500 people. It must be emphasized that the ultimate conversion of the Illinois reserves to pipeline quality gas is dependent upon the development of an economically feasible gasification process.

Duemler further stated:

These agreements provide for the highest and best use of Columbia's present coal reserves without diminution of its gasification feedstock reserves. Pipeline quality gas can be delivered to Columbia's customers at a substantially lower cost than from the West Virginia reserves included in the exchange.

Carter Oil President, Harry Pistole, said:

The transaction consummated today will make a positive contribution to the nation's

critical need for supplies of low-sulfur, high quality coal.

He explained that coal from the West Virginia mines will be suitable for use by power companies or by the metals industry in the near term.

Monterey Coal Co. has stated that when the two West Virginia mines reach full capacity they are expected to provide about 1,600 jobs with an annual payroll of \$27 million. Robert H. Quenon, Monterey President, said:

We are confident those mines can be developed in harmony with the goals of the local communities, and we are committed to utilizing the best technology and practices to insure safety and protection of the environment.

Monterey operates an underground mine at Carlinville, Ill., employs about 450 people and produces 3 million tons of steam coal per year. Illinois Governor Dan Walker, has said:

The Monterey mine has proven that with modern technology a coal mine can be a good neighbor and operate in harmony with the environment.

I emphasize that the Monterey Coal Co. officials have stated that when the two West Virginia mines reach full capacity they are expected to provide approximately 1,600 jobs with an annual payroll of \$27 million. I call attention also to the significant additions to the Illinois economy.

The total of agreements between Columbia Gas and Carter Oil—and their subsidiaries—will eventually mean vastly more energy supplies for the country, as well as more jobs for the labor force. Yes, there will be additional coal mining in both West Virginia and Illinois, and there will eventually be conversion of the Illinois coal reserves to pipeline quality gas by Columbia's Coal Gasification Corp.

These are important developments in the right direction toward improving America's energy self-sufficiency status.

Energy self-sufficiency is a goal I have been actively advocating for our country for more than a dozen years. The recent Arabic petroleum embargo was proof that we should go forward—as Columbia Gas and its subsidiaries and Exxon and its subsidiaries have agreed—in taking practical and positive steps toward the achievement of fuels and energy self-sufficiency.

#### ADDRESS BY SENATOR HUBERT HUMPHREY TO THE NATIONAL FOREST PRODUCTS ASSOCIATION

Mr. HUMPHREY. Mr. President, I recently had the pleasure of addressing the National Forest Products Association.

This group gave me a very warm reception. I spoke to them concerning the need to do a much better job in the future in terms of planning for and meeting our long-range timber and renewable resource requirements. Above all, I tried to point out that our aversion to planning in any form has exacted a high price.

Mr. President, I ask unanimous consent that the text of my address be printed in the RECORD.

There being no objection, the address was ordered to be printed in the RECORD, as follows:

#### STATEMENT BY SENATOR HUBERT H. HUMPHREY—"RESOURCE CONSERVATION AND DEVELOPMENT"

During the 200 years of our national history, we have utilized our resources and land recklessly. Now at a time of scarcity, we must make up for our past negligence. We need also to develop a plan for the future.

The Chinese long ago almost destroyed themselves before learning that man must work with rather than fight against nature.

Our history—in terms of utilizing our resources—has been an ongoing attempt to fly in the face of this rule. While there were warning voices, we used up our resources at an alarming rate.

Since the birth of our nation, we have had bountiful supplies of land, timber, minerals and capable people.

Our early settlers could use the soil and then move on after it was exhausted. Our loggers cut the timber and got out. They certainly had no idea of what the future resource needs would be. The term "inventory" was almost totally unknown.

In the past few years, the danger of this profligacy has become increasingly evident. A society is governed by the laws of nature as much as by the laws of man. We have begun to realize this at a serious cost.

It would accomplish little to point out what we should have done.

The uncomfortable fact is that we are a highly consumption-oriented nation of 212 million people. We are wasting resources at an alarming rate.

We have also had a great aversion to planning in any form. The motto, "Don't tread on me," of our early history has been a strongly held attitude for many rugged individuals. We did not want to be told what to do. The future would somehow take care of itself.

Planning has also had strongly ideological overtones in more recent years. Other countries had five year plans for national economic growth, but not our country.

In 1940, we established the National Resources Planning Board to carry out long term planning. However, after the war, we returned to our old haphazard ways. The future would have to take care of itself. We thought there was no limit to growth—no end to consumptive levels.

But we have recently advanced in our thinking. The energy crises and the pressure on all our resources have been growing. In fact, in the 1950's and 60's we invented the "Throw Away" concept.

We must now take a major forward step. The Senate-passed bill, S. 2296, which 27 Senators joined with me in introducing, attempts to chart new directions in the valuable resources of our forests and range. Hopefully, it will serve as model legislation for other resource areas.

In designing the bill, we had to keep in mind that a forest is a resource with multiple values and uses.

We thus had to think in terms of fish and wildlife, water, air and soil. We decided to look at the totality of the forests and range.

It seemed to me that what we needed was an integrated assessment of these lands and their resources. With such an assessment we would be in a position to develop a rational national program.

I also felt that time was of the essence in getting a first crack at an assessment and program. Refinement in the program could come later.

Further, we needed to retain some flexibility to deal with the inevitable changes.

Finally, we believe, the Federal role should be to provide leadership as a land manager

without usurping the private initiative. In fact, it could assist the private effort.

From the assessment, we can develop a program, which outlines our goals and priorities. The Program will need to balance the multiple uses of our forests. It must also include a schedule which phases the Program's implementation.

We know that by thinning and improved management, forest output can be increased substantially. Our estimated timber requirements will increase by at least fifty percent in the next three decades. If we can find reasonable ways to increase supplies on a sustained yield basis, forest products will meet demand.

Washington State has already incorporated practices and funding techniques to increase the yield of State Forests. State and Federal Forests can, if properly managed, yield more uses on a sustained basis.

The President's Advisory Council on Timber and the Environment recently concluded that intensive management would greatly increase timber yields. A study by the General Accounting Office noted that much more solid reforestation and stand improvement work would pay dollar and conservation dividends.

There is a new awareness that these positive steps are needed now. We also have time to deal with this problem and lay out a strategy that can succeed.

Developing this legislation involved a lot of work over eight months. It brought groups together of sharply differing and competing views. Many of you made useful contributions to this effort.

The legislation makes provision for continuing citizen participation.

I am hoping that developing the Program will enable and encourage groups with differing views to continue this useful interchange. This approach should go far toward developing the best possible Program.

It could well be argued that if this bill had already been enacted into law, recent court cases over forest issues might have been avoided. The process of developing a Program would air conflicting views which hopefully could be resolved without litigation.

While I am optimistic about the bill and what it will accomplish, we should not expect instant miracles. It will take time to make the Assessment and develop the Program.

In the meantime, we can make improvements in the present Forest System operations.

I would suggest five steps which would serve this end:

1. Increase fiscal year 1975 Funding for the Forest Service.

I have pointed out to the Committee on Appropriations that the FY 1975 funding proposed by the Administration is just not adequate. In my view, an additional \$193 million is needed.

The National Forest System now contains more than half of the nation's total softwood timber inventory. The rate at which this sustained yield wood supply can be utilized depends largely on the intensity and effectiveness of forest management.

The National Forest Service needs beefing up if it is to increase the intensity of its timber management.

There is also a backlog of 3 million acres requiring reforestation, and another 13 million acres needing timber stand improvement.

Additional funds would help catch up on this work and lead to an increased timber off-take.

2. Provide incentives for small private holding.

Small private timber holdings account for 60 per cent of total commercial timberlands. However, they carry only 20 per cent of the

softwood timber inventory. Timber management levels on most of these lands, other than for fire protection, are low. Improvement of stocking and cultural practices would be essential steps toward increasing the nation's timber supply.

We need to enlist more small owners in a good forest practices program.

### 3. Assure Good Land Use.

Good land use is the business of every land owner, public and private. It is a paramount importance that private forest owners practice good forest management. There is a sound reason for this: private enterprise is the keystone of our system and most of the productive commercial forest land is in private ownership.

On industrial lands, great strides have been made in these last two decades. The cut is still above growth. We need, nationwide, to get all lands voluntarily on a high level of management and, wherever feasible on a sustained yield management.

On public forests, there is serious disagreement over how this land is used. Congress has enacted a multiple-use, sustained-yield policy. Some groups would like to see more land allocated to one use. Some would opt for more wilderness. Some would give a priority to timber production. Others say wildlife values are dominant. Still others see water values as most important. Finally, the great rank and file of people think of the forest as a public park.

There is no easy answer to how we resolve this dilemma. In my view the great bulk of the commercial forest lands in our National Forests are and ought to be in multiple-use management.

### 4. Increase National Forest output.

National Forest timber management should be directed toward making its proper contribution to the nation's forest product requirements. This means prompt reforestation and securing the fullest and best output of all resources.

And it also means adequate funding on a continuing basis.

Intensive management requires a long-term commitment to maintain the effort. If you are going to plant genetically superior tree stock, there must be the commitment to secure the full benefit of its superior growth—decade after decade.

### 5. Increase the use of cut trees and Mill Waste.

I have been increasingly concerned over the wood waste which is presently not used. There is much dead and diseased wood which can be carefully removed from the forest.

The Forest Service normally does not secure the removal of all wood waste left by primary loggers. I have urged that funds be appropriated so that this wood can be utilized.

In this era of wood shortages, I see no reason why we should be so slow in utilizing this supply.

We would also clean out trees that spread disease to healthy forests.

Beyond outlining a long range planning mechanism and recommending more immediate improvements, we need to give greater attention to immediate economic problems confronting the forest products industry. Some of these are a part of the broader problems facing our whole economy. Others are more aggravated in the case of your industry.

The Administration has not let you twist slowly in the wind. It has given you a spin whenever it looked like you were merely hanging. The way in which it has handled housing has compounded the problems of supplying forest products.

The Administration has done little to dampen the fires of inflation. It has pursued policies of reaction rather than action. The budget policies over the past 5 years on timber sales, reforestation and roads can only be characterized as shortsighted.

The Administration has impounded funds, and frozen programs. It has sought to maximize income from timber resources now rather than invest in the development of a full level of multiple uses on a sustained yield basis.

In spite of inflation, high interest rates and price controls, the forest industry can be proud of its performance.

The recently completed study by the Rinfret-Boston Associates describes the keen competition in the softwood and plywood industry. The study provides a useful comprehensive overview of a most complex industry. This report should acquaint citizens with the problems of the timber industry and its important contribution.

As a legislator long associated with resource issues, I applaud the contributions and statesmanship of your organization. The grass roots change in your councils augurs well for the future.

I congratulate you and I encourage you. We all know that the days ahead will test us all. Each generation of Americans has had its own challenges. Some are inherited from the past, some created in the present.

A major challenge and responsibility—in a world growing ever closer together—will be to develop and manage our resources more effectively. We are starting late, but with the help of people such as you, it can be done.

## UNIVERSITY CENTERS FOR RATIONAL ALTERNATIVES

Mr. BUCKLEY. Mr. President, during the late sixties, when many of our campuses were in turmoil, responsible faculty members began to organize to preserve the universities as viable educational institutions, encourage rational discourse rather than rhetorical hooliganism, and encourage administrators to resist the demands of those who would deny freedom of speech to those with whom they disagree.

Prof. Sydney Hook was a leader in organizing one of the most prestigious of these organizations—the University Centers for Rational Alternatives or UCRA. Although Professor Hook has since left New York for Stanford, he still plays an active role in UCRA activities and I am happy to report that the group continues to provide a means of communication to those faculty members interested in preserving freedom of expression on our campuses.

The continued success of UCRA strikes me as especially important at a time when many off campus observers seem to think that the radical assault on our educational institutions ended with the violence of the sixties.

It did not end there and as UCRA's newsletter, *Measure*, reported recently, we should continue on our guard.

Mr. President, I ask unanimous consent to have the UCRA report on the status of free expression on our campuses printed in the *RECORD*.

There being no objection, the report was ordered to be printed in the *RECORD*, as follows:

### WHAT HAVE WE LEARNED?

The last few years have brought a period of calm and order to American campuses racked by outright physical violence in the late sixties. However, there are signs that the peace may be cracking at the edges. In particular, there are indications that certain

organized radical groups are making an effort to stage a comeback by using violent and disruptive tactics against a few chosen targets. Though these efforts have not yet succeeded in mobilizing much widespread support, the initial reaction of administrators does not indicate that they have, as a group, learned much from the trials of the previous decade.

The theme chosen by the radical groups is that of "racism." The remnant of SDS, the Young Socialists, Lyn Marcus' NCLC and a "Committee Against Racism," have all undertaken to visit their persecutions upon a select list of professors who can with more or less plausibility be attacked as racists. Presently most visible is the Committee Against Racism which claims to be an outgrowth of a conference on "racism and the university" held at NYU last November. It claims to oppose "scholarly justifications for racism" and mentions by name Professors Shockley, Herrnstein, Jensen, Eysenck, and Banfield. In order to attack membership from universities, the media, and professional organizations, C.A.R. strives to formulate a respectable program of resolutions for presentation at the conventions of academic associations, promises to lobby in Washington and elsewhere, and often tries to coopt legitimate issues first raised by bonafide professional and interest groups. In many places and to many people, C.A.R. tries to project a general image of a legitimate, peaceful pressure group. However, recent events show that there is another, uglier side to C.A.R.'s activities which involves violent disruption.

At the end of February, a panel of the 140th meeting of the American Association for the Advancement of Science in San Francisco, organized by President John Bunzel of San Jose State University, was to be held on the subject of "Case Studies in Forbidden and Discouraged Knowledge." Various kinds of subjects were covered. For instance, two prominent Yugoslav dissidents, Mirovan Djilas and Mihajlo Mihajlov, were ironically prevented by the Yugoslav government from contributing their experience in forbidden and discouraged knowledge to the conference. Questions concerning privacy and research on human subjects were also discussed. Another topic was the difficult one of studies in the genetic basis of intelligence. Speakers on both sides of the question were to be present. Professor Richard Herrnstein, who has been the object of much vilification, declined to give his paper and attend. The Committee Against Racism asked to be included in the proceedings in order to offer a presentation of its own at the panel. This was allowed. However, when the session was to begin, a number of shouting demonstrators had managed to obtain tickets and threatened to disrupt the meeting if their ticketless confreres were not seated. They chanted slogans like "Hook and Page should be put in a cage." Professor Ellis Page refused to give his presentation in the face of such intimidation. Subsequently, the C.A.R. speaker asked the demonstrators to abide by the rules of order and the meeting was able to proceed in a generally peaceful way.

The next set of incidents occurred at Toronto and are described in the accompanying article. Professor Banfield then went to Chicago for another public appearance at the University. There his public lecture was again disrupted, though a small seminar given under strict police protection proceeded peacefully. Though the administration sought to protect the public lecture by changing the meeting hall to a more secure place and having tickets printed for the event, some disruptors managed to get into the hall, as at San Francisco, and break up the lecture. Just as at Toronto, a campaign of pamphleteering and other propaganda had

preceded the disruptions. It is not expected that disciplinary action will be taken by the University since most of the disruptors were outsiders. It is of interest that this time C.A.R. did not appeal for peace, but asked recipients of their handbills to "join us in protesting at Banfield's lecture, March 20..." SDS is reported to have "targeted Banfield for exposure and harassment," at a recent national meeting. It contributed flyers decorated with pictures of Hitler reading Banfield's book and entitled "Wanted—Dead or Alive: Edward Banfield."

Activities of the militants are not limited only to the disruption of the classes of teachers with whom they disagree. The "battle" has been extended to the field of book-banning and active intrusions into the teaching process. According to headlines in the newly published *SDS New Left Notes*, "SDS Stops the Presses on De Cecco," and the paper boasts that the group has "succeeded in banning *Introduction to Sociology* by John and Mavis Blezanz," for containing a "culture of poverty" theory. After shouting down Professor Lachman at Wayne State for maintaining that not all men are equally intelligent, a C.A.R. activist delivered substitute lecture. The SDS paper states that it was a serious mistake there to waste "too much time in private discussion with the professor while not being active in the class from the start."

In Philadelphia a new organization has emerged which specializes in disrupting the question period of public lectures. A somewhat eccentric though multi-racial group, it is called MOVE. The name is not an acronym but stands for "activity as opposed to stagnation." It follows the 400 page "guidelines" of its founder, John Africa, which, according to a spokesman, are "based not on philosophy, not on theory, not on concepts, but doing away with those." It appears to advocate "total revolution" and the liberation of humanity from enslavement to civilization. Its membership, its spokesman claims, is made up of ex-dope addicts, bank robbers, ex-gang members, teachers, professors, three students and a married couple of former American Nazis. On Monday, February 25, they broke up the question period of Dr. Daniel Ellsberg's lecture at the University of Pennsylvania. The next night they drove Ms. Margaret Sloan, chairwoman of the National Black Feminist Organization, off the University of Pennsylvania stage. They gave as their reason that "all life is one." The previous week they had disrupted a symposium on gang warfare in North Philadelphia. On March 20, they moved to Temple University to disrupt the question period of a lecture in Political Theory given by a visitor from the University of Toronto.

The University of Pennsylvania responded cautiously to these incidents. Dean of Students, Alice Emerson, said the University Committee on Open Expression planned to "observe the situation." The Committee Chairman, Dr. Edward Herman, felt his Committee was not dealing strictly in its jurisdiction, and that it did not have enough facts to make a decision. The Provost, Elliot Stelar, said the University wants to keep an eye on the situation and argued that "should these disruptions amount to anything, they would represent a threat to our academic freedom and purpose, and we must then find a manner to defend ourselves." President Meyerson thought that "at the moment we can just go on the assumption that this is so alien to our community that it will and should disappear."

The picture formed by these fragments is becoming clearer. Radical groups from the remains of the New Left are making a serious and concerted effort to regain their former position on American campuses. They hope that the grave charge of racism will do it for them. By focusing on some of the

more extreme extrapolations of a Shockley, they hope to associate with them others whose teachings may have nothing to do with race at all. They then can hope to tar all those who defend academic freedom as racists too. These efforts have led to disgraceful acts of political terrorism against individual professors, but have not yet succeeded in enlisting the kind of broad support these movements enjoyed in the sixties. However, many university administrators have been as passive in the face of present-day violence, as neglectful of the true values of a university, as the worst of their predecessors in the earlier times. Only where, as in Toronto, a strong and united faculty has drawn the line and pressured the administration to adhere to it, has there been a positive result. Even where the radical group is isolated, and clearly zany, all that comes from the administration are pious wishes that the threat will go away by itself.

It would be obviously wrong to assume that the American academy has lost its appreciation of, and belief in, academic freedom and the general freedom of expression. Whenever there comes news of abrogation of these freedoms somewhere abroad, there is a prompt and loud response. Professors from Greece or South Africa, Spain or Chile, are invited to come and take refuge at our colleges and universities. The *New York Review of Books* carries detailed descriptions of the plight of dissident Marxist professors at the Faculty of Philosophy in Belgrade, while the *Wall Street Journal* comments on the suppression of politically inspired satire in Yugoslavia. There is no lack of support for Andrei Sakharov and the AFL-CIO is ready to underwrite a coast-to-coast lecture series for the most famous of all the fighters for intellectual and personal freedom, Aleksander Solzhenitsyn.

And yet when it comes to problems within our own shores, most of our teachers and scholars, journalists and judges, and other members of our intellectual community, who are so properly incensed at injustices abroad, remain strangely inactive and silent. We do not know of any committee in defense of Dr. Banfield. Solzhenitsyn's fellow laureate, Shockley—with whom many may disagree but whose rights of free expression all should support, as a matter of principle—is waging a singularly lonely battle. It almost appears as if we exhaust all our strength on principled verbal barrages against injustices in distant lands and save insufficient resolve for principled action in our backyard.

There are, of course, theoretical reasons given for following the more comfortable cause of protest abroad, neglect at home. One is told that there is a great deal of difference between the outrages committed by governments in power (these should presumably be arrested and condemned) and those advocated and carried out by fanatical sects who are out of power (these should apparently be endured and disregarded). There is also the forlorn hope of those who, like President Meyerson, trust that the evil is "so alien" that it will and should disappear.

Such rationalizations seem strangely off the mark. As reported at the latest meeting in New York of the Freedom House-sponsored International Council on the Future of the University, militant European radicals, though quite alien to the scholarly communities they invaded, have succeeded in dislocating the educational process to the point where the survival of their host universities is in grave doubt. They have done this by a systematic program of violence, intimidation, disruption and threat. Of course, such groups do not disappear by themselves, either in contemporary Europe or the United States or ever. In Europe they have little by little gained a power which has no relation to the size of their following. The situation on American campuses may be far remote from the horrors narrated by visitors from

overseas, but the events reported above indicate that our relative well-being may be more a matter of passive good fortune than active virtue and, in the presence of a by now endemic disease, may therefore not be counted on as enduring.

There is another, educational reason against neglecting to oppose these outbreaks. Tyranny, like other practices, is learned by habit. It becomes emboldened by submission and appears normal to itself after sufficient repetition. One must not forget that many of the leaders of present and past dictatorships, with their notorious contempt for academic as well as all other liberties, started as members of militant student groups, learning their unfortunate trade by experiments on their teachers and fellow students. Many a member of the Nazi hierarchy started as a student rowdy breaking up the classes of left wing or pacifist professors; many a functionary of the KGB started as an obscure member of some anarchist or red university cell. We must not forget that universities teach political and social science as much by their actions as their course content.

Therefore, while the effectiveness and power of the domestic opponents of academic and other freedoms is presently fairly limited, their future will depend as much on the response (or lack of it) of the intellectual community to their flagrant misdeeds, as on their own efforts. For that reason the American professoriat, while working continually to improve teaching and scholarship, should also keep sight of the potential for destruction of those devoted to violence.

#### SECOND SUPPLEMENTAL JAVITS SUMMER YOUTH JOB OPPORTUNITIES

Mr. JAVITS. Mr. President, as Members know, the Senate passed on May 7 by a vote of 85 to 1, H.R. 14013, the second supplemental appropriations bill.

Under the Senate bill, following the recommendations of the Committee on Appropriations, an aggregate of \$381.5 million in new appropriations would be provided for the summer youth job program and related recreation and transportation activities for this summer; this amount is \$155.9 million above the House measure which contains only \$208.6 million for the summer job program and no funds at all for recreation and transportation.

This Senate action resulted from the very fine action of the chairman and members of the Senate Committee on Appropriations and the Subcommittee on HEW-Labor Appropriations in particular.

On May 13, 1974, with certain of the colleagues who joined in the original requests which were joined in by 25 Senators I wrote the conferees of the House-Senate conference on H.R. 14013, which conference has not yet been scheduled, urging retention of the Senate approved amounts in order to ensure that no area in the Nation will have a program with less job opportunities this summer than last, as would be the case in most areas under the House bill.

Our letter includes, as an attachment, a series of charts prepared at my request by the Department of Labor, which show in respect to each State and major area within the State, the number of job opportunities and funds that would be available under the Senate as compared

with the House provision, and last year's levels.

I ask unanimous consent that our letter to the conferees dated May 13, 1974, together with the charts and related materials, be printed in the RECORD.

There being no objection, the materials were ordered to be printed in the RECORD, as follows.

U.S. SENATE,

Washington, D.C., May 13, 1974.

DEAR CONFEREES: We are writing to urge your support for the \$381.5 million provided for the summer youth job program and related activities for this summer by the Senate amendment to H.R. 14013, the Second Supplemental Appropriations bill, as follows:

\$364.5 million under the Comprehensive Employment and Training Act of 1973 which will provide meaningful work opportunities for poor youth ages 14 to 21, along the lines of the Neighborhood Youth Corps. When combined with the \$91.4 million in carried over funds which the Administration has already committed to that purpose, the appropriation would provide an aggregate funding level this summer of \$455.9 million for 878,616 nine-week opportunities.

\$15.0 million for recreation for younger youth and \$2.0 million for transportation, approximately the levels of funding available last summer.

Under the House measure, \$208.6 million (or \$155.9 million less than provided by the

Senate) would be added to the \$91.4 million for an aggregate funding level of \$300.0 million for summer youth job programs, as requested by the Administration; no funds were included for recreation or transportation.

The aggregate of \$300.0 million was originally intended by the Administration to fund 709,200 nine-week opportunities, actually under the level of opportunities available last year.

However, since the Administration submitted its request, the Congress has passed and the President has signed into law the Fair Labor Standards Amendments of 1974, P.L. 92-259, which raises the hourly wage applicable to summer youth job positions, as well as to other employment generally, from \$1.60 to \$2.00 an hour.

Under the new minimum wage, the \$300.0 million that would be available under the House bill can provide only 578,032 opportunities, or 131,167 less even than those intended by the Administration, thus forcing cut-backs throughout the Nation compared with last year.

The Senate amendments would insure that no area receives less funds or opportunities in the summer youth job program (as well as related recreation and transportation activities) than last summer, and make it possible for a moderate increase in summer youth job opportunities to contribute to meeting the special employment needs of poor youth, who suffer particularly from the gen-

eral unemployment situation, aggravated by the energy crisis, with unemployment rates in some areas ranging from 30 to 40 percent.

We note in that regard that the Department of Labor has estimated that 3.4 million poor youth will be looking for jobs this summer—approximately four times the number that can be covered even under the Senate bill; and, that even the Senate provisions fall 233,483 short of the 1,111,483 job opportunities which we sought in the Senate on the basis of a detailed study by the National League of Cities-U.S. Conference of Mayors as the number that could be used effectively.

Enclosed is a chart, prepared at our request by the Department of Labor, showing for each area the levels of funding and opportunities which would be available under the Senate bill as compared with the House, and last year's levels.

For these reasons, we urge adoption of the Senate provisions.

Sincerely,

Jacob K. Javits, Mike Gravel, Robert T. Stafford, James S. Abourezk, Frank E. Moss, William D. Hathaway, Hubert H. Humphrey, J. Glenn Beall, Jr., Philip A. Hart, Robert Taft, Jr., Quentin N. Burdick.

Dick Clark, John V. Tunney, Edward M. Kennedy, Alan Cranston, Walter F. Mondale, Gaylord Nelson, Harrison A. Williams, Abraham Ribicoff, George McGovern.

U.S. DEPARTMENT OF LABOR, MANPOWER ADMINISTRATION—SUMMER ALLOCATION COMPARISONS

	Fiscal year 1973 actual		Annualization of 1973 slots with formula increases		Distribution of \$300,000,000		Distribution of \$456,000,000	
	Slots	Dollars	Slots	Dollars	Slots	Dollars	Slots	Dollars
<b>REGION I</b>								
Connecticut	10,399	4,398.9	11,628	6,034.7	7,978	4,141.1	12,268	6,367.1
Bridgeport Constr	2,190	926.4	2,190	1,136.4	1,606	833.6	2,201	1,142.3
Hartford Constr	2,208	934.0	2,269	1,177.7	1,740	903.1	2,651	1,375.9
New Haven Constr	2,272	961.1	2,272	1,179.3	1,666	865.1	2,272	1,179.2
Stamford Constr	725	306.7	731	379.2	560	290.8	854	443.2
Waterbury City	699	295.7	699	362.9	512	266.2	709	368.0
Balance	2,305	975.0	3,467	1,799.2	1,892	982.3	3,581	1,858.5
Maine, balance	3,740	1,582.0	3,981	2,066.3	3,053	1,584.6	4,652	2,414.4
Massachusetts	18,142	7,674.0	22,314	11,581.2	14,436	7,492.4	24,354	12,639.7
Boston	5,145	2,176.3	5,145	2,670.1	3,773	1,958.6	5,145	2,670.2
Cambridge Constr	1,212	512.7	1,366	708.8	994	516.4	1,596	828.3
New Bedford Constr	741	313.4	783	406.2	600	311.5	914	474.4
Springfield Constr	1,437	607.9	1,696	880.2	1,179	612.2	1,981	1,028.1
Worcester Constr	562	237.7	637	434.6	461	239.5	873	453.1
Lowell Constr	775	327.8	854	443.5	636	330.1	998	518.0
Balance	8,270	3,498.2	11,633	6,037.8	6,790	3,524.1	12,847	6,667.6
New Hampshire	1,858	785.9	2,005	1,040.6	1,518	788.0	2,342	1,215.5
Rockingham Constr	474	200.5	529	274.7	388	201.8	618	320.7
Hillsborough County	514	217.4	554	287.3	422	219.2	647	335.8
Balance	870	368.0	922	478.6	707	367.0	1,077	559.0
Rhode Island	3,625	1,533.4	4,214	2,186.7	2,826	1,467.0	4,636	2,406.1
Providence	1,704	720.8	1,704	884.1	1,249	648.5	1,704	884.4
Balance	1,921	812.6	2,510	1,302.6	1,577	818.5	2,932	1,521.7
Vermont, balance	1,492	631.1	1,642	852.1	1,224	635.7	1,918	995.4
<b>REGION II</b>								
New Jersey	22,078	9,339.1	27,573	14,311.4	17,298	8,978.1	27,533	14,289.5
Atlantic County	826	349.4	866	449.5	664	344.7	1,012	525.2
Hudson County	1,322	569.2	1,624	843.0	1,085	563.2	1,898	985.1
Jersey City	2,222	939.9	2,222	1,153.3	1,630	846.0	2,222	1,153.2
Monmouth County	813	343.9	1,218	632.3	667	346.6	1,263	655.5
Essex County	757	320.2	1,220	633.1	621	322.7	1,176	610.3
Newark City	7,139	3,019.8	7,139	3,705.4	5,236	2,718.0	7,139	3,705.1
Morris County	381	161.2	635	329.6	312	162.2	591	306.7
Union County	473	200.1	828	429.8	388	201.5	735	381.5
Elizabeth City	324	137.1	391	203.1	265	138.0	457	237.2
Middlesex County	1,090	461.1	1,645	853.8	894	464.4	1,693	878.7
Bergen County	527	222.9	1,468	762.0	563	292.2	858	445.3
Passaic County	669	283.0	865	448.7	549	285.1	1,010	524.2
Paterson City	1,128	477.1	1,128	585.3	827	429.3	1,128	585.4
Mercer County	323	136.6	440	228.6	265	137.6	502	260.5
Trenton City	692	292.7	692	359.3	507	263.5	711	369.0
Cumberland County	258	109.1	450	233.6	211	109.8	400	207.6
Burlington County	478	202.2	821	426.1	382	203.5	742	385.1
Camden County	733	310.1	1,015	526.7	601	312.3	1,139	591.1
Camden City	472	199.7	575	298.3	387	201.1	672	348.8
Gloucester County	262	110.8	490	254.2	215	111.8	408	211.8
Ocean County	350	148.1	619	321.3	287	149.1	544	282.3
Somerset County	113	47.8	333	172.8	127	66.2	194	100.7
Balance	726	307.1	889	461.6	595	309.3	1,039	539.2

## U.S. DEPARTMENT OF LABOR, MANPOWER ADMINISTRATION—SUMMER ALLOCATION COMPARISONS—Continued

	Fiscal year 1973 actual		Annualization of 1973 slots with formula increases		Distribution of \$300,000,000		Distribution of \$456,000,000	
	Slots	Dollars	Slots	Dollars	Slots	Dollars	Slots	Dollars
REGION II—Continued								
New York	69,372	29,344.3	76,923	39,923.1	52,526	27,261.4	76,920	39,921.2
Albany Csrst	787	332.9	787	408.3	591	307.2	902	468.1
Rensselaer County	230	97.3	340	176.6	189	98.2	358	185.8
Saratoga County	305	129.0	333	172.7	250	130.0	389	201.9
Schenectady County	180	76.1	317	164.6	148	76.9	280	145.3
Erie Csrst	366	154.8	1,251	649.3	479	248.9	731	379.4
Buffalo City	2,558	1,082.0	2,558	1,327.6	1,941	1,007.7	2,958	1,535.2
Niagara County	454	192.0	780	404.9	372	193.4	705	365.9
Broome County	603	255.1	609	316.1	467	242.4	712	369.5
Chemung County	409	173.0	409	212.3	304	158.2	464	240.8
New York City	50,752	21,468.1	50,752	26,340.2	37,227	19,321.2	50,752	26,340.2
Rockland County	151	63.9	384	199.5	147	76.5	235	122.0
Westchester Cnstr	1,157	489.4	1,738	902.2	949	492.9	1,737	932.6
Yonkers City	333	140.9	485	251.8	273	142.1	518	268.8
Nassau County Csrst	1,144	483.9	2,236	1,160.3	939	487.6	1,778	922.8
Suffolk County Csrst	1,305	552.0	2,138	1,109.5	1,071	556.0	2,027	1,052.0
Dutchess County	302	127.7	364	188.8	248	128.9	425	220.6
Monroe/Rochester	1,298	549.1	1,393	722.9	1,065	553.1	1,627	844.4
Oswego County	203	85.9	318	164.9	166	86.6	316	164.0
Onondaga County	0	0.0	312	161.8	119	62.0	364	188.9
Syracuse City	1,270	537.2	1,270	659.0	931	483.4	1,270	659.1
Oneida County	818	346.0	897	465.5	671	348.6	1,048	543.9
Chautauqua Csrst	801	338.8	926	480.6	657	341.5	1,082	561.6
Orange County	125	52.9	419	217.6	160	83.4	245	127.2
St. Lawrence County	210	88.8	345	179.2	172	89.7	327	169.7
Ulster County	137	58.0	324	168.2	124	64.5	213	110.5
Balance	3,474	1,469.5	5,238	2,718.7	2,852	1,480.5	5,397	2,801.0
Puerto Rico	19,782	8,367.9	20,859	10,826.2	14,868	7,716.6	23,263	12,073.5
Ponce Municipio	861	364.2	1,262	655.0	706	366.7	1,337	693.9
Bayamon Municipio	1,125	475.9	1,125	584.0	825	428.4	1,225	635.8
Carolina Municipio	1,033	437.0	1,033	536.2	757	393.3	1,033	536.1
San Juan Csrst	2,255	953.9	2,931	1,521.2	1,851	961.1	3,424	1,777.1
Mayaguez City	837	354.1	837	434.3	613	318.6	837	434.4
Balance	13,671	5,782.8	13,671	7,095.5	10,112	5,248.5	15,407	7,996.2
Virgin Islands	421	178.0	421	218.5	323	167.5	421	218.5
REGION III								
Delaware, balance	1,733	733.1	1,788	928.1	1,371	711.7	2,089	1,084.2
Maryland	10,703	4,527.3	12,222	6,342.9	8,201	4,256.7	11,972	6,213.5
Baltimore Cnstr	8,045	3,555.3	8,405	4,362.3	6,165	3,199.9	8,405	4,362.2
Montgomery County	127	53.7	664	344.4	254	132.0	388	201.4
Prince Georges County	827	349.8	1,321	685.7	678	352.3	1,284	666.4
Washington County Cnstr	397	167.9	737	382.4	325	169.1	616	319.7
Balance	947	400.6	1,095	568.1	777	403.4	1,279	663.8
Pennsylvania	34,058	14,406.6	39,532	20,517.3	26,263	13,630.5	41,010	21,284.1
Lehigh Valley Cons	351	148.5	702	364.2	288	149.5	545	282.9
S. Allegheny Cnstr	1,156	488.6	1,553	805.9	948	492.1	1,794	931.1
Erie Cnstr	952	402.7	952	494.2	698	362.5	1,024	531.5
Susquehanna Cnstr	743	314.3	817	424.0	609	316.4	954	495.1
Lancaster Cnstr	316	133.7	625	324.3	259	134.6	491	254.8
Bucks County	397	167.9	878	455.8	336	174.8	617	320.2
Chester County	404	170.9	535	277.7	331	172.0	625	324.4
Delaware County	568	240.3	1,216	631.2	466	242.0	882	457.8
Montgomery County	351	148.5	1,018	528.4	390	202.6	595	308.8
Philadelphia	8,950	3,785.9	8,950	4,645.0	6,564	3,407.2	9,971	5,174.9
Allegheny County	2,744	1,160.7	2,852	1,522.2	2,253	1,169.5	3,449	1,790.0
Pittsburgh	5,327	2,253.3	5,327	2,754.6	3,907	2,027.9	5,327	2,764.7
Beaver County	391	165.4	520	269.9	321	166.8	607	315.0
Washington County	351	148.5	553	287.1	288	149.5	545	282.9
Westmoreland County	395	167.1	986	511.6	378	196.2	613	318.1
Berks County	484	204.7	558	289.8	397	206.1	652	338.4
Lackawanna County	252	106.6	382	198.1	206	107.2	391	202.9
Scranton	374	158.2	388	201.4	297	154.4	453	235.1
Luzerne County	1,129	477.6	1,225	635.9	927	481.2	1,432	743.2
York County	109	46.1	367	190.7	140	73.1	215	111.6
Lycoming Cnstr	315	133.2	447	231.9	258	134.3	490	254.3
Butler Cnstr	585	247.5	773	401.3	480	249.2	903	468.7
Fayette County	902	381.5	902	468.2	661	343.4	940	487.9
Franklin County	144	60.9	223	115.5	118	61.6	224	116.3
Lawrence County	235	99.4	329	170.9	192	100.1	365	189.4
Mercer County Cnstr	1,076	455.1	1,076	558.4	789	409.6	1,076	558.4
Schuylkill Cnstr	461	195.0	681	353.4	378	196.6	717	372.1
Balance	4,597	1,944.5	4,597	2,385.8	3,371	1,750.0	5,113	2,653.6
Virginia	13,711	5,799.7	14,789	7,676.0	10,727	5,567.5	16,239	8,428.0
Peninsula Cnstr	1,115	471.6	1,115	578.8	817	424.5	1,215	630.6
Stamps	2,941	1,244.0	2,941	1,526.3	2,157	1,119.6	3,042	1,578.8
Ramps	1,875	793.1	1,875	973.2	1,375	713.9	1,875	973.1
Henrico County Cnstr	0	0	229	118.7	87	45.5	267	138.6
Roanoke County	390	165.0	528	274.3	320	166.2	606	314.5
Arlington County	406	171.7	465	241.5	333	173.0	544	282.3
Fairfax County	344	145.5	656	340.5	282	146.7	535	277.7
Prince William County	211	89.3	226	117.5	173	90.1	264	137.0
Alexandria City	299	126.5	303	157.3	232	120.6	354	183.7
Balance	6,130	2,593.0	6,451	3,347.9	4,946	2,567.4	7,537	3,911.7
West Virginia	10,084	4,265.6	10,084	5,233.8	7,424	3,853.5	10,336	5,364.4
Kanawha City Cnstr	2,941	462.8	1,094	567.8	830	430.8	1,265	656.5
Cabell City Cnstr	755	314.7	744	386.2	545	283.3	825	428.2
Balance	8,246	3,488.1	8,246	4,279.8	6,048	3,139.4	8,246	4,279.7

	Fiscal year 1973 actual		Annualization of 1973 slots with formula increases		Distribution of \$300,000,000		Distribution of \$456,000,000	
	Slots	Dollars	Slots	Dollars	Slots	Dollars	Slots	Dollars
<b>REGION IV</b>								
Alabama.....	15,033	6,359.0	15,185	7,881.2	11,169	5,797.1	15,874	8,238.5
Birmingham Consr.....	2,292	969.5	2,292	1,189.8	1,689	876.7	2,574	1,335.9
Huntsville Consr.....	518	219.1	540	280.1	413	214.8	632	327.5
Mobile Consr.....	1,151	486.9	1,281	664.9	945	490.5	1,497	776.9
Montgomery Consr.....	1,350	571.1	1,350	700.8	990	514.1	1,350	700.6
Tuscaloosa County.....	479	202.6	479	248.6	351	182.3	479	248.6
Balance.....	9,243	3,909.8	9,243	4,797.0	6,779	3,518.7	9,343	4,849.0
Florida.....	22,069	9,335.4	24,073	12,494.9	17,230	8,942.6	26,855	13,937.7
Volusia County.....	460	194.6	522	271.2	377	195.9	610	316.6
Lee County.....	47	19.9	199	103.5	76	39.7	116	60.2
Alachua County.....	313	132.4	313	162.7	229	119.3	315	163.5
Brevard County.....	646	273.3	753	391.0	530	275.1	880	456.7
Orange County.....	525	222.1	757	393.0	431	223.9	816	423.5
Escambia County.....	474	200.5	529	274.7	389	202.2	618	320.7
Sarasota County.....	71	30.0	201	104.3	77	40.0	117	60.7
Pasco County.....	0	0	232	120.3	88	46.1	271	140.6
Palm Beach County.....	660	279.2	1,075	557.7	541	281.1	1,025	532.0
Hrtind Mnpr Consr.....	1,164	492.4	1,291	669.8	955	495.9	1,508	782.7
Miami/Dade Consr.....	4,694	1,985.6	4,741	2,460.7	3,636	1,887.1	5,540	2,875.3
NE Florida Manpower Consr.....	1,697	717.8	1,697	881.0	1,299	674.2	1,979	1,027.1
Broward Consr.....	1,556	658.2	1,709	886.8	1,277	662.9	1,896	1,035.9
Leon/Gadsden Consr.....	638	269.9	638	331.3	468	243.0	652	338.4
St. Petersburg Consr.....	982	415.4	1,274	661.0	806	418.6	1,488	772.3
Tampa Consr.....	2,438	1,031.3	2,438	1,265.4	1,788	928.2	2,438	1,265.3
Balance.....	5,704	2,412.8	5,704	2,960.5	4,257	2,209.4	6,486	3,366.2
Georgia.....	16,715	7,070.4	17,174	8,913.1	12,786	6,636.0	19,226	9,978.2
Atlanta.....	3,090	1,307.1	3,090	1,603.6	2,266	1,176.3	3,090	1,603.7
Fulton County.....	253	107.0	339	175.9	207	107.9	393	204.0
DeKalb County.....	563	238.1	686	356.0	462	239.8	802	416.2
Cobb County.....	372	157.4	483	250.7	305	158.6	564	292.7
Csra Consr.....	866	366.3	959	497.5	711	369.2	1,120	581.3
Savannah/Chatham Consr.....	602	254.6	602	312.5	441	229.2	668	346.7
Mid. Georgia Consr.....	763	322.7	799	414.7	612	318.0	934	484.7
Columbus Area Cons.....	1,673	707.7	1,673	868.2	1,226	636.8	1,673	868.3
Balance.....	8,533	3,609.5	8,543	4,434.0	6,551	3,400.2	9,982	5,180.6
Kentucky.....	14,351	6,070.4	14,461	7,505.5	10,546	5,473.4	15,404	7,994.7
Kenton County.....	215	90.9	325	168.9	176	91.8	335	173.9
Louisville consr.....	2,888	1,221.6	2,888	1,498.8	2,118	1,099.4	2,888	1,498.9
Lexington Consr.....	1,485	628.2	1,485	770.6	1,089	565.3	1,485	770.7
Balance.....	9,763	4,129.7	9,763	5,067.2	7,161	3,716.9	10,696	5,551.2
Mississippi.....	13,150	5,562.4	13,150	6,825.2	9,646	5,006.4	13,150	6,824.8
Jackson Consr.....	1,097	464.0	1,097	569.6	805	417.8	1,097	569.3
Balance.....	12,053	5,098.4	12,053	6,255.6	8,841	4,588.6	12,053	6,255.5
North Carolina.....	22,520	9,526.0	22,937	11,904.2	16,624	8,628.2	23,328	12,107.2
Buncombe County.....	679	287.2	679	352.3	497	258.4	679	352.4
Cumberland County.....	1,517	641.7	1,517	787.1	1,112	577.3	1,517	787.3
Gaston County.....	181	76.6	290	150.6	148	77.0	281	145.8
Onslow County.....	124	52.5	178	92.6	101	52.9	193	100.2
Charlotte.....	775	327.8	775	402.1	568	294.9	843	437.5
Winston-Salem-Cons.....	301	127.3	508	263.5	247	128.5	468	242.9
Raleigh Consr.....	1,375	581.6	1,375	713.7	1,008	523.5	1,407	730.2
Greensboro-Guilford.....	600	253.8	647	335.7	493	255.9	756	392.4
Durham Consr.....	931	393.8	931	483.3	683	354.5	931	483.2
Balance.....	16,037	6,783.7	16,037	8,323.3	11,763	6,105.3	16,253	8,435.3
South Carolina, balance.....	11,267	4,765.9	11,267	5,847.6	8,264	4,289.4	11,666	6,054.6
Tennessee.....	16,248	6,872.9	16,368	8,495.4	11,934	6,194.2	17,278	8,967.3
Chattanooga.....	1,138	481.4	1,138	590.8	834	433.3	1,138	590.6
Hamilton County.....	100	42.3	220	114.3	84	43.8	156	81.0
Nashville/Davidson.....	1,531	647.6	1,531	794.7	1,123	582.9	1,591	825.7
Sullivan County.....	373	157.8	373	193.5	278	144.7	425	220.6
Knoxville Consr.....	1,477	624.8	1,477	766.7	1,083	562.4	1,477	766.6
Memphis Consr.....	2,997	1,267.7	2,997	1,555.3	2,198	1,140.8	2,997	1,555.4
Balance.....	8,632	3,651.3	8,632	4,480.1	6,331	3,286.3	9,494	4,927.4
<b>REGION V</b>								
Illinois.....	48,406	20,475.7	55,393	28,749.6	36,583	18,986.8	53,011	27,512.5
Chicago.....	39,836	16,850.6	39,836	20,674.7	29,220	15,165.4	39,836	20,674.8
Cook County.....	1,970	833.3	3,673	1,906.1	1,617	839.4	3,060	1,588.1
Du Page County.....	0	0.0	495	257.1	189	98.6	579	300.5
Kane County.....	106	44.8	411	213.5	157	81.9	240	124.6
Lake County.....	252	106.6	643	333.8	246	128.0	391	202.9
Macon County.....	193	81.6	260	135.1	158	82.1	299	155.2
McHenry County.....	7	3.0	171	88.7	65	34.0	100	51.9
Rock Island County.....	127	53.7	287	149.2	110	57.2	197	102.2
Tazewell County.....	50	21.2	166	86.2	63	33.1	97	50.3
La Salle County.....	8	3.4	168	87.2	64	33.4	98	50.9
Rockford Consr.....	174	73.6	419	217.4	160	83.4	271	140.6
Champaign Consr.....	173	73.2	361	187.5	141	73.6	268	139.1
Will County Consr.....	272	137.1	553	286.9	223	115.9	422	219.0
Sangamon County Consr.....	265	141.7	570	295.9	275	143.0	521	270.4
Madison County Consr.....	509	215.3	819	424.9	418	217.0	791	410.5
St. Clair Consr.....	247	104.5	539	279.7	206	107.2	383	198.8
Peoria Consr.....	504	213.2	521	270.5	399	207.4	609	316.1
East St. Louis.....	940	397.6	940	488.1	689	358.0	940	487.9
Shawnee Consr.....	523	221.2	523	271.6	384	199.3	523	271.4
Balance.....	2,180	922.1	4,038	2,095.5	1,789	928.9	3,386	1,757.3

## U.S. DEPARTMENT OF LABOR, MANPOWER ADMINISTRATION—SUMMER ALLOCATION COMPARISONS—Continued

	Fiscal year 1973 actual		Annualization of 1973 slots with formula increases		Distribution of \$300,000,000		Distribution of \$456,000,000	
	Slots	Dollars	Slots	Dollars	Slots	Dollars	Slots	Dollars
<b>REGION V—Continued</b>								
Indiana.....	17,746	7,506.4	20,795	10,793.0	13,566	7,040.8	20,735	10,761.4
Gary.....	5,627	2,380.2	5,627	2,920.3	4,172	2,142.1	5,627	2,920.4
Hammond.....	427	180.6	427	221.8	313	162.7	427	221.6
Lake County.....	1,59	490.3	1,159	601.5	850	441.2	1,159	601.5
Elkhart County.....	187	79.1	246	127.8	153	79.7	288	149.5
South Bend.....	1,084	458.5	1,084	562.8	795	412.8	1,084	562.6
St. Joseph County.....	116	49.1	189	98.3	95	49.5	180	93.4
Tippecanoe County.....	171	72.3	194	100.9	140	72.8	227	117.8
Madison County.....	230	97.3	257	133.2	189	98.2	300	155.7
Vigo County.....	483	204.3	483	250.4	353	183.7	483	250.7
Indianapolis.....	1,976	835.8	2,314	1,200.9	1,622	842.0	2,704	1,403.4
La Porte County.....	154	65.1	195	101.4	126	65.8	228	118.3
Ft. Wayne Csrt.....	1,200	507.6	1,200	622.6	879	456.7	1,201	623.3
Delaware Csrt.....	236	99.8	323	167.5	194	100.7	367	190.5
Evansville Csrt.....	1,510	638.7	1,510	783.9	1,107	575.0	1,510	783.7
Balance.....	3,186	1,347.7	5,587	2,899.7	2,616	1,357.9	4,950	2,569.0
Michigan.....	24,899	10,532.2	30,562	15,861.4	19,587	10,166.1	32,075	16,647.1
Wayne County.....	1,554	657.3	2,235	1,160.1	1,275	662.2	2,414	1,252.9
Detroit.....	10,567	4,469.8	10,567	5,484.5	7,751	4,023.0	10,567	5,484.3
Dearborn.....	0	0	145	75.3	55	28.9	170	88.2
Livonia.....	41	17.3	123	63.9	47	24.5	72	37.4
Monroe County.....	208	88.0	279	144.7	170	88.5	322	167.1
Bay County.....	257	108.7	361	187.2	210	109.3	398	206.6
Saginaw County.....	396	167.5	549	284.9	325	169.0	616	319.7
Oakland County.....	1,331	563.0	2,239	1,162.3	1,092	567.1	2,067	1,072.8
St. Clair County.....	303	128.2	432	224.3	249	129.3	471	244.4
Calhoun County.....	299	126.5	433	224.6	245	127.5	465	241.3
Kalamazoo County.....	351	148.5	502	260.4	288	149.7	546	283.4
Berrien County.....	391	165.4	556	288.4	321	166.6	607	315.0
Ottawa County.....	187	79.1	327	169.6	153	79.5	290	150.5
Washtenaw Csrt.....	466	197.1	611	317.0	382	198.5	714	370.6
Kent County Csrt.....	1,073	453.9	1,724	894.8	880	457.1	1,666	864.7
Muskegon Csrt.....	661	279.6	761	395.2	543	281.9	890	461.9
Genesee/Filint Csrt.....	1,000	423.0	1,464	759.7	820	426.0	1,553	806.0
Ingham Csrt.....	666	281.7	902	468.4	547	283.9	1,035	537.2
Jackson Csrt.....	565	239.0	737	382.3	463	240.6	861	446.9
Macomb.....	744	314.7	1,079	559.8	611	317.2	1,156	600.0
Warren City.....	190	80.4	342	177.4	155	80.8	295	153.1
Balance.....	3,649	1,543.5	4,194	2,176.6	2,996	1,555.0	4,900	2,543.1
Minnesota.....	7,895	3,339.6	10,389	5,392.4	6,581	3,415.8	11,206	5,815.9
Duluth.....	268	113.4	333	172.7	219	114.0	389	201.9
Dakota County.....	66	27.9	210	109.2	80	41.9	123	63.8
Urban Minnesota Coenst.....	1,745	738.1	2,904	1,507.4	1,432	743.5	2,710	1,406.5
St. Paul City.....	807	341.4	973	504.9	662	343.9	1,137	590.1
Ramsey County.....	13	5.5	218	113.3	83	43.4	128	66.4
Region III Csrt.....	816	345.2	922	478.5	669	347.6	1,077	559.0
Balance.....	4,180	1,768.1	4,829	2,506.4	3,432	1,781.5	5,642	2,928.2
Ohio.....	30,201	12,775.0	34,025	17,658.6	23,547	12,221.0	36,947	19,175.5
Cincinnati.....	3,180	1,345.1	3,180	1,650.5	2,332	1,210.7	3,180	1,650.4
Butler County.....	365	154.4	524	272.0	299	155.7	567	294.3
Clark County.....	277	117.2	350	181.5	227	118.0	408	211.8
Hamilton County.....	203	85.9	669	347.1	256	133.1	391	202.9
Licking/Del Csrt.....	442	187.0	442	229.2	330	171.5	503	261.1
Lorain County.....	457	193.3	557	289.2	375	194.7	651	337.9
Akron Csrt.....	1,428	604.0	1,639	850.8	1,172	608.6	1,915	993.9
Canton Csrt.....	593	250.8	893	463.3	486	252.7	921	478.0
Cleveland Csrt.....	9,966	4,215.6	9,966	5,172.2	7,310	3,793.9	9,966	5,172.3
Columbus Csrt.....	1,796	759.7	1,884	978.0	1,445	750.0	2,202	1,142.8
Dayton Csrt.....	1,339	566.4	1,568	813.8	1,099	570.5	1,832	950.8
Toledo Csrt.....	1,216	514.4	1,411	732.1	998	518.0	1,648	855.3
Youngstown Csrt.....	2,081	880.3	2,081	1,080.0	1,581	821.0	2,410	1,250.8
Balance.....	6,858	2,900.9	8,861	4,598.9	5,631	2,922.6	10,353	5,373.2
Wisconsin.....	9,709	4,106.9	11,725	6,085.3	7,932	4,116.9	13,491	7,001.7
Outagamie County.....	143	60.5	208	108.2	117	61.1	223	115.7
Rock County.....	241	101.9	326	169.0	198	102.8	375	194.6
Milwaukee Csrt.....	2,395	1,013.1	2,763	1,433.8	1,966	1,020.8	3,228	1,675.3
Madison-Dane Csrt.....	525	222.1	659	341.9	431	223.9	770	399.6
Waukesha Csrt.....	473	200.1	473	245.4	346	180.0	529	274.6
Winne-Fond Csrt.....	207	87.6	411	213.5	170	88.4	322	167.1
Trico Cetae.....	619	261.8	771	400.3	508	263.8	901	467.6
Balance.....	5,106	2,159.8	6,114	3,173.2	4,192	2,176.1	7,143	3,707.2
<b>REGION VI</b>								
Arkansas.....	9,677	4,093.4	9,706	5,037.7	7,113	3,692.1	9,998	5,189.0
Little Rock Csrt.....	1,548	654.8	1,548	803.5	1,135	589.4	1,548	803.4
Texarkana Consrt.....	172	72.8	201	104.3	141	73.3	235	122.0
Balance.....	7,957	3,365.8	7,957	4,129.9	5,836	3,029.4	8,215	4,263.6
Louisiana.....	18,126	7,667.4	18,283	9,488.3	13,472	6,992.2	19,562	10,152.8
Rapides Parish.....	581	245.8	581	301.3	425	221.0	632	328.0
Baton Rouge.....	1,270	537.2	1,270	658.9	945	490.6	1,440	747.4
Lafayette Parish.....	400	169.2	400	207.7	305	158.8	466	241.9
Calcasieu/Jefferson.....	698	295.3	788	408.8	573	297.4	820	477.5
Ouachita Parish.....	417	176.4	461	239.5	342	177.6	539	279.7
New Orleans County.....	3,364	1,410.3	3,334	1,730.1	2,445	1,269.1	3,647	1,892.8
Jefferson Parish.....	1,087	459.8	1,087	564.4	813	422.3	1,240	643.6
Shreveport.....	601	254.2	624	323.8	478	248.3	729	378.4
Balance.....	9,738	4,119.2	9,738	5,053.8	7,142	3,707.1	9,949	5,163.5

	Fiscal year 1973 actual		Annualization of 1973 slots with formula increases		Distribution of \$300,000,000		Distribution of \$456,000,000	
	Slots	Dollars	Slots	Dollars	Slots	Dollars	Slots	Dollars
New Mexico	3,806	1,610.0	4,028	2,909.1	2,863	1,486.3	4,500	2,335.5
Albuquerque	821	347.3	1,043	541.1	674	350.0	1,218	632.1
Balance	2,985	1,262.7	2,985	1,549.0	2,189	1,136.3	3,282	1,703.4
Oklahoma	9,678	4,093.9	10,313	5,352.1	7,286	3,781.5	10,774	5,591.7
Comanche County	298	126.1	298	154.6	220	114.4	336	174.4
Oklahoma County	698	295.3	698	362.3	512	265.8	706	366.4
Oklahoma City Csrt.	1,065	450.5	1,463	759.2	874	453.8	1,654	858.4
Tulsa Csrt.	1,050	444.2	1,287	667.8	862	447.5	1,503	780.1
Balance	6,567	2,777.8	6,567	3,408.2	4,816	2,500.0	6,575	3,412.4
Texas	39,779	16,826.7	42,278	21,941.4	30,150	15,648.0	44,246	22,863.7
Amarillo Csrt.	846	357.9	854	443.2	654	339.9	998	518.0
Austin Csrt.	1,088	460.2	1,161	602.4	889	461.9	1,356	703.8
Beaumont Csrt.	778	329.1	981	508.9	638	331.5	1,146	594.8
Cameron County	834	352.8	834	432.7	621	322.3	946	491.0
Corpus Christi Csr.	1,808	764.8	1,808	938.2	1,326	688.2	1,964	1,019.3
Dallas City	1,903	805.0	2,041	1,059.4	1,562	810.8	2,385	1,237.8
Dallas County	348	147.2	663	344.2	285	148.3	541	280.8
El Paso City/County	1,025	433.6	1,228	637.3	841	436.7	1,435	744.8
Ft. Worth Csrt.	846	357.9	1,212	629.3	694	360.6	1,314	682.0
Tarrant County	100	42.3	397	206.0	152	79.0	232	120.4
Galveston Cnty	871	368.4	871	452.3	639	331.7	871	452.0
Houston	4,294	1,816.4	4,294	2,228.8	3,237	1,680.1	4,932	2,559.7
Harris County	293	123.9	1,061	550.7	406	211.1	620	321.8
Bell Cnty Csrt.	352	148.9	423	219.4	289	150.1	494	256.4
Hidalgo Cnty	1,367	565.6	1,337	694.1	950	509.1	1,464	759.8
San Antonio Cst.	5,906	2,498.2	5,906	3,065.0	4,331	2,248.3	5,906	3,065.2
McClannan Cnty Csrt.	852	360.4	852	441.9	624	324.2	947	491.5
Wichita Cnty Csrt.	865	365.9	865	448.7	634	329.1	865	448.9
Webb County	1,307	552.9	1,367	678.1	958	497.4	1,307	678.3
Texarkana	218	92.2	275	142.8	179	93.1	322	167.1
Balance	13,908	5,883.1	13,908	7,218.0	10,201	5,294.6	14,210	7,370.3
REGION VII								
Iowa	5,858	2,478.0	6,598	3,424.4	4,805	2,494.1	7,552	3,919.5
Des Moines Consr.	945	399.7	1,071	555.9	776	402.8	1,251	649.3
Cedar Rapids Consr.	137	58.0	232	120.4	112	58.3	213	110.5
Blackhawk County	162	68.5	300	155.5	132	69.0	252	130.8
Woodbury County	338	143.0	356	184.8	273	141.7	416	215.9
Scott County	246	104.1	279	144.8	202	104.9	326	169.2
Balance	4,030	1,704.7	4,360	2,263.0	3,309	1,717.4	5,094	2,643.8
Kansas	5,408	2,287.6	5,963	3,094.3	4,273	2,218.1	6,828	3,543.6
Kansas City Consr.	913	386.2	948	491.9	726	377.2	1,107	574.5
Topeka Consr.	534	225.9	534	276.9	391	203.1	534	277.1
Wichita Consr.	1,191	503.8	1,191	618.0	881	457.5	1,343	697.0
Balance	2,770	1,171.7	3,290	1,707.5	2,274	1,180.3	3,844	1,905.0
Missouri	18,378	7,773.8	19,232	9,981.2	13,647	7,082.8	20,027	10,393.9
Kansas City Consr.	3,757	1,589.2	3,757	1,949.6	2,755	1,430.1	3,757	1,949.9
Jefferson Consr.	318	134.5	487	252.6	261	135.6	494	256.4
Springfield	214	90.5	298	154.8	175	91.3	333	172.8
St. Louis City	5,828	2,465.2	5,828	3,024.8	4,275	2,218.8	5,828	3,024.7
St. Louis County	1,359	574.9	1,960	1,017.1	1,116	579.3	2,112	1,096.1
Balance	6,902	2,919.5	6,902	3,582.3	5,063	2,627.7	7,503	3,894.0
Nebraska	4,915	2,079.0	5,095	2,644.2	3,831	1,988.5	5,582	2,897.0
Omaha Consr.	2,202	931.4	2,202	1,142.7	1,615	838.2	2,202	1,142.8
Lincoln City	384	162.4	397	205.8	304	157.8	463	240.3
Balance	2,329	985.2	2,496	1,295.7	1,912	992.5	2,917	1,513.9
REGION VIII								
Colorado	6,138	2,596.4	6,592	3,421.0	4,725	2,452.5	7,028	3,647.5
Arapaho County	47	19.9	191	99.0	73	38.0	111	57.6
Jefferson County	56	23.7	276	143.3	105	54.9	161	83.6
Colorado Springs Consr.	444	187.8	515	267.1	364	189.4	601	311.9
Denver Consr.	3,207	1,356.6	3,207	1,664.4	2,352	1,220.8	3,368	1,748.0
Pueblo Consr.	475	200.9	475	246.4	350	181.9	534	277.1
Balance	1,909	807.5	1,928	1,000.8	1,478	767.5	2,253	1,169.3
Montana, balance	1,693	716.1	2,425	1,258.8	1,389	721.4	2,630	1,365.0
North Dakota, balance	1,575	666.2	1,986	1,031.0	1,293	671.4	2,321	1,204.6
South Dakota, balance	1,394	589.7	1,737	901.6	1,144	594.2	2,030	1,053.6
Wyoming, balance	824	348.6	893	463.6	676	351.3	1,044	541.8
Utah, statewide consr.	3,299	1,395.5	3,727	1,934.4	2,708	1,405.8	4,355	2,260.2
REGION IX								
Arizona	8,366	3,538.9	8,366	4,341.7	6,136	3,184.7	8,536	4,430.2
Phoenix/Maricopa	4,316	1,825.7	4,316	2,239.9	3,165	1,643.0	4,393	2,280.0
Tucson-Pima County	1,207	510.6	1,207	626.5	885	459.5	1,300	674.7
Balance	2,843	1,202.6	2,843	1,475.3	2,085	1,082.2	2,843	1,475.5
California	67,451	28,531.7	80,429	41,742.8	53,560	27,797.7	88,020	45,681.8
Berkeley	617	261.0	735	381.5	507	263.2	859	445.8
Glendale	97	41.0	283	146.6	108	56.2	165	85.6
Long Beach	1,491	630.7	1,518	787.8	1,164	604.2	1,774	920.7
Los Angeles	13,560	5,735.9	13,702	7,111.2	10,507	5,453.3	16,008	8,308.1
Oakland	3,536	1,495.7	3,536	1,835.3	2,593	1,346.2	3,536	1,835.2
Pasadena	851	360.0	851	441.5	623	323.8	851	441.7
San Francisco	4,432	1,874.7	4,432	2,300.3	3,299	1,712.6	5,027	2,609.0
Torrance	101	42.7	273	141.7	104	54.3	160	83.0
Butte County	150	63.5	388	201.4	148	77.2	234	121.4

## U.S. DEPARTMENT OF LABOR, MANPOWER ADMINISTRATION—SUMMER ALLOCATION COMPARISONS—Continued

	Fiscal year 1973 actual		Annualization of 1973 slots with formula increases		Distribution of \$300,000,000		Distribution of \$456,000,000	
	Slots	Dollars	Slots	Dollars	Slots	Dollars	Slots	Dollars
<b>REGION IX—Continued</b>								
California—Continued								
Contra Costa County	785	332.1	1,344	697.6	644	334.7	1,220	633.2
Kern County	1,227	519.0	1,348	699.6	1,007	522.8	1,575	817.4
Los Angeles County	9,034	3,821.4	11,196	5,810.8	7,418	3,850.0	13,081	6,789.0
Marin County	309	130.7	527	273.7	253	131.5	479	248.6
Merced County	691	282.3	691	358.6	506	263.1	757	392.9
Monterey County	923	390.4	954	494.9	731	379.5	1,114	578.2
San Louis Obispo County	445	188.2	445	231.0	326	169.5	482	250.2
San Mateo County	767	324.4	1,358	704.8	629	326.9	1,192	618.6
Santa Barbara County	757	320.2	849	440.8	621	322.6	992	514.8
Santa Cruz County	352	148.9	541	280.9	288	149.9	546	283.4
Solano County	503	212.8	559	290.2	412	214.3	653	338.9
Sonoma County	587	248.3	846	439.0	482	250.3	912	473.3
Stanislaus County	612	258.9	1,123	582.7	502	260.7	950	493.0
Ventura County	720	304.6	1,117	579.6	591	306.8	1,118	580.2
San Diego Rtc.	3,771	1,595.1	5,202	2,699.9	3,096	1,607.2	5,859	3,040.8
Orange Cty Manp.	1,777	751.7	3,501	1,817.0	1,458	757.1	2,760	1,432.4
Inland Manp Assoc.	2,659	1,124.8	3,798	1,971.2	2,183	1,133.1	4,131	2,144.0
Fresno City/Cty	2,110	892.5	2,259	1,172.4	1,732	899.1	2,639	1,369.6
Tulare/Kings County	1,645	695.8	1,645	853.7	1,206	626.2	1,762	914.5
Sacramento/Yolo	2,442	1,033.0	3,007	1,560.7	2,005	1,040.8	3,513	1,823.2
San Joaquin County	1,710	723.3	1,710	887.3	1,286	667.6	1,960	1,017.2
Santa Clara Valley	1,936	818.9	3,161	1,640.7	1,589	825.2	3,008	1,561.1
County of Alameda	2,255	953.9	2,340	1,214.5	1,794	931.4	2,734	1,418.9
Richmond	479	202.6	479	248.7	358	186.0	546	283.4
Imperial County	454	192.0	472	245.1	362	188.0	552	286.5
Humboldt County Consr.	356	150.6	543	282.0	292	151.8	553	287.0
Balance	3,310	1,400.1	3,696	1,918.1	2,717	1,410.6	4,318	2,241.0
Hawaii	2,378	1,005.9	2,902	1,506.4	1,952	1,013.1	3,391	1,759.9
Honolulu City/Cnty	1,808	764.8	2,214	1,149.2	1,484	770.3	2,587	1,342.6
Balance	570	241.1	688	357.2	467	242.8	804	417.3
Nevada	1,786	755.5	2,061	1,070.2	1,466	761.1	2,396	1,243.5
Las Vegas Csr.	1,126	476.3	1,227	637.0	924	479.7	1,434	744.2
Washoe County	407	172.2	487	253.0	334	173.6	569	295.3
Balance	253	107.0	347	180.2	207	107.8	393	204.0
American Samoa	60	25.7	60	31.1	47	24.2	60	31.1
Guam	700	314.8	700	363.3	570	296.2	700	363.3
W. Trust Territory	140	46.6	140	72.7	84	43.8	140	72.7
<b>REGION X</b>								
Alaska	2,696	1,140.5	2,945	1,528.3	2,003	1,039.7	2,860	1,484.4
Anchorage Borough	298	126.1	547	283.8	244	126.8	462	239.8
Balance	2,398	1,014.4	2,398	1,244.5	1,758	912.9	2,398	1,244.6
Idaho, statewide Consr.	2,523	1,067.2	2,818	1,462.6	2,071	1,075.3	3,293	1,709.1
Oregon	6,648	2,812.2	7,814	4,055.6	5,272	2,736.5	8,589	4,457.7
Portland City	2,124	898.5	2,124	1,102.5	1,558	808.7	2,138	1,109.6
Clackamas County	405	171.3	483	250.5	332	172.5	564	292.7
Multnomah/Wash Crt.	520	220.0	794	412.0	426	221.5	808	419.4
Lane County	577	244.1	752	390.4	473	245.7	879	456.2
M-WILM Val Mpr Cst	548	231.8	796	413.0	450	233.6	852	442.2
Balance	2,474	1,046.5	2,865	1,487.2	2,031	1,054.5	3,348	1,737.6
Washington	14,708	6,221.6	16,792	8,714.7	11,229	5,828.1	17,617	9,143.1
King Snc. Consr.	8,370	3,540.5	8,370	4,343.8	6,139	3,186.3	8,743	4,537.6
Tacoma City	1,329	562.2	1,329	689.9	975	506.1	1,329	689.7
Pierce Cty	800	338.4	876	454.6	657	341.0	1,023	530.9
Spokane Consr.	578	244.5	949	492.5	474	246.2	898	466.1
Clark County	172	72.8	312	161.8	141	73.4	268	139.1
Kitsap County	137	58.0	300	155.7	115	59.7	213	110.5
Yakima County	571	241.5	745	386.4	468	243.2	870	451.5
Balance	2,751	1,163.7	3,911	2,030.0	2,258	1,172.2	4,273	2,217.7
District of Columbia	13,610	5,757.0	13,610	7,063.7	9,983	5,181.4	13,610	7,063.6
Indians	10,728	4,537.8	10,728	5,568.0	8,228	4,270.1	10,728	5,568.0
National total	753,749	318,842.6	835,700	433,731.5	578,032	299,999.1	878,616	456,000.0

## EXPLANATION OF COMPUTATIONS

- Columns 1 and 2: Actual 1973 Dollars. Slots are computed by dividing dollar amounts by \$423, the average cost per slot.
- Columns 3 and 4: Distribution of Total 1973 Slots by CETA Title I formula with 100% Hold Harmless. Dollars are computed by multiplying slots by \$519/Slot.
- Columns 5 and 6: Distribution of \$300,000,000 by CETA Title I formula with 90% Hold Harmless. Reduction of all Prime Sponsors greater than 90% Hold Harmless. Reduction of all Prime Sponsors greater than 90% to make up those below 90%. No Prime Sponsor receives less than 50% of its formula amount. Slots are computed by dividing dollars by \$519.
- Columns 7 and 8: Distribution of 878,616 slots by CETA Title I formula with 100% Hold Harmless. Reduction of all Prime Sponsors greater than 100% to make up those

below 100%. No Prime Sponsor receives less than 50% of its formula amount. Dollars computed by multiplying slots by \$519.

## EDUCATION AMENDMENTS OF 1974

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now resume the consideration of the unfinished business, S. 1539, which the clerk will state.

The assistant legislative clerk read as follows:

S. 1539, to amend and extend certain acts, relating to elementary and secondary education programs and for other purposes.

The Senate resumed the consideration of the bill.

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum with the time to be taken out of both sides.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered, and the clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. GURNEY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. GURNEY. Mr. President, I ask unanimous consent that the amendment I previously offered as an intended amendment to this bill be withdrawn, and I would like to send another amendment to the desk in its stead.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered. How much time does the Senator yield himself?

Mr. GURNEY. As much time as I may require.

The ACTING PRESIDENT pro tempore. The amendment will be stated.

The assistant legislative clerk proceeded to read the amendment.

Mr. GURNEY. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered; and, without objection, the amendment will be printed in the RECORD.

The amendment is as follows:  
At the end of the bill, add the following new title:

**"TITLE IX—EQUAL EDUCATIONAL OPPORTUNITIES**

**"SHORT TITLE**

"SEC. 801. This title may be cited as the 'Equal Educational Opportunities Act of 1974'.

**"PART A—POLICY AND PURPOSE**

**"DECLARATION OF POLICY**

"SEC. 802. (a) The Congress declares it to be the policy of the United States that—

"(1) all children enrolled in public schools are entitled to equal educational opportunity without regard to race, color, sex, or national origin; and

"(2) the neighborhood is the appropriate basis for determining public school assignments.

"(b) In order to carry out this policy, it is the purpose of this Act to specify appropriate remedies for the orderly removal of the vestiges of the dual school system.

**"FINDINGS**

"SEC. 803. (a) The Congress finds that—

"(1) the maintenance of dual school systems in which students are assigned to schools solely on the basis of race, color, sex, or national origin denies to those students the equal protection of the laws guaranteed by the fourteenth amendment;

"(2) for the purpose of abolishing dual schools solely on the basis of race, color, sex, thereof, many local educational agencies have been required to reorganize their school systems, to reassign students, and to engage in the extensive transportation of students;

"(3) the implementation of desegregation plans that require extensive student transportation has, in many cases, required local educational agencies to expend large amounts of funds, thereby depleting their financial resources available for the maintenance or improvement of the quality of educational facilities and instruction provided;

"(4) transportation of students which creates serious risks to their health and safety, disrupts the educational process carried out with respect to such students, and impinges significantly on their educational opportunity, is excessive;

"(5) the risks and harms created by excessive transportation are particularly great for children enrolled in the first six grades; and

"(6) the guidelines provided by the courts for fashioning remedies to dismantle dual school systems have been, as the Supreme Court of the United States has said, 'incomplete and imperfect', and have not established a clear, rational, and uniform standard for determining the extent to which a local educational agency is required to reassign and transport its students in order to eliminate the vestiges of a dual school system.

(b) For the foregoing reasons, it is necessary and proper that the Congress, pursuant to the powers granted to it by the Constitu-

tion of the United States, specify appropriate remedies for the elimination of the vestiges of dual school systems.

**"PART B—UNLAWFUL PRACTICES**

**"DENIAL OF EQUAL EDUCATIONAL OPPORTUNITY**

"SEC. 804. No State shall deny equal educational opportunity to an individual on account of his or her race, color, sex, or national origin, by—

"(a) the deliberate segregation by an educational agency of students on the basis of race, color, or national origin among or within schools;

"(b) the failure of an educational agency which has formerly practiced such deliberate segregation to take affirmative steps, consistent with part D of this title, to remove the vestiges of a dual school system;

"(c) the assignment by an educational agency of a student to a school, other than the one closest to his or her place of residence within the school district in which he or she resides, if the assignment results in a greater degree of segregation of students on the basis of race, color, sex, or national origin among the schools of such agency than would result if such student were assigned to the school closest to his or her place of residence within the school district of such agency of providing the appropriate grade level and type of education for such student;

"(d) discrimination by an educational agency on the basis of race, color, or national origin in the employment, employment conditions, or assignment to schools of its faculty or staff, except to fulfill the purposes of subsection (f) below;

"(e) the transfer by an educational agency, whether voluntary or otherwise, of a student from one school to another if the purpose and effect of such transfer is to increase segregation of students on the basis of race, color, or national origin among the schools of such agency; or

"(f) the failure by an educational agency to take appropriate action to overcome language barriers that impede equal participation by its students in its instruction programs.

**"BALANCE NOT REQUIRED**

"SEC. 805. The failure of an educational agency to attain a balance, on the basis of race, color, sex, or national origin, of students among its schools shall not constitute a denial of equal educational opportunity, or equal protection by the laws.

**"ASSIGNMENT ON NEIGHBORHOOD BASIS NOT A DENIAL OF EQUAL EDUCATIONAL OPPORTUNITY**

"SEC. 806. Subject to the other provisions of this title, the assignment by an educational agency of a student to the school nearest his place of residence which provides the appropriate grade level and type of education for such student is not a denial of equal educational opportunity or of equal protection of the laws unless such assignment is for the purpose of segregating students on the basis of race, color, sex, or national origin, or the school to which such student is assigned was located on its site for the purpose of segregating students on such basis.

**"PART C—ENFORCEMENT**

**"CIVIL ACTIONS**

"SEC. 807. An individual denied an equal educational opportunity, as defined by this title, may constitute a civil action in an appropriate district court of the United States against such parties, and for such relief, as may be appropriate. The Attorney General of the United States (hereinafter in this title referred to as the 'Attorney General'), for or in the name of the United States, may also institute such a civil action on behalf of such an individual.

**"EFFECT OF CERTAIN POPULATION CHANGES ON CIVIL ACTIONS**

"SEC. 808. When a court of competent jurisdiction determines that a school system is desegregated, or that it meets the constitutional requirements, or that it is a unitary system, or that it has no vestiges of a dual system, and thereafter residential shifts in population occur which result in school population changes in any school within such a desegregated school system, such school population changes so occurring shall not, per se, constitute a cause for civil action for a new plan of desegregation or for modification of the court approved plan.

**"JURISDICTION BY THE ATTORNEY GENERAL**

"SEC. 809. The appropriate district court of the United States shall have and exercise jurisdiction of proceedings instituted under section 807.

**"INTERVENTION BY ATTORNEY GENERAL**

"SEC. 810. Whenever a civil action is instituted under section 807 by an individual, the Attorney General may intervene in such action upon timely application.

**"SUITS BY THE ATTORNEY GENERAL**

"SEC. 811. The Attorney General shall not institute a civil action under section 807 before he—

"(a) gives to the appropriate educational agency notice of the condition or conditions which, in his judgment, constitute a violation of part B of this title; and

"(b) certifies to the appropriate district court of the United States that he is satisfied that such educational agency has not, within a reasonable time after such notice, undertaken appropriate action.

**"ATTORNEYS' FEES**

"SEC. 812. In any civil action instituted under this Act, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorneys' fee as part of the costs, and the United States shall be liable for costs to the same extent as a private person.

**"PART D—REMEDIES**

**"FORMULATING REMEDIES; APPLICABILITY**

"SEC. 813. In formulating a remedy for a denial of educational opportunity or a denial of the equal protection of the laws, a court, department, or agency of the United States shall seek or impose only such remedies as are essential to correct particular denials of equal educational opportunity or equal protection of the laws.

**"PRIORITY OF REMEDIES**

"SEC. 814. In formulating a remedy for a denial of equal educational opportunity or a denial of the equal protection of the laws, which may involve directly or indirectly the transportation of students, a court, department, or agency of the United States shall consider and make specific findings on the efficacy in correcting such denial of the following remedies and shall require implementation of the first of the remedies set out below, or of the first combination thereof which would remedy such denial:

"(a) assigning students to the schools closest to their places of residence which provide the appropriate grade level and type of education for such students, taking into account school capacities and natural physical barriers;

"(b) assigning students to the schools closest to their places of residence which provide the appropriate grade level and type of education for such students, taking into account only school capacities;

"(c) permitting students to transfer from a school in which a majority of the students are of their race, color, or national origin to a school in which a minority of the students are of their race, color, or national origin;

"(d) the creation or revision of attendance

zones or grade structures without requiring transportation beyond that described in section 815;

"(e) the construction of new schools or the closing of inferior schools;

"(f) the construction or establishment of magnet schools; or

"(g) the development and implementation of any other plan which is educationally sound and administratively feasible, subject to the provisions of sections 815 and 816 of this title.

#### "TRANSPORTATION OF STUDENTS

"Sec. 815. (a) No court, department, or agency of the United States shall, pursuant to section 814, order the implementation of a plan that would require the transportation of any student to a school other than the school closest or next closest to his place of residence which provides the appropriate grade level and type of education for such student.

"(b) No court, department, or agency of the United States shall require directly or indirectly the transportation of any student if such transportation poses a risk to the health of such student or constitutes a significant impingement on the educational process with respect to such student.

"(c) When a court of competent jurisdiction determines that a school system is desegregated, or that it meets the constitutional requirements, or that it is a unitary system, or that it has no vestiges of a dual system, and thereafter residential shifts in population occur which result in school population changes in any school within such a desegregated school system, no educational agency because of such shifts shall be required by any court, department, or agency of the United States to formulate, or implement any new desegregation plan, or modify or implement any modification of the court approved desegregation plan, which would require transportation of students to compensate wholly or in part of such shifts in school population so occurring.

#### "DISTRICT LINES

"Sec. 816. In the formulation of remedies under section 813 or 814 of this title the lines drawn by a State, subdividing its territory into separate school districts, shall not be ignored or altered except where it is established that the lines were drawn for the purpose, and had the effect, of segregating children among public schools on the basis of race, color, sex, or national origin.

#### "VOLUNTARY ADOPTION OF REMEDIES

"Sec. 817. Nothing in this title prohibits an educational agency from proposing, adopting, requiring, or implementing any plan of desegregation, otherwise lawful, that is at variance with the standards set out in this title, nor shall any court, department, or agency of the United States be prohibited from approving implementation of a plan which goes beyond what can be required under this title, if such plan is voluntarily proposed by the appropriate educational agency.

#### "REOPENING PROCEEDINGS

"Sec. 818. On the application of an educational agency, court orders, or desegregation plans under title VI of the Civil Rights Act of 1964 in effect on the date of enactment of this title and intended to end segregation of students on the basis of race, color, or national origin, shall be reopened and modified to comply with the provisions of this title. The Attorney General shall assist such educational agency in such reopening proceedings and modifications.

#### "LIMITATION ON ORDERS

"Sec. 819. Any court order requiring, directly or indirectly, the transportation of students for the purpose of remedying a denial of the equal protection of the laws shall, to the extent of such transportation, be terminated if the court finds the defend-

ant educational agency is not effectively excluding any person from any school because of race, color, or national origin, and this shall be so, whether or not the schools of such agency were in the past segregated de jure or de facto. No additional order requiring such educational agency to transport students for such purpose shall be entered unless such agency is found to be effectively excluding any person from any school because of race, color, or national origin, and this shall be so, whether or not the schools of such agency were in the past segregated de jure or de facto.

#### "TERMINATION OF COURT ORDER

"Sec. 820. Any court order requiring the desegregation of a school system shall be terminated, if the court finds the schools of the defendant educational agency are a unitary school system, one within which no person is to be effectively excluded from any school because of race, color, or national origin, and this shall be so, whether or not such school system was in the past segregated de jure or de facto. No additional order shall be entered against such agency for such purposes unless the schools of such agency are no longer a unitary school system.

#### "PART E—DEFINITIONS

##### "DEFINITIONS

"Sec. 821. For the purposes of this title—  
 "(a) the term 'educational agency' means a local educational agency or a 'State educational agency' as defined by section 801(k) of the Elementary and Secondary Education Act of 1965;

"(b) the term 'local educational agency' means a local educational agency as defined by section 801(f) of the Elementary and Secondary Education Act of 1965;

"(c) the term 'segregation' means the operation of a school system in which students are wholly or substantially separated among the schools of an educational agency on the basis of race, color, sex, or national origin or within a school on the basis of race, color, or national origin;

"(d) the term 'desegregation' means desegregation as defined by section 401(b) of the Civil Rights Act of 1964; and

"(e) an educational agency shall be deemed to transport a student if any part of the cost of such student's transportation is paid by such agency.

#### "PART F—MISCELLANEOUS PROVISIONS

##### "REPEALER

"Sec. 822. Section 709(a)(3) of the Emergency School Aid Act is hereby repealed.

##### "SEPARABILITY OF POWERS

"Sec. 823. If any provision of this title or of any amendment made by this title, or the application of any such provision to any person or circumstance, is held invalid, the remainder of the provisions of this title and of the amendments made by this title and the application of such provision to other persons or circumstances shall not be affected."

Amend the table of contents by adding at the end thereof the following:

#### "TITLE IX—EQUAL EDUCATIONAL OPPORTUNITIES

"Sec. 801. Short title.

##### "PART A—POLICY AND PURPOSE

"Sec. 802. Declaration of policy.

"Sec. 803. Findings.

##### "PART B—UNLAWFUL PRACTICES

"Sec. 804. Denial of equal educational opportunity.

"Sec. 805. Balance not required.

"Sec. 806. Assignment on neighborhood basis not a denial of equal educational opportunity.

##### "PART C—ENFORCEMENT

"Sec. 807. Civil actions.

"Sec. 808. Effect of certain population changes on civil actions.

"Sec. 809. Jurisdiction by the Attorney General.

"Sec. 810. Intervention by Attorney General.

"Sec. 811. Suits by the Attorney General.

"Sec. 812. Attorneys' fees.

#### "PART D—REMEDIES

"Sec. 813. Formulating remedies; applicability.

"Sec. 814. Priority of remedies.

"Sec. 815. Transportation of students.

"Sec. 816. District lines.

"Sec. 817. Voluntary adoption of remedies.

"Sec. 818. Reopening proceedings.

"Sec. 819. Limitations on orders.

"Sec. 820. Termination of court orders.

#### "PART E—DEFINITIONS

"Sec. 821. Definitions.

#### "PART F—MISCELLANEOUS PROVISIONS

"Sec. 822. Repealer.

"Sec. 823. Separability of provisions.

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

Mr. GURNEY. I yield.

Mr. GRIFFIN. In light of the fact that there was a unanimous-consent agreement, would the Senator explain briefly what general changes or modifications have been made?

Mr. GURNEY. The amendment actually is the same amendment I offered as a proposed amendment to the bill. My proposed amendment was offered even before the bill was reported by the committee. Originally, I intended to substitute my amendment for a full title of the bill. The amendment I have sent to the desk is not a substitution of a title of the pending bill but is a new title, and that is the change.

Mr. GRIFFIN. In other words, the language and the thrust and the purpose of the Senator's amendment have not changed; but instead of offering it as a substitute for an existing provision of the bill, the Senator is offering it as an additional title to the bill. Is that correct?

Mr. GURNEY. I say to the distinguished assistant Republican leader that that is precisely the state of the matter.

Mr. GRIFFIN. As I understand the unanimous-consent agreement, it referred to an amendment by Senator GURNEY, and certainly this would appear to me to be a technical modification, not changing the substance of the amendment in any way, and I assume that it would not be objectionable to anyone.

Mr. GURNEY. That is precisely so. The parliamentary procedure here by the Senator from Florida is not intended to introduce anything new at all, but is simply to offer the amendment as a new section, rather than a substitution.

Incidentally, the reason why the Senator from Florida wanted to do that is that in the title for which my amendment originally was intended to substitute there is good language, there are good provisions, and I understand that other Members of the Senate will want to offer amendments to that title. Therefore, it seemed to me better to offer my amendment as a separate title.

Mr. President, I ask unanimous consent that two members of my staff, Pamela Turner and James Heinisch, have the privilege of the floor during the debate on this amendment.

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

Mr. GURNEY. Mr. President, the purpose of this amendment, Mr. President, is to prevent a denial of equal educational opportunity on the basis of race, creed or color; to provide remedies in the case of such denial; and to prohibit the forced transportation of students beyond the school next closest to the student's home.

This language, which is similar to the so-called Esch amendment, will be added as a new title IX to the bill. I would like to point out that the House has passed similar language not once, but twice—once by a margin of well over 2 to 1. I am hopeful that my colleagues in the Senate will take similar action.

I am not so optimistic as to expect a 2-to-1 vote, but I hope we can muster enough votes in this year, 1974, to adopt this amendment, which is so deeply needed to aid our school systems—at least, in the opinion of this Senator and in the opinion of many others.

I would like to mention that several of my colleagues have joined in cosponsoring this amendment.

The distinguished Senator from Kansas (Mr. DOLE), who joins me in offering this substitute language, had previously offered a similar amendment, and I greatly appreciate the Senator's cooperation and his joining me in this amendment.

Also cosponsoring this amendment are the Senators from Tennessee (Mr. BAKER and Mr. BROCK), the Senator from Kentucky (Mr. COOK), the Senator from Colorado (Mr. DOMINICK), the Senator from Mississippi (Mr. EASTLAND), the Senator from North Carolina (Mr. HELMS), and the Senator from Texas (Mr. TOWER).

For a solid decade now, the question of forced busing has been debated in Congress. Scores of bills and amendments have been offered, and, on a cumulative basis, literally months of floor debate has centered on this controversy.

In the beginning, the busing issue was considered regional in nature. Everyone thought it was a southern problem, peculiar to the States below the Mason-Dixon line—and the southern States bore the brunt of the courts' arbitrary directives.

Since busing began in the South, times have changed, and now we find that busing is spreading like a cancer through every part of our country. In addition, to States like Florida, North Carolina, Tennessee, Alabama, Georgia, Virginia, and South Carolina, and others where busing was first instituted, busing has reached into many other areas, including Colorado, Michigan, California, Indiana, Illinois, Nevada, and Oklahoma.

It is interesting to note that the farther busing spreads, the closer the vote here in Congress on antibusing measures. I should not say Congress but the Senate, because the House has been voting in opposition to busing on many occasions. In 1972, for example, an antibusing amendment failed to pass the Senate by a slim one-vote margin.

The reason, of course, is obvious: The overwhelming majority of Americans are

opposed to forced busing, and they are becoming increasingly adamant in expressing this opposition to those of us who represent them here in Congress.

This amendment represents a rational and acceptable alternative to an irrational and unacceptable situation.

First of all, there is an express prohibition against the denial of equal educational opportunity to any student on the basis of race, creed, or color. That is no change from the basic principle of law laid down in the case of Brown against Board of Education which ended segregation of the races in schools. This amendment does not change that in any respect. As a matter of fact, it reaffirms that law.

Included among the prohibited practices are deliberate segregation or failure to eliminate a dual school system, discrimination in faculty assignment and transfer of students to increase segregation.

All of this is in the amendment and all of this is, of course, basic fundamental law decided again and again in the last decade since the Brown case, not only by the Supreme Court but also by courts of appeals and district courts. This amendment reaffirms all of that basic law.

Furthermore, specific remedies are listed in the following priorities:

Assigning students to schools closest to their homes, taking into account school capacities and natural physical barriers.

Assigning students to schools closest to their homes, considering only school capacity.

Permitting students to transfer from a majority to a minority student concentration of their race, creed, or color.

Creation or revision of attendance zones or grade structures if it does not require transportation beyond the school next closest to the student's home.

Construction of new schools.

Closing of inferior schools.

And any other plan which is educationally sound and administratively feasible as long as it does not require transportation beyond the next closest school or across district lines, unless such lines were drawn for the purpose of segregation.

The amendment specifies that no forced busing shall be implemented unless these alternatives have been tried and proven ineffective in achieving the desired goal. In no case may a student be bused farther than the school next closest to his home.

For those school districts already under court order to bus, there is a reopener provision. In this way, we will be sure of more equitable treatment for all school districts.

The goal of this amendment, then, is to provide the best possible education for every child; and to do this through the neighborhood school system.

During all the years I have served in Congress, both the House and the Senate, there has been no issue of more concern and frustration to my constituents than that of forced busing. And my State of Florida has had its share of this problem, there is no doubt about that.

Take, for example, Jacksonville, Fla., which is one of the largest school districts in the country.

Jacksonville has been under court order since 1971. Previous to the first busing order, student enrollment was 122,000, of which 33,500—roughly 27 percent—rode a bus to school. It took 200 buses to do the job.

Now let us take a good look at the results of the busing order.

First of all, public school enrollment has dropped to roughly 110,000. But the number of students being bused has shot up to 52,000—nearly half the total enrollment. The number of buses has more than doubled—from 200 to 428.

If this sounds like crazy math, that is exactly what it is. And what it all adds up to is a whopping bill of \$3 million a year. This is triple the pre-court order cost.

In March of 1972, Florida became the first State to hold a referendum on the issue of busing. An overwhelming 74 percent of Florida voters indicated their opposition to forced busing. And that just begins to tell the story of nationwide attitudes toward busing.

If there were ever an issue on which the vast majority of Americans have voiced a unanimous opinion, busing is it. Every poll I have seen—every referendum or other expression of public sentiment—has consistently reflected strong opposition to forced busing.

In 1971, a Gallup poll registered national opposition to busing at 77 percent.

This was at a time when busing was concentrated in only a few of the Southern States. It had not reached the North, West, or Far West. It is rather interesting that in 1971 the figure was 77 percent. Again last fall, another Gallup poll showed 95 percent against the use of forced busing to achieve integration.

The voting of California, by a 5 to 3 margin, adopted proposition 21, to prohibit forced busing. In Tennessee, 80 percent of the voters object to busing. The distinguished Senator from Oklahoma (Mr. BARTLETT) recently inserted in the RECORD a resolution passed by his State denouncing busing as "unworkable and harmful to the educational system and to the schoolchildren of the State of Oklahoma."

Even the Civil Rights Commission admitted the results of their poll which showed 70 percent opposed to busing.

What is more, 12 States have passed resolutions calling for a constitutional convention to solve the busing problem once and for all. This is over one-third of the 34 States needed to call a convention.

As a matter of fact, I think if Congress would pass one of the many amendments which are now pending before the Judiciary Committees of both the House and the Senate and send that amendment out to the States for ratification, and the amendment I am talking about is to stop the busing, there is no question in my mind that the amendment would be adopted overwhelmingly to the Constitution.

Can there be any doubt about the will of the people? Certainly not.

And is it any wonder? Some of these

busing orders look like Rube Goldberg handiwork. The only difference is that despite their complexity, the Goldberg drawings made some sense in the end. The same cannot be said for these outlandish busing plans.

Those who support busing rely heavily on the arguments of social egalitarians that busing will improve the education level of minorities.

These days I think that is the chief argument for busing: That there must be busing of schoolchildren so they will all have equal opportunity so far as education is concerned, and that it will expedite integration as required by the Brown case.

Well, busing has been with us for a decade now. Let us take a look at the record. What has busing accomplished? And what has it failed to accomplish?

First, let us consider the education picture. Proponents of artificial ratios and balances would have us believe that such arrangements will increase the learning ability and the educational achievement of the minority student. Factual evidence now indicates the contrary.

As explained in a recent Washington Post article by William Chapman:

The old attitudes have been bent by the weight of evidence emerging from many professional studies of the classroom effects of integration. The old education went something like this: 'Blacks get unequal education because their schools are unequal. Given equal access to the tools of education with whites, they will perform like whites. They will learn to read and write more quickly. They will shed old feelings of inferiority and low aspirations.' Each element of the equation is seriously undermined by the studies of the late 1960s.

There are roughly a dozen studies of busing and its net effect on several communities throughout the Nation. The consensus is that busing has not improved educational skills. In fact, there are a number of instances where it has only served to make things worse.

One of the major studies was done in 1972 by that eminent sociologist, David Armor of Harvard. Armor found no consistent evidence of educational improvement as a result of busing. As a matter of fact, he found considerable proof of adverse effects upon the students who were bused.

Armor's findings were updated in 1973 by Prof. Jeffrey Leech of the Indiana University Law School. Leech confirmed every major point in the original Armor report. Furthermore, Leech states:

Thus the most recent sociological evidence fails to confirm a basic premise underlying the rationale of court-ordered busing; i.e., that it will positively affect the academic performance of minority children.

Another major report, prepared in 1966 by James S. Coleman, found that school integration, in itself, had very little effect on the academic achievements of blacks or whites.

These and other studies show that, contrary to the claims of busing proponents, academic progress is not achieved by busing.

And what about the other aspects of education? What about extracurricular activities? And for many youngsters,

these activities are particularly valuable in their social and psychological development. There is no way a child who attends school miles away from home can stay after school to participate in group activities or valuable tutoring sessions.

These are very important aspects of education, and they are completely ignored by the great social organizers in the busing dispute before us.

Furthermore—and this is a very important point—busing prevents family and community participation in the student's education process.

What I mean by that is that I have had all manner of parents who complain that they are unable to participate, at least the way they used to do, by belonging to parent-teachers organizations and the communication that goes on between parents and teachers in the educational process. This has been changed, and in some cases totally wiped out in the case of some parents, who cannot drive across town to attend these meetings.

As a result, all three suffer—the student, his family, and the community.

Studies made in the Headstart preschool program found no visible improvement in the child if the parents were left out. The parents must be involved; the communities must be involved. Students should not look upon the classroom part of his education as something strange—something which takes him far away from home—something which does not relate to his neighborhood and family environment.

In conclusion, then, as far as educational benefits are concerned, busing has been a failure, and in some cases a miserable failure.

Now let us take a look at another mainstay in the pro-busing defense: busing will speed integration and smooth racial tension.

There have been many major studies on this factor, and the studies show just the opposite from this argument.

Both Armor and Leech found that bused pupils had a higher degree of racial antagonism than those not bused. Ironically, opposition to busing is what unites black and white; while busing itself merely increases tension and racial polarization.

Flareups in tension-filled schools have caused physical harm and material damage. Buses have been burned in Pontiac. There has been student violence in Charlotte, N.C.

Those are just a couple of examples. There are many all over the United States. There are some in my State of Florida. It certainly is not the way to smooth race relations. I have had teachers tell me that sometimes it is all they can do in these days of busing simply to maintain order in the classroom. They have a hard time doing that, and teaching and education have gone out the window.

I would venture to say that on this count, as with educational achievement, busing is not the answer.

Now I would like to speak to the issue of busing costs, which I think is important.

Proponents of widespread busing do not like to talk about the price tag for

these social game plans, and with good reason. As if the taxpayers did not have enough demands on their dollar, the courts have given them yet another punch in the purse.

In Charlotte-Mecklenburg, about \$1 million annually has been added to the schools' operating budget. In addition, taxpayers had to sell out \$1½ million in capital investment for additional buses. Finally, there is an annual tab of \$250,000 for contracts with the local city bus company in addition to the schoolbuses that have been purchased. In Prince Georges County, estimated costs for forced busing amount to an annual cost of \$1,325,000.

School officials in Kalamazoo spent \$4 million implementing their busing order—and lost 20 percent of their student enrollment, even when they spent that additional money.

Taxpayers in California were saddled with astounding financial obligations as a result of widespread desegregation orders in connection with schoolbusing.

For openers, there was an initial outlay of \$42 million. Subsequent annual outlays drop to a mere \$20 million.

The list goes on, but the point is clear: We are financially strapping our taxpayers and our school districts to pay for what I call the folly of the social planners, backed up by court orders. And what about education? Channeled into productive areas, this kind of money would mean a big boost in the educational standards of any school district.

No wonder the taxpayers around the country, again and again, have been defeating bond issues for school districts.

This money should be going where it will really help improve educational benefits for all children. It should go to teachers' salaries, modern classrooms and equipment, and special remedial programs.

I know, too, that the added tax burdens bear heavily on the retired and the elderly. I hear this time and again from many of my Florida constituents, and I think it's high time we did something about this.

Now another aspect of busing costs which should concern all Americans is the energy factor. With the fuel situation being what it is, it is inconceivable to me that we can even consider all this busing up and down a school district or throughout a county.

In North Carolina, the excess busing burden means an annual waste of at least 1.1 million gallons of gasoline.

Oklahoma City's busing plan consumed 350,460 gallons above normal this year alone.

In this area, neighboring Prince Georges County uses about 750,000 gallons annually to comply with busing orders.

And Richmond used some 530,000 extra gallons of gas this year.

This loss of precious fuel is even more tragic when we consider what was happening to the rest of the Nation as the buses rolled along. Americans were asked to turn down their thermostats, to cut back on energy-using devices, and conserve in other ways. Fuel for cars, when it was available, required hours of wait-

ing in long lines around gas stations. Some stations were forced out of business altogether. Airline employees and people in the petrochemical industry were laid off in very considerable numbers.

But the schoolbuses, of course, kept rolling along, using the millions of additional gallons of gasoline.

The Senator from North Carolina (Mr. HELMS) offered an amendment to curb this waste—and I supported his effort, as did other Senators. Unfortunately, however, the senseless notion of "busing will out" prevailed.

Finally, busing does immeasurable damage to our Government itself. This is true of the courts, our education system, and even Congress.

The judicial branch is supposed to be the guardian of the people's rights—a bastion of reason and commonsense. Forced busing—and particularly some of the outlandish cross-district busing plans—defy both reason and commonsense.

I have never heard so much criticism of our judicial system, including the downgrading of the opinions of our higher courts, as I have heard in connection with the busing controversy. People just cannot understand how any man of reason can defend busing as it has been practiced in the last few years.

No wonder the people are frustrated. No wonder there is such criticism and lack of confidence in our judicial system.

The courts approve busing on the grounds that it protects individual rights and prevents segregation. In the now-famous Brown case, the court insisted that no child should be forced to attend a certain school because of his color.

These court-ordered school plans specifically deny every parent the right to control the education of his child. Furthermore, such compulsory assignments are based solely on race or color.

By pronouncement, then, the courts have set forth principles which have been reversed by their very own actions.

Nor has Congress done anything to clear up the ambiguities or set clear, reasonable guidelines for the courts. Instead, we have enacted confusing language, full of loopholes, which does nothing more than restate the courts' own decisions.

Massive forced busing has proved to be a miserable and disruptive failure, I think, on all counts. Despite this, and despite the overwhelming popular opposition to busing, there are still those who support what I would almost call an insane practice.

I think it is very interesting to consider the source of busing support. It seems to me that what we are dealing with here is a very small group of social planners and engineers who think these artificial game plans will make up for the lack of success with their other egalitarian schemes.

Earlier this year, we had hearings on several antibusing bills before the Subcommittee on Constitutional Rights. The witness list tells an interesting story. Over 20 Members of Congress spoke in opposition to massive forced busing. Other opponents were school board

members and local citizens' groups, which have to work with the problem day by day and know more about it than probably any Member of Congress knows about it.

Speaking for busing were representatives from the Civil Rights Commission, NAACP, and the American Civil Liberties Union, people like that—special interest groups, lobbyist groups, not the people affected day by day by the busing of their children long distances to and from school.

Now here is my point—for years, parents and community leaders from all over the country have been coming into my office, literally begging me to stop, or help to stop, massive schoolbusing. These people are not a part of any vast, heavily funded organization. They pay their own way up here.

These people do not employ well-heeled legal counsel to speak for them. They do not have to. They speak from experience; they live with forced busing.

They come to Congress and talk with me—and I am sure this occurs with many other Senators. Believe me, in some cases, the money they spend in order to come to Washington they are hard pressed to get. They really cannot afford it. But they feel so deeply about it that they come here on their own to make their pleas. They are not financed by contributions; they do not come financed by the American Civil Liberties Union or other lobbies which try to maintain busing, which is so prevalent in our country.

On the other hand, we have the pro-busing groups—those organizations dedicated to massive social structuring at the expense of society itself. How many of them live with forced busing each day? I do not think any of them do.

It is interesting to note that the great social planners never seem to talk about "people." They ignore the fact that we are dealing with individuals—children and parents. No; they would rather talk about "populations," about norms and statistics, about great social patterns, and other arguments like that.

Well, I think Americans are sick and tired of being used as social guinea pigs.

I have talked a lot about the special interests problem. I could talk much more about it if I had the time.

Now I should like to take a few minutes to go into the constitutional aspects of the busing issue—particularly as it relates to my own amendment.

First of all, the purpose of my amendment is to specify appropriate remedies for the orderly removal of the vestiges of the dual school system. It does not modify or restrict in any way the guarantees of the 14th amendment. It goes only to the remedial measures which courts may require of school districts that have denied equal protection by segregation in the public schools.

The amendment tells the courts, as well as the departments and agencies of the Federal Government, that they may "impose only such remedies as are essential to correct particular denials of equal educational opportunity or equal protection of the laws." The amendment sets forth a priority of remedies which

the Federal courts, agencies, and departments must follow. It places specific preference on the neighborhood school system and restricts busing beyond the school closest or next to the student's home. It prohibits busing which will endanger the health or hinder the educational process of the students affected. It prohibits busing beyond established school district lines.

To the extent that the amendment prescribes such limitations on the busing of students, it inhibits the power of Federal judges to order desegregation remedies. This raises a constitutional question that merits consideration because it goes to the delicate balance between the legislative and judicial branches of our Government. That question is: Does Congress have the power to limit the use of busing remedies ordered by the Federal courts, and, if so, to what degree?

I think the answer clearly is that Congress has specific power to regulate busing under section 5 of the 14th Amendment. This is the opinion of such constitutional law experts as Prof. Charles Alan Wright of the University of Texas, former U.S. Solicitor General Robert Bork of Yale Law School, Harvard law professors Henry M. Hart, Jr., and Archibald Cox.

We are certainly familiar with that name; he acquired his fame recently in another area, but he also is a constitutional law expert. Some other scholars suggest that Congress has an even broader authority over the jurisdiction of Federal courts by virtue of article III, section 2 of the Constitution. I shall discuss this latter argument first.

The primary source of congressional authority over Federal court proceedings derives from article III. Section I of the article vests the judicial power of the United States in "one Supreme Court, and in such inferior courts as Congress may from time to time ordain and establish." The power to refuse to establish lower Federal courts comprehends the power to limit or refuse their jurisdiction. Section 2 grants the Supreme Court appellate jurisdiction over certain classes of cases "with such exceptions, and under such regulations as the Congress shall make."

To support the view that Congress has the power under article III to withdraw particular remedies for the Federal courts when sitting as courts of equity, I point to such precedents as the anti-inspection act of 1793 (U.S.C. 2283).

I call attention to that case because that was at the very beginning of our country. Then I call particular attention to the Norris-LaGuardia Act, a famous labor Act which every lawmaker knows about, 29 U.S.C. section 101 et seq.; the Johnson Act of 1934, 28 U.S.C. section 1342; and the Tax Injunction Act of 1937, 28 U.S.C. section 1341. The Emergency Price Control Act of 1942—that, of course, was the Price Control Act of World War II, which the older Members of this body, at least, know a lot about, and its present day counterpart, the Economic Stabilization Act of 1971, which was the recent Price Control Act. These are additional precedents.

For example, let us take the Norris-La Guardia Act. In section 1, it provided that no Federal court could issue any restraining order or preliminary or permanent injunction in any case involving a labor dispute. The Supreme Court upheld the act in *Lauf v. E. G. Skinner Co.*, 303 U.S. 323 (1938), saying at one point that there can be "no question of the power of Congress thus to define and limit the jurisdiction of the inferior courts of the United States.", 303 U.S. at 330.

Even as applied to the Supreme Court, there are numerous decisions containing very broad statements to the effect that the Supreme Court's appellate power is subject to congressional exceptions and regulations. One of the best known cases is *ex parte McCordle*, 74 U.S. (7 Wall.) 506 (1868), in which the Supreme Court upheld a reconstruction statute repealing a specific statutory right of appeal from circuit court decisions denying habeas corpus as an exception to its appellate jurisdiction. Mr. McCordle, the plaintiff, had invoked the Court's jurisdiction under an 1867 law which Congress repealed while his case was pending. The Court accepted the power of Congress to remove jurisdiction and dismissed McCordle's appeal. Then there was the 1871 decision of *United States v. Klein*, 76 U.S. (13 Wall.) 128, in which the Court ignored McCordle and refused to give effect to a congressional exception to its jurisdiction. So McCordle may no longer be a valid precedent, as I feel I should point out in fairness here. Article III arguments do have some analogical impact, at least with regard to the effect of the law upon lower Federal courts, but they are less persuasive in arguing the power to remove jurisdiction. It is doubtful, perhaps, that Congress could simply deny the Court entirely its jurisdiction over an important class of constitutional cases and I am not making that point.

But, while congressional power over the Court is not absolute, as we shall see, the decisions indicate that Congress may exercise some limited power, at least to the extent of defining remedies for violations of constitutional provisions.

I turn now to the more widely held view of congressional power under the 14th amendment, which is so important to the matter we are discussing here today.

Desegregation cases are decided under the equal protection clause of section 1 of the 14th amendment. Section 5 of that amendment provides:

The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

That is, to put it another way, Congress has power to deal with remedies issued by the courts in 14th amendment cases.

The reason Congress has general power over remedies is clear. Remedies, unlike basic rights, often require compromises between conflicting considerations. The nature of that compromise, being political, is better suited for an elected body representing the diverse interests of the Nation than for the courts.

I think there is another reason, too: That as far as the remedy is concerned, to put it another way, the Court, in in-

terpreting the 14th amendment, has laid down general principles of law. In the matter we are discussing here, the *Brown* case, the Court says there cannot be segregation of the races, as far as schools are concerned, on the basis of color. That was the general principle laid down in the *Brown* case. But as far as the specific, practical matters are concerned that have to be enacted and carried out, promulgated under a case like the *Brown* case involving desegregation, that matter is for the Congress, and not only for the Congress but later, of course, for the administrative branches of the Government, in this case, fortunately, the Department of HEW, under the laws that Congress enacts.

The courts are competent to decide—and have wisely decided, in my opinion—that racial segregation in the schools is a denial of equal protection guaranteed under the Constitution. But they are confined to particular fact situations, the litigants, and the records before them. They are less free to work out detailed legislative rules of the sort required generally. It occurs to me that they lack the "special competence" to determine where a bus should run and how much racial balance is sufficient. Such questions, I think, are better resolved by legislation in Congress.

Congress, in my opinion, and in the opinions of Professor Bork, Archibald Cox and others, is better equipped to make the sophisticated and detailed judgments necessary to frame a general rule which compromises local remedies and can be applied uniformly across the Nation. Congress is a more competent institution for making certain kinds of decisions about equal protection. And the authors of the 14th amendment intended Congress to play a major role in enforcing it. For these reasons, I believe that the courts ought to defer consistently to the wisdom of Congress in desegregation matters—obviously, as long as Congress is not violating the 14th amendment provisions.

Some constitutional scholars say that Congress' power under section 5 is so broad that it cannot only adjust remedies but can even define, to a substantial degree, the meaning of fundamental constitutional rights. The key decision is *Katzenbach v. Morgan*, 384 U.S. 641 (1966), where the Court applying the Voting Rights Act of 1965—with which so many of us are familiar—struck down the parts of the New York elections laws requiring English literacy tests as unconstitutional. I quote the Court in *Morgan*:

Correctly viewed, section 5 is a positive grant of legislative power authorizing Congress to exercise its discretion in determining whether and what legislation is needed to secure the guarantees of the fourteenth amendment. 384 U.S. at 651.

The Court turned the issue of the equal protection violation over to Congress because it said that Congress had assessed and weighed various conflicting considerations and decided that—

It is not for us to review the Congressional resolution of these factors. It is enough that we be able to perceive a basis

upon which Congress might resolve the conflict as it did. 384 U.S. at 653.

In other words, it said exactly what I have been saying here, that the court lays down the general proposition under the 14th amendment and under that general proposition then the Congress is the one to express its will to resolve the factors involved and the basic principles laid down by the Court.

So the Court held that the State statute must yield even though it might otherwise have upheld it and might have rendered a decision quite different from that of Congress.

Some critics of *Morgan* argue that this case goes too far in the direction of legislative power and overturns the relationship between Congress and the Court by converting section 5 from a power to deal with remedies into a general police power for the Nation. Nevertheless, it is clear from *Morgan* that the Court believes Congress is assigned power because of its superior ability "to assess and weigh the various conflicting considerations." The Court recognized and deferred to Congress' special competence.

That is what I say in this schoolbusing thing and in the pending amendment, that Congress should have the power to legislate on schoolbusing matters. To use the language again, "To assess and weigh the various conflicting considerations."

Heaven knows, I do not think there has been an issue in our time—certainly maybe never an issue in the whole time of the history of the United States of America—where there were more conflicting considerations than there has been in this forced schoolbusing business.

The enforcement clause argument appears to have been employed to justify the enactment by Congress of title II of the Omnibus Crime Control and Safe Streets Act of 1968—Public Law 90-351; 18 U.S.C. 3501—with which we are all so familiar in this body. One purpose behind the act was to limit the Supreme Court decision in *Miranda v. Arizona*, 384 U.S. 436 (1966) relating to the admissibility of confessions at trials, a landmark case, as we all know. It was argued that since the Supreme Court in *Katzenbach* against *Morgan* had affirmed the view that Congress is possessed of a "positive grant" of power to enforce the 14th amendment by virtue of its fifth section, Congress can accordingly make its own independent assessment of relevant factors and perceive alternatives not relied upon by the *Miranda* court, and alternatives that might not accord with the *Miranda* ruling. See Senate report No. 1097, 90th Congress, 2d session, 59-63—1968.

So, too, the decisions which we make under this amendment, as to whether or not to order busing, and to what degree, involves the kind of assessment and weighing of conflicting considerations referred to in *Morgan* as the reason for judicial deference to congressional judgment.

At a minimum, section 5 of the 14th amendment confirms and reinforces the historic power of Congress to deal with remedies employed by Federal courts. There is little doubt that Congress has

power to limit or deny one remedy among many.

Let me quote Professor Hart:

The denial of any remedy is one thing. . . . But the denial of one remedy while another is left open, or the substitution of one for another, is very different. It must be plain that Congress necessarily has a wide choice in the selection of remedies and that a complaint about action of this kind can rarely be of constitutional dimension. . . . (T)he basic reason, I suppose, is the great variety of possible remedies and the even greater variety of reasons why in different situations a legislature can fairly prefer one to another.

Speaking specifically of the remedies in desegregation cases, Professor Cox has stated:

The scope and character of the relief to be afforded, however, seems well within the sphere open to congressional action under section 5. . . . It seems irrelevant whether the relief is greater or lesser than the courts would order. In either event, the relief is not part of the Constitution.

What he is saying there is that the relief is part of Congress, that that is its job, after the court has laid down the basic decision and the basic proposition under the 14th amendment and then the interpretation carrying out that basic proposition, so far as remedies are concerned, is for the Congress.

The Supreme Court has long acknowledged the power that Congress has over remedies. In a case dealing with a State law giving corporations summary process over debtors, *Bank of Columbia v. Okeley*, 4 Wheat. 235 (1819), the Court said, and I quote:

It is the remedy, and not the right, and as such we have no doubt of its being subject to the will of Congress. The forms of administering justice and the duties and powers of courts as incident to the exercise of a branch of sovereign power, must ever be subject to legislative will, and the power over them is unalienable, so as to bind subsequent legislatures. 4 Wheat. at 245.

Similarly, the power of Congress over remedies for violations of constitutional rights is widely accepted. For instance, in the recent case of *Bivens v. Six Unknown Agents*, 403 U.S. 388 (1971) the court held that violation of plaintiffs 4th amendment rights by Federal agents gives rise to a cause of action for damages, and stated:

We have here no explicit congressional declaration that persons injured by a Federal officer's violation of the fourth amendment may not recover money damages from the agents, but must instead be remitted to another remedy, equally effective in view of Congress. 403 U.S. at 421.

I contend that Congress does have power over the remedies employed by Federal courts, even in constitutional cases and that power derives from section 5 of the 14th amendment. Section 5 is the source of congressional power over Court remedies in desegregation cases, and more especially in the schoolbusing issue we have before us now.

At this point let me review briefly the leading decisions in the desegregation area. The fundamental right was set forth in the landmark case of *Brown v. Board of Education*, 347 U.S. 483 (1954). There the Court held that State-imposed segregation of the races in the public

schools is inherently unequal and a denial of equal protection of the law. Since then the courts have dealt largely with the remedies for violation of the right enounced in *Brown*. In the second *Brown v. Board* decision, 349 U.S. 294 (1955), the court held that a State which had violated the 14th amendment has an affirmative duty to take whatever steps are necessary to convert to a unitary school system from which racial discrimination is eliminated.

The full realization of the right mandated in *Brown I* was subordinated in *Brown II* to the requirement of "all deliberate speed" so as to grant sufficient time for adjusting to the particular needs of each school district. As Professor Bork has observed:

*Brown I* states an inflexible constitutional objection to *de jure* separation. *Brown II* stresses the need for flexibility in fashioning remedies.

*Brown II* makes clear the necessity to adjust and reconcile conflicting interests whereas *Brown I* sets forth an uncompromising statement of fundamental principles. To emphasize the distinction, it is significant that the Court discussed the constitutional right and the remedy in separate *Brown* decisions.

Later on in *Griffin v. Board of Supervisors*, 377 U.S. 218 (1964), the Supreme Court dropped the *Brown II* Standard for compliance by stating that there had been "entirely too much deliberation and not enough speed," 377 U.S. at 229, and ordered immediate relief for the Prince Edward County schoolchildren whose right to an equal education had been violated.

Then in *Green v. County School Board*, 391 U.S. 430 (1968), the Court ruled that new Kent County's "freedom of choice" plan was not sufficient affirmative action to remedy the past violation. It told local officials:

To fashion steps which promise realistically to amount promptly to a system without a "white" school and a "Negro" school, but just school. 391 U.S. at 442.

In both *Griffin* and *Green*, the Court stressed the affirmative obligation of segregation, regardless of the need for adjustment and reconciliation of conflicting interests.

Following the High Court's direction, lower Federal courts increasingly relied on desegregation schemes requiring remedial student assignments. The method most widely resorted to was busing.

In 1971, the Supreme Court expressly endorsed busing as a reasonable method of desegregation the Nation's public schools. In *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971), Chief Justice Warren Berger stated in a unanimous opinion, that desegregation plans must achieve the "greatest possible degree of actual desegregation." 402 U.S. at 26. To achieve that end, a district court may, and in certain situations may have no real alternative but to, order students transported to schools away from their homes, although not so far "as to either risk the health of the children or significantly infringe on the educational process." 402 U.S. at 30-31.

I want to emphasize here that *Swann I* holds that busing is a permissible but not mandatory tool available to courts for breaking down the barriers of dual school systems. The Court in *Swann I* recognized that "the scope of permissible transportation of students as an implement of a remedial decree cannot be defined with precision." 402 U.S. at 29. It said that "no rigid guidelines" can be given and that "the reconciliation of competing values" is required. 402 U.S. 29, 31.

The court clearly distinguished between the substantive right under the Constitution and the question of remedy left to the broad equity power of the courts. The Chief Justice noted that, since *Brown I*, Federal courts have struggled to find appropriate remedies for desegregation and have been forced to "improvise and experiment without detailed or specific guidelines." 402 U.S. at 2. Later, in the opinion, he stated:

A school desegregation case does not differ fundamentally from other cases involving the framing of equitable remedies to repair the denial of a constitutional right. The task is to correct, by a balancing of the individual and collective interests, the condition that offends the Constitution." 402 U.S. at 11.

The opinion recognizes that busing is a remedy—that is why I have quoted this language—that must be chosen and limited with regard to other competing values upon which it infringes.

The clear distinction between right and remedy was maintained by the Court in *North Carolina State Board of Education v. Swann*, 402 U.S. 43, 45 (1971). In *Swann II*, the Supreme Court struck down a State statute which banned assignment of any student on account of race for the purpose of creating a racial balance or ratio in the schools. The Court said this statutory bar on any use of busing must inevitably conflict with the duty to dismantle a dual school system.

The language in *Swann I* recognizes that busing and other desegregation remedies are not absolute rights, but remedies, which must take into account competing considerations. By contrast, *Swann II* suggests that the courts would likely find that Congress lacks the power to bar busing altogether as a desegregation remedy. Still, Congress can limit or deny one remedy among many, as Professor Hart suggested and the cases make clear.

The amendment which I have introduced will not do away altogether with busing of schoolchildren for desegregation purposes. In light of *Swann II*, it is doubtful that any legislative remedy, short of a constitutional amendment, could prevent busing under any circumstances or could stop the courts, in their equitable capacity, from devising remedies to remove *de jure* segregation which entail some degree of transportation.

Unlike the North Carolina statute struck down in *Swann II*, this amendment specifically provides for busing as an appropriate remedy for insuring equal protection and equal educational opportunities—but only as a remedy of last resort. Where children are bused to retain segregation in the school, this amendment can prove helpful in achiev-

ing an end to dual school systems. This use of busing is consistent with the principles of Brown I and II and the requirements of Swann I and II.

However, this amendment is specifically designed to limit the extent and frequency of busing. Its constitutionality hinges upon the reasonableness of those provisions restricting court ordered busing. The question is whether the inhibitions set out in this amendment are so strong that the courts cannot properly carry out their constitutional mandate. It is a question of degree.

While reasonable men may differ about this matter, it seems to me that the sections covering the busing of schoolchildren are not so restrictive that the Federal courts will not be able to devise appropriate remedies to remove de jure segregation and end inherently unequal school systems.

Let us look at what the amendment does in light of what the courts have said. The constitutional per se rule of Brown I is preserved. So also is the affirmative duty of a de jure segregated school system to "desegregate now."

The statement of purpose in section 902 is in line with the court's expressions in Brown II, in *Green v. County School Board*, 391 U.S. 430, 437-8 (1968) and *Keyes v. School District No. 1*, 413 U.S. 189 (1973), that school districts, North and South, with a past record of statutorily compelled racial separation, have an affirmative duty to take whatever steps are necessary to convert to a unitary system "in which racial discrimination would be eliminated root and branch." The findings set out in section 903 of the amendment reflect the essential holdings of Brown I and Swann I.

Brown I enunciated the principle that no child should be involuntarily assigned by State authorities to a certain school because of his race. It is an inversion of this decision—and a perversion, I think—to contend that school districts must assign students to a particular school solely on the basis of race. That is what is going on now. Neither Swann nor any other Supreme Court case has held that there is a fundamental right to attend a racially balanced school or to be bused to school for that purpose. Swann I rejected the notion that the Constitution requires racial balance, 420 U.S. at 24. So, too, does section 905 of my amendment.

Arguments can be made for or against the various propositions set forth in the amendment, especially with regard to the hierarchy of preferred remedies established in part D. But reasonable men can conclude that these propositions are correct.

The different remedies I propose in section 914 are designed "to correct particular denials of equal educational opportunity or equal protection of the laws." It is not unreasonable and unduly restrictive to provide that, in framing remedial relief that may entail busing, the courts or administrative bodies consider, or make specific findings with respect to, the efficacy of alternative desegregation schemes.

By adopting this amendment, Congress will indicate a disapproval of unne-

sary busing and require the courts to go through a checklist of remedies to be absolutely certain that busing away from home is necessary before it is decreed. This, again, reflects a legislative balancing of competing considerations. It is difficult to believe that Congress does not have the power under the Constitution to design such remedies or to prefer one remedy among many in an effort to tackle the dual school systems problem.

All students should be able to attend a local school close to home, within the neighborhood, if possible. This amendment in section 915 reaffirms that right. I think we would agree that the neighborhood is the most appropriate and convenient basis for determining public school assignments. This amendment embodies that concept.

Of course, where local officials have committed acts constituting de jure segregation affecting a meaningful portion of the schools in a district, the fact that neighborhood schools are involved will not relieve the authorities of proving that similar unlawful actions involving other local schools were not similarly motivated. Still, this presumption does not vitiate the principle of neighborhood school systems; nor does it invalidate the policy of protecting neighborhood school assignments and preventing busing beyond nearby educational facilities.

In addition, the preservation in section 916 of the amendment of district lines in fashioning busing decrees is not an unreasonable requirement. If school officials have engaged in de jure segregation, they have done so within the school district. Dual school systems can be dismantled within district boundaries. To order busing across district lines where the adjoining district has engaged in racial segregation would be a futile exercise. Even if the next district has not engaged in discriminatory practices, to treat students as pools of racial resources to cure racial imbalance is repugnant and is certainly not required under the 14th amendment.

The Congress must assess and weigh conflicting values, including the educational benefits and harm to the schoolchildren involved and families affected. But it seems reasonable to conclude that so long as local school officials do not engage in the unlawful practices proscribed in section 904, the limitations on busing beyond the closest or next closest schools and within district bounds are not duly restrictive.

The other restrictions on student busing are in accord with established judicial precedent. For instance, the ban in section 915 on busing which poses health hazards or infringes on the educational process is identical to the limitations set by the Court in Swann I. The limitation in section 919 on new or additional busing following a finding of compliance with constitutional standards jibes with Swann.

The Court stated that year-by-year adjustments of racial composition in student bodies are not required once the duty to desegregate has been carried out and racial discrimination through official action is eliminated 402 U.S. at 32. It is unwise to treat a violation of the 14th

amendment as an opportunity for indefinite Federal judicial supervision of local schools, yet that is what is going on. Once there has been good faith compliance and segregation is ended, despite population shifts, unless the system later engages in de jure discrimination, further intervention by a district court should be unnecessary, and not only unnecessary, but also it should be unlawful and that is what this amendment seeks to do.

The standards in sections 919 and 920 for limiting and terminating Federal court desegregation orders incorporate the concept of unitary school systems defined in *Green*, supra, and other cases.

In addition, the unlawful practices proscribed in section 904 are largely a restatement of existing constitutional principles.

That section prohibits, among other things, deliberate segregation of students and faculty; the failure to take affirmative steps to eliminate the vestiges of a dual school system; and student transfers made for the purpose and effect of increasing segregation—all of these were condemned by the Supreme Court in Brown I and its progeny.

Accordingly, I do not doubt that this amendment will survive a court challenge. That is why I spend so much time talking about the constitutional aspects and how this amendment fits into the scope of those leading cases.

Congress has the power to enact reasonable restrictions upon the array of desegregation remedies devised by the courts, including the busing of schoolchildren. That is essentially what this amendment will accomplish, if enacted.

No one would reasonably deny that it should be the policy of the United States to insure that all public schoolchildren are entitled to equal educational opportunity without regard to race, color, sex or national origin. That is what this amendment provides.

I believe that just as wholeheartedly as the people who will oppose this amendment, but I declare that this amendment provides precisely that.

I support that policy and oppose the maintenance of dual school systems in which students are assigned by school officials to public educational facilities on the basis of their race, color, sex, or national origin. This amendment would help to eliminate those systems.

I also oppose unnecessary, indiscriminate, and widespread transportation of students far away from their places of residence, and this amendment would prevent that occurrence.

As I have stated, this amendment will not end all busing for all time—it is not intended to do that; if it did that it would never survive constitutionality, the question if it went to the Supreme Court, but at least it will inform the Federal judges it is the will of the people and the determination of Congress that extensive busing is not preferred, and that to the extent that busing is essential to achieve constitutional ends, it should be limited at least to the neighborhood and district schools.

This amendment is no legal legislative cure-all. It is not intended to create an additional statutory remedy for de facto

segregation, and the language should not be interpreted to support a contrary conclusion. Of course, it may be that in Swann, Keyes, and other decisions, the courts, by attempting to apply de jure remedies to essentially de facto situations, have blurred the distinctions.

It is unfortunate that the courts have been left to their own devices in dealing with the difficult problem of eliminating segregation and dual school systems. Absent congressional action, the courts have had to improvise and experiment without detailed rules or specific guidelines, often to the detriment of the schoolchildren affected. The adoption of this amendment will provide some guidance. It is in the national interest that we take action before busing gets out of control.

This is the tragic thing about school busing. The courts certainly have the duty to decide these landmark cases that they have decided, such as Brown, Swann, and the others. They had that duty. They would have been derelict in their duty if they had not. But we in Congress have been derelict in our duty, too, because after these decisions and from pretty clear language laid down in these decisions, we have not done anything in Congress except to put mealy-mouthed language in bills we have passed and we have not given the courts any guidelines or anything they can tie their hands to to make their interpretations. So we have, indeed, abdicated to the arbitrary decisions of Federal district judges all over the country and particularly in the South, where I reside.

We have let one person tell a school board, tell an entire school district, tell the parents, tell the children, and tell thousands and thousands of people, just one man, what must be done about the desegregation problems and, in particular, about schoolbusing, because Congress, and more particularly the Senate of the United States has not had the guts and the courage to enact legislation which should have been enacted a long time ago.

I must say the House has; they have done it on two occasions and by an overwhelming majority. But we have refused to do it in the Senate and we have refused to do it in spite of the expression of overwhelming opinion by people all across the Nation.

As I have pointed out earlier in these remarks, 95 percent of the people of the United States oppose forced schoolbusing. We talk about ourselves being representatives of the people. How unrepresentative can we get if we ignore the will of 95 percent of the people around the United States and substitute our own arbitrary decisions, totally opposed to what they believe. That is precisely what the Senate has been doing year after year when we argue these schoolbusing propositions.

It is high time we came to our senses and if we are, indeed, representative of our people, whether we live in the South, the North, the East, or the West, we should be responsive to their will.

I would like to call to the further attention of my colleagues an interesting quote I read recently in the Washington Post. These are the words of a young

black woman with two school-age children. She was asked her opinion about busing and this young woman replied in this fashion:

To me this is a reversion to what we were getting into before Brown. It might just be me, but I had to walk all this distance to catch a school bus and be bused across town. If this is what it comes to here in Topeka, I will conform to it, but . . . if there is another solution that would give us our neighborhood schools and still give us an integrated school system, I would rather see that.

The words are those of Linda Brown, whose name is borne by that landmark decision which will be 20 years old this Friday.

I think this pretty well sums up the general attitude on busing. And I earnestly hope my colleagues will support this amendment.

I reserve the remainder of my time.

The PRESIDING OFFICER (Mr. HOLLINGS). Who yields time?

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

Mr. JAVITS. Mr. President, I ask unanimous consent that the time be charged to neither side.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. PELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. PELL. Mr. President, it is clear that we will soon be faced with an up or down vote on the so-called Esch amendment as offered by Mr. GURNEY, in lieu of the language contained in title VIII of the committee bill commonly known as the Scott-Mansfield amendment, which was passed in the 1972 higher education bill.

I think that it would be useful to the Senate if we thought back to June of 1972 when the conference report was being considered on the floor. At that time many thought that the Scott-Mansfield language went much too far in restricting the use of transportation as a desegregation tool. Indeed, I can well remember that during the all-night final conference on the bill this very question hung up the conference until 5 a.m., and ultimately three Senate members of the conference did not sign the report because of the Scott-Mansfield amendment.

Now we are faced with the so-called Esch or Gurney amendment. I do not pretend to be an expert on the law nor a strong proponent of schoolbusing. Nevertheless, this amendment seems to be a totally mischievous one which can only exacerbate the already emotional subject of busing.

As I read the amendment I am perplexed, for it seems to offer no answers to questions raised but implies promise of relief; for instance, I find reference to "dual schools" and "unitary schools" with no definition found anywhere in the bill as to what those terms mean.

You then further read that the Congress is making findings which to my mind are totally overstated, and I question whether they are based on fact, other than fact found in literature designed to make a particular slanted point. For example, there is a finding stating that—

(1) all children enrolled in public schools are entitled to equal educational opportunity without regard to race, color, sex, or national origin, and (2) the neighborhood is the appropriate basis for determining public school assignments.

I know of no publications, studies, or hearings which would substantiate such a parallel statement of findings. Indeed, in many instances the education of a child in his neighborhood school may well deny him equality of educational opportunity. We then read about something called the next nearest school, which again is not defined. It may sound fine in a grammar school situation, but what do you do above the sixth grade? I do not know of any literature, study, or finding that shows the neighborhood as an appropriate basis for determining public school assignments—convenient, yes, but appropriate? I question it.

Finally, I turn to what is to me the most unacceptable portion of this legislation—that section which would allow the reopening of any court-ordered desegregation plan going back to the 1954 Brown against Board of Education decision. Can this reopener do anything but create further divisiveness in our Nation? Would not the adoption of this type of amendment merely add to the uncertainty that prevails? This amendment could reopen cases settled years ago—decades ago—and lay bare wounds which have only recently closed. This could cause another decade of chaos.

I urge the Senate to support the committee recommendation in title VIII which was thrashed out 2 years ago, and for which, as I said earlier, was criticized a great deal by civil rights groups as going as far as they would like to go; but it then seemed to be a fair statement of what was right for the children and what would achieve a desegregated school system, North and South, and so it seems now.

In this regard, we ought to remember that the language we have in the bill says very specifically that when transportation is harmful to the education or health of a child, it cannot be ordered. It would not come into effect until all the court remedies had been exhausted. That is the law now. It has worked for the last year or two. Tempers are far cooler now than they were a year ago. What we would do if we adopted the amendment is exacerbate the situation and raise emotions to a high heat.

Mr. PELL. Mr. President, I yield 5 minutes to the distinguished Senator from New York.

Mr. JAVITS. Mr. President, there will be a very adequate number of speakers to deal with this amendment, but during the morning period I should like to make a few observations with respect to it. First, and very important, let me say that I am one of those Members who, after having negotiated the higher

education conference report, and labored over it diligently, felt in conscience that I could not compromise on this issue of desegregation of schools, though I believed and said that the Supreme Court would not carry it out because its civil rights provisions would be unconstitutional and invidious. Nonetheless, and notwithstanding that, I know that I felt I could not in good conscience send that kind of message out to the people who would be adversely affected. So I voted against the conference report. Subsequent history has justified me.

The fact is that it was not the courts, which would enforce that kind of restraint, which influenced me when I was proved to be right. The courts did not. The fact is that we were sending the wrong signal.

The issue would be tremendously compounded if we did what we are asked to do by this amendment, and at a time—and this is the point I should like to emphasize—at a time when there is enough instability in the country already, when there is enough fear of the future, and the Earth is wavering under our feet in terms of the constitutional base on which the United States stands, and when there is not much widespread complaint any more about this issue. Surely, there are some cities in which desegregation orders involving busing are pending and undetermined before the courts. But there are no Little Rocks or other outbreaks in this country, placing the whole social system in jeopardy in this country, placing the whole country in conflict between blacks and whites.

This has been a triumph of the Constitution in the sense that in the allocation of balance between the courts, the Executive, and Congress, the country has somehow essentially readjusted itself to this situation.

Seeking to gather up a whole network of what are relatively, in terms of tension, minor areas of disaffection, an effort is going to be made to overturn the whole system, the whole social balance by this amendment, if it prevails. So obviously it is the same as the one in the other body in terms of law, and that is going to be it. In my judgment, it will have a most adverse effect in terms of social instability in this country, and in the confidence of the people, in whom confidence is slowly being built in Government in the United States.

Mr. President, I think this is so damaging, especially at this time, that we should not tamper with it. But we should allow the situation under existing law, which deals with the entire matter of racial segregation. Indeed, one of the sections of this amendment is a complete restatement of existing law, as are some of the recitals that have already been provided in the Scott-Mansfield compromise respecting any risk to the health of a student or any impingement on the educational process.

With all respect, I was the author of those amendments myself and the fashioning of that compromise. That is all

recited in this amendment. It is simply a repetition of what already exists in section 815(d), which is similar in its recital of the purpose, and the recital of the same ideas that are set forth.

But the devastating part of this amendment is twofold. First, in the complete instability which will result, based on what has happened in the past. The proceedings under section 818 and the new prohibitions and limitations that will take place upon the actions of the court, in seeking an order to remedy under that situation which, in my judgment, they will reject.

All that we are doing is to incite a lot of appetite for confrontation between sections of the public in different parts of the country and the U.S. Supreme Court. That will create all kinds of tension, which will be extremely harmful to our country, especially at this time, and there is no need for it.

This problem has to be worked out in the pragmatic area of the same court system, consistently, and without its becoming a national problem or crisis. We have one now, and we are inviting another by this proposal, if we adopt this amendment.

We have fought this battle up and down the hill. The interesting thing about battles like this is that they never stop; they constantly recur, hoping for a moment when our guard is down, when we are demoralized or disorganized or weakened.

We have gone through this situation when it was worse than it is now. We worked out a compromise, and that compromise has worked. It has given us relative stability. Now, at a moment when the country is in a state of some disorder and disarray, because of the impeachment situation, here it comes again, adding more fires to the same flame. It can only harm our Nation, which so urgently and dearly needs to be encouraged in the form of stability, this time between blacks and whites.

There is some claim, as the Senator from Florida (Mr. GURNEY) showed when he quoted from Linda Brown, that black people themselves do not want busing. The Constitution was made for white and black people. The necessity, where it is argued, for busing is in terms of law and the tranquillity of the country. It is the responsibility of all, not only the white or the black people of the country.

Second, it is almost inconceivable that the way in which these remedies have been utilized should represent any restraint or restriction upon the blacks any more than the whites. It has not. As a matter of fact, in the figures cited here, it is by no means conclusive or decisive, nor should they determine the course which we take in legislation that, as I say, is designed to enforce the Constitution, the law, and the tranquillity of our country. We had that experience when there were riots in the streets. Nobody said, "There are many blacks rioting; therefore, rioting must be right as a means of protest." Of course, that would be wrong.

So I join with my colleagues and others who are devoted to civil rights in America to punish such infractions of the law or whatever may have been fancied justifications of those who engage in it.

It is our common heritage to enforce the law. That is the best augury for this country, and we must do it in this situation as well.

Again I repeat, Mr. President, we have tried to avoid these awful social confrontations between a group of people and the Supreme Court of the United States. We had the problem behind us; and now, in a moment of national disarray, we should not introduce the problem again. Yet that is precisely what we would be doing by this amendment.

For all of those reasons, Mr. President, I hope very much that the Senate will stand by the policy it adopted in the most considered way, after the most extensive debate and consideration, a policy now justified by time and experience, and allow this matter to stand where it is.

The PRESIDING OFFICER. Who yields time?

Mr. JAVITS. Mr. President, I ask unanimous consent that we may request a short quorum call without the time being charged to either side.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### MESSAGE FROM THE HOUSE

A message from the House of Representatives by Mr. Berry, one of its reading clerks, announced that the House had passed the bill (S. 1752) prescribing the objectives and functions of the National Commission on Productivity and Work Quality with amendments in which it requests the concurrence of the Senate.

#### ENROLLED BILL SIGNED

The message also announced that the Speaker had affixed his signature to the enrolled bill (H.R. 3418) to amend section 505 of title 10, United States Code, to establish uniform original enlistment qualifications for male and female persons.

The enrolled bill was subsequently signed by the Acting President pro tempore (Mr. HARRY F. BYRD, JR.).

#### MESSAGES FROM THE PRESIDENT— APPROVAL OF BILLS

Messages in writing from the President of the United States were communicated to the Senate by Mr. Heiting, one of his secretaries, and he announced that on May 4, 1974, the President had approved and signed the following bills:

S. 1115. An act to amend the Controlled Substances Act to provide for the registration of practitioners conducting narcotic treatment programs; and

S. 1125. An act to extend through fiscal year 1974 certain expiring appropriations authorizations in the Public Health Service Act, the Community Mental Health Centers Act, and the Development Disabilities Services and Facilities Construction Act, and for other purposes.

## EXECUTIVE MESSAGES REFERRED

As in executive session, the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

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

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

EDUCATION AMENDMENTS  
OF 1974

The Senate continued with the consideration of the bill (S. 1539) to amend and extend certain acts, relating to elementary and secondary education programs and for other purposes.

Mr. MANSFIELD. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. MANSFIELD. When does the first vote occur today?

The PRESIDING OFFICER. At 12:15 p.m.

Mr. MANSFIELD. Is it to be followed immediately by a second vote?

The PRESIDING OFFICER. That is the order of the day.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that at the conclusion of the first vote I be recognized for not to exceed 1 minute for the purpose of introducing the members of the Mexican Delegation to the 14th United States-Mexican Interparliamentary Conference.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MANSFIELD. It is my intention at that time, the Senate concurring, to ask that there be a recess of not to exceed 5 minutes for the purpose of allowing the Senate to pay its respects to our associates from the United Mexican States, and also to greet them personally. I make that unanimous-consent request now.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. MANSFIELD. I am sure that will meet with the approval of all Senators. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. On whose time?

Mr. MANSFIELD. Both.

Mr. PELL. Mr. President, I would ask unanimous consent that it not be charged to either side.

Mr. GURNEY. What was the request?

Mr. PELL. That it not be charged.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. PELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. METZENBAUM). Without objection, it is so ordered.

Mr. PELL. Mr. President, I yield 15 minutes to the distinguished Senator from Maine (Mr. HATHAWAY).

The PRESIDING OFFICER. The Senator from Maine is recognized for 15 minutes.

Mr. HATHAWAY. Mr. President, I thank the Senator from Rhode Island very much for yielding me this time.

Mr. President, every schoolday morning in the State of Maine, 150,000 children, 66 percent of our total school population, board buses and are driven to school. Every afternoon they are bused home. Busing for these children is an unquestioned aspect of their education. We have been busing children in Maine for many years and it is such an accustomed practice we do not think about it very much. I suppose if the parents of the bused children reflected on the matter some might express a preference to have their children attend schools within walking distance of their homes. But they recognize that busing is one of the prices they and their children must pay—and a small price it is—for good education. We bus because we have found that the neighborhood school—the “little red schoolhouse” of fond memory—is inefficient and inadequate for children in the 20th century. By consolidating our schools and transporting children to them, we can assure them the kind of comprehensive curriculum they must have for training adequate to live and work in a modern society. We bus solely for the purpose of good education. And there, shorn of rhetoric and emotion, is why Federal courts in this country have ordered the busing of schoolchildren. They have found that in school districts both North and South, millions of children are being denied decent educations. Millions of children, indeed, were once bused specifically to deny them the education that is their constitutional right. That is one of the key elements in the Supreme Court's decision of 1954. The Court has affirmed in a number of decisions since then the usefulness of busing as one means of guaranteeing children a good education. As recently as 1971 in *Swann against Charlotte-Mecklenburg*, it noted that busing of students is “a normal and accepted tool of educational policy” and concluded that in certain circumstances school authorities may be “required to employ bus transportation as one tool of school desegregation.”

In short, busing of schoolchildren is commonplace; not something that is part of a unique way of life in the State of Maine. In 1972, 19 million students, 43.5 percent of the total enrollment in our public schools, were transported to their schools by bus. That meant using 256,000 buses traveling 212 billion miles at a cost of \$1.7 billion a year. Since 1919, 48 States have legally authorized busing.

Busing only becomes an issue, it seems, when it is used not to segregate, but to

desegregate our public schools. And even then consider what a relatively tiny portion of schoolbusing is used for that purpose. Only 3 percent of all students traveling on schoolbuses are there because of an order to desegregate. More public funds are still being spent to transport students to racially segregated schools than to desegregated ones.

A white mother in Richmond, Va., put the issue crudely, but clearly. She said: It's not the busing, it's the blacks.

Shocking as that sounds, it is really the nub of the issue we confront in the Senate today. If we were busing children in order to give them the educational advantages inherent in consolidated or special purpose schools, there would be no more public outcry than you find in Maine. It is busing to accomplish the results required by the 1954 school decision of the U.S. Supreme Court in the *Brown* case that has stirred such bitter animosity. And is it not sad and ironic that this Friday, May 17, is the 20th anniversary of the *Brown* decision and here we are debating an amendment whose purpose is to nullify or undercut that decision.

The Gurney amendment does nothing to alleviate the problems of busing. It can only complicate the issue. It has at least two provisions of dubious constitutionality:

First, it would prevent courts from ordering a student bused to any but the “closest or next closest” school to the student's place of residence, even if the only way to guarantee a student's constitutional rights were to bus a student a greater distance than that. Second, it would permit reopening of long-settled school desegregation cases, presenting school districts and communities throughout the country with the terrible prospect of refighting battles long considered settled.

Since the Gurney amendment and others similar to it attempt to bar enforcement of judicially defined rights, the position of its proponents has to be that the congressional power of enforcement under section 5 of the 14th amendment, includes the power to define a lesser duty to desegregate than that contemplated by the courts. The Supreme Court has spoken quite clearly on that issue. In *Katzenbach against Morgan—1966*, Justice Brennan in a decision from which only two Justices dissented, declared:

Section 5 does not grant Congress power . . . to enact “statutes so as in effect to dilute equal protection and due process decisions of this Court.” We emphasize that Congress power under Section 5 grants Congress no power to restrict, abrogate or dilute these guarantees. Thus, for example, an enactment authorizing the States to establish racially segregated systems of education would not be . . . as required by Section 5 . . . a measure “to enforce” the Equal Protection Clause since that clause of its own force prohibits such state laws.

Seven of the Justices presently sitting on the Court—a clear majority—have already expressed their view that the enforcement clause of the 14th amendment gives Congress no power to dilute judicially declared rights.

The Court has spoken even more directly to the constitutionality of such an amendment as the one here proposed.

Again the Swann decision, Chief Justice Burger specifically noted that a plan assigning pupils to schools nearest their homes "may fail to counteract the continuing effects of past school segregation" and hence be constitutionally unacceptable.

In Davis versus Board of School Commissioners—1971, the Court held:

A district court may and should consider the use of all available techniques including restructuring of attendance zones and both contiguous and non-contiguous attendance zones. . . . The measure of any desegregation plan is its effectiveness. . . .

The Court then ruled the desegregation plan at issue to be constitutionally unacceptable because "inadequate consideration was given to the possible use of bus transportation and split zoning."

In view of these decisions alone—and there are others—can any Member of this body believe that the Gurney amendment can survive a court attack on its constitutionality? And if the amendment is held to be unconstitutional where will we be then? Those Senators who feel, for whatever reasons, that they must vote for an antibusing amendment will find they have been handed a legal fraud. Let them explain to the voters, then, how an antibusing provision they supported turned out to be nothing of the sort.

It should be noted that the choice today is not between a bill with no busing restrictions and this amendment. It is, rather, between this amendment and the realistic and probably constitutional language we have adopted before on this subject—the so-called Scott-Mansfield language—which is already in the bill.

So no Senator need feel that he is voting for busing by opposing this amendment. Instead, he can quite honestly take the position that he was taking the course most likely, in the long run, to minimize the use of busing while also minimizing the disruption of situations long settled.

But I do not want to let the matter rest with practical political considerations. There is at stake here a broad and fundamental issue. Shall we in this body, 20 years after the Brown decision, a ruling that has sparked a revolution in America's racial attitudes, now be party to an attempt to overturn that decision? Lately the media has been full of reconsiderations of Brown and its impact on our society. While we all recognize its partial success and realize that much still remains to be done to obtain full compliance with it, still all of us must recognize its germinal effect. Brown and subsequent Supreme Court decisions and the series of civil rights laws Congress enacted during the 1960's have, together, gone a long way toward breaching the walls of segregation and discrimination. This amendment is an attempt to rebuild those walls, to deny those hard-won rights. When the rhetoric is stripped away and emotions are laid aside, what we are being asked to do here today is just not right. And it is by that standard that we shall surely be judged.

Mr. President, in this morning's Washington Post is an excellent editorial en-

titled "Race, Schools and the Senate." I ask unanimous consent that the editorial be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. HATHAWAY. I should like to read the concluding paragraph of that editorial, which quotes Mr. William McCulloch, who was ranking Republican Member of the House Judiciary Committee when this bill, which President Nixon first submitted 2 years ago, came up accompanied by a proposal for a temporary freeze on busing orders:

It is with the deepest regret that I sit here today to listen to a spokesman for the administration asking the Congress to prostitute the courts by obligating them to suspend the equal protection clause so that Congress may debate the merits of further slowing down and perhaps even rolling back desegregation in public schools—What message are we sending to our black people? Is this any way to govern a country?

#### EXHIBIT 1

##### RACE, SCHOOLS AND THE SENATE

In March of 1972, when Watergate was still a gleam in Gordon Liddy's eye and the Board of Directors (as we now know) had yet to give final approval to his plans, Mr. Ehrlichman, now busy with other matters, did the best a lawyer could do to justify and explain its patent illegalities to the press. And Richard Kleindienst, then Acting Attorney General and nothing if not blunt, happily explained to a committee of Congress that the proposed legislation would authorize the reopening of every school case—North and South—that had been settled since the Supreme Court's original school desegregation decision in 1954.

Since that time we have acquired, for our sins, a much richer context of administration law-breaking and contempt for the commands of the constitution into which to fit this particular exercise in defiance and contempt—from the court-blocked adventures in impoundment of congressionally appropriated funds to the Watergate crimes and improprieties to the sloven procedures for obtaining wiretaps, which has just compelled the Burger Court unanimously to render a decision that will free some 600 persons accused and/or convicted of violating federal criminal statutes. So it is hardly surprising that the administration's proposed monument in the field of desegregation law turned out itself to be a monumental challenge to due process, to the Constitution and to the rule of law. What is surprising and—to put it mildly—distressing, is that two years later the U.S. Senate is considering commemorating the 20th anniversary of the Supreme Court's 1954 decision by passing this proposal. Today the Senate is scheduled to vote on a House-passed variation of the Nixon administration bill which has been introduced by Senator Edward J. Gurney of Florida as an amendment to an extension of the federal school aid act. And the vote, according to most accounts, is likely to be close.

Everybody, as it seems, is against skull-duggery and for the rule of law—except when it is either inconvenient or inexpedient to explain. Thus, legislators who in a non-political year would acknowledge themselves horrified by the reckless sweep of this proposal and acutely aware of the cynicism from which it springs, are counted among those who, for "political" reasons are likely to go over the side and vote with Mr. Gurney. We refer to the cynicism underlying the effort because for all the chaos and disruption

it could bring to settled school systems North and South, the proposal itself would almost undoubtedly be overturned in many of its key parts by the Court, meanwhile creating new and burdensome problems for numerous of those communities whose burdens it purports to relieve.

Consider the bill's provisions. Its list of mandatory remedies that must be invoked before busing can be ordered could cost tax-ridden communities a fortune in the demolition and construction of schools. It is a rich man's bill, in effect providing that any busing which occurs will spare the affluent suburbs and be contained within geographical limits that are likely to result only in sending poor blacks from their own inferior schools to the inferior schools of neighboring poor white children—to communities in which racial hostilities and insecurities are keenest. And, above all, it says to black children—to black people generally in this country—that even where a finding has been made of unconstitutional discrimination against them by the state, there will be no remedy in many cases. It is a tribute of sorts to the monstrosity of this concept, in a nation of laws, that back in 1972 even Mr. Ehrlichman had trouble explaining it when pressed.

In the 20 years that have passed since the Supreme Court rendered its original decision in Brown, and in the 10 years that have passed since the Civil Rights Act of 1964 gave that decision heightened impact and authority, there have been some lower court decisions and administrative interpretations that, to our mind, have skewed and distorted the meaning of the law and imposed senseless burdens on communities around the country, so that both blacks and whites have suffered. There have been, in other words, some bad busing decisions and some unreasonable and unsound bureaucratic regulations rendered. It could hardly be otherwise, given both the complexity of the cases and the familiar resistance to reasonable and desirable change that preceded and, in effect, brought on the compulsory programs to which so many now object. But it has been clear for some time now that the Supreme Court was moving carefully and deliberately to refine its position in consonance with the constitutional command that is the bedrock of Brown so as to take account of changed circumstances that underlie so many school cases 20 years later. This is as it should be. The question is whether the Senate will wait. The alternative before it today was admirably summed up by William McCulloch, who was ranking Republican member of the House Judiciary Committee, when the Nixon bill first came up two years ago, accompanied by a proposal for a temporary freeze on busing orders.

"It is with the deepest regret that I sit here today to listen to a spokesman for the administration asking the Congress to prostitute the courts by obligating them to suspend the equal protection clause so that Congress may debate the merits of further slowing down and perhaps even rolling back desegregation in public schools—What message are we sending to our black people? Is this any way to govern a country?"

The PRESIDING OFFICER. Who yields time?

Mr. PELL. Mr. President, I suggest the absence of a quorum, and ask unanimous consent that the time not be charged to either side.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. GURNEY. Mr. President, I ask

unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GURNEY. Mr. President, I yield such time as he may require to the distinguished Senator from Alabama.

Mr. ALLEN. I thank the distinguished Senator from Florida.

Mr. President, I commend the Senator from Florida for the leadership he is displaying and asserting on behalf of this amendment. I feel that it will do much to resolve some of our school problems throughout the country.

Mr. President, I ask unanimous consent that Mr. William E. Pursley, of the Judiciary Committee staff, and Mr. James C. Kelly, a member of the staff of the distinguished Senator from North Carolina (Mr. ERVIN), be permitted the privilege of the floor during the consideration of S. 1539 and during any votes taken on the bill or any of the amendments.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ALLEN. Mr. President, the distinguished Senator from Maine (Mr. HATHAWAY) referred a moment ago to the 20th anniversary of the decision of the Supreme Court in the case of Brown against the Board of Education, and he stated that the Gurney amendment, the amendment under consideration, would undercut that decision.

Well, as the Senator from Alabama sees it that is not correct because all that Brown against Board of Education decided was that State educational agencies could not make assignments on the basis of race. Well, no one objects to Brown against the Board of Education. That is good law; that is accepted throughout the entire South. What we object to is the fact that the Supreme Court has changed course 180 degrees and now holds that the State and the local educational agencies must make assignments on the basis of race, and that the ordering of busing by U.S. District Court judges is a proper implement in the forced assignment by race.

Mr. President, as the Senator from Alabama sees it the effect of the Gurney amendment would be more to get us back under Brown against The Board of Education rather than to depart from it because we already have departed from it and that is the basis of our objection, because these busing decrees are made for the purpose of requiring the local school boards to make these assignments of students to schools on the basis of race and to carry out that assignment by putting children in buses and sending them from one end of the county to the other or one side of the city to the other.

So let us get back to the principle enunciated by the Supreme Court in Brown against the Board of Education. We would not have any problem whatsoever on this question if the Supreme Court had not changed the rules and started requiring assignments on the basis of race, which is exactly what they decided could not be done under Brown against the Board of Education.

So the Gurney amendment does not do violence to Brown versus the Board

of Education. What it seeks to do is to get us back under Brown versus the Board of Education and to provide remedies under which desegregation orders may be carried out.

Mr. President, there is no objection in Alabama and the South to the desegregation of public schools. That is the law of the land. We abide by it. We have implemented that requirement. Where segregation exists today it is in areas outside of the South, and these busing decrees are going to come to the big cities one of these days where they still have segregation. We do not have segregation in Alabama, in the South, but we surely have it in the big cities of the North, East, and West.

Mr. President, long after this matter has been decided and accepted in the Southern States it is going to be a problem to plague other sections of the country.

A little later on the distinguished Senator from North Carolina (Mr. ERVIN) is going to offer an amendment or a substitute to the Gurney amendment which would provide for freedom of choice. In the final analysis that is going to be the solution to this problem, where any child can go to any school of his choice. There could not be a fairer method of handling this problem.

Mr. President, throughout Alabama and the South it is the black schools that are being closed. It is the black students that are being transported from one side of the county to the other side. So the Gurney amendment has no racial connotation, as the Senator from Alabama sees it. It would seek to emphasize the need and the value of educating our children where they desire to go to school and not to spend the money transporting the children to and fro. This is a hardship, far more on the black children of the South than it is on the white children.

So, Mr. President, I shall support the Gurney amendment. I find it difficult to justify opposition to the measure which will be mounted by the same pro-busing Senators who killed the same proposal by a filibuster in the closing days of the 92d Congress. At that time the proposal was denounced as an effort to reverse the U.S. Supreme Court Brown decisions—assailed as an antibusing bill—and condemned as an effort to perpetuate segregated schools in the South. Such charges were then and are now unfounded and most liberal opponents of the bill know or should know that the charges are groundless.

Mr. President, the real reason for liberal opposition to the Equal Educational Opportunities Act, and that is a part of the Gurney amendment, is that it creates a statutory cause of action for denial of equal educational opportunity and because the cause of action arises from racial isolation in public schools, without regard to the cause of such isolation. This is a new approach to the problem heretofore referred to as de facto segregation. Let me demonstrate. When President Nixon first presented to Congress the Equal Educational Opportunities proposal, he said:

For the first time in our history, the cherished American ideal of equal educational opportunity would be affirmed in the law of the land by the elected representatives of the people in Congress.

In the same message to Congress, the President made it clear that racial isolation in public schools, attributable to denial of equal protection of the law, would continue to be remedied in the South by judicial decrees. So, it is the statutory cause of action—the cause of action designed to eliminate racial isolation attributable to de facto segregation which offends the liberal opponents of this bill.

The PRESIDING OFFICER. Under the previous order, the hour of 11:30 having arrived, the Senator from Massachusetts (Mr. BROOKE) is recognized to call up his amendment to the amendment of the Senator from Arkansas (Mr. McCLELLAN).

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. BROOKE. Mr. President, I do not intend to press my amendment at this particular time, and I suggest the absence of a quorum.

The PRESIDING OFFICER. On whose time?

Mr. BROOKE. On my time.

Mr. JAVITS. Mr. President, I ask unanimous consent that the time not be charged to either side.

Mr. PELL. Mr. President, the time is to be equally divided and charged to both sides.

The PRESIDING OFFICER. On the bill?

Mr. McCLELLAN. Mr. President, reserving the right to object, I am just now being apprised of this. Will the amendment be called up or withdrawn? What is the situation? I do not mind a quorum call charged to nobody's time, but we have only 45 minutes. I do not understand. We have the amendment. It is pending. It is the pending business.

The PRESIDING OFFICER. The time was allocated to the Senator from Massachusetts, but if the Senator from Massachusetts does not call up his amendment—

Mr. McCLELLAN. It is up.

The PRESIDING OFFICER. Then the question is on the amendment of the Senator from Arkansas.

Mr. McCLELLAN. Well, we are to vote on that amendment at 12:15. What are we going to do with the rest of the time?

The PRESIDING OFFICER. If the amendment of the Senator from Massachusetts is not called up, then it cannot be voted on at 12:15. Then the question before the Senate will be on the amendment of the Senator from Arkansas, and time on that amendment has expired.

Mr. McCLELLAN. We have 45 minutes. I do not know what the Senators want to do until that time.

Mr. BROOKE. Mr. President, if the Senator will yield, as I understand it, the Senator from Arkansas asked yesterday, in the unanimous-consent request, that those 45 minutes could be used on the Brooke amendment or on the McClellan amendment, if he so desired. Is that correct?

Mr. McCLELLAN. I did not ask for it.

The leadership asked for it. I do not know what the record shows.

The PRESIDING OFFICER. That would be the case if the Brooke amendment were called up, but since it has not been called up, the question is on the McClellan amendment, and there is no time remaining.

Mr. McCLELLAN. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. McCLELLAN. Is not the Brooke amendment an amendment to the McClellan amendment?

The PRESIDING OFFICER. It would be if it were called up.

Mr. McCLELLAN. All right. Then, if it is not called up, there is no amendment pending to the McClellan amendment. Is that correct?

The PRESIDING OFFICER. The Senator from Arkansas is correct.

Mr. McCLELLAN. And, as I understand, it is agreed that we will vote on the McClellan amendment at 12:15?

The PRESIDING OFFICER. The agreement was that the Brooke amendment would be voted on at 12:15, to be followed immediately by a vote on the McClellan amendment.

Mr. McCLELLAN. That is right.

The PRESIDING OFFICER. If the Brooke amendment is not called up, then the question is on the McClellan amendment at this point.

Mr. McCLELLAN. I ask unanimous consent that the time for the vote on the McClellan amendment, if that is necessary, be at 12:15.

The PRESIDING OFFICER. Is there objection?

Mr. JAVITS. Mr. President, I object.

Mr. McCLELLAN. Well—

Mr. JAVITS. If the Senator will yield and give me 1 minute on the bill, which I will take with the Senator's permission, let me explain that we have a situation now that is new, and we wanted a quorum call in order to unravel it and to make sure that all understood it. However, to change the order on voting is not fair to Senators—I am sure the Senator would not have made that request if he knew what I am going to say—who have left the Chamber and will be returning at 12:20 or 12:21, expecting a certain pattern on the votes.

So I respectfully suggest to the Senator from Arkansas that he allow us to have a brief quorum call so we can unscramble these eggs.

Mr. McCLELLAN. Will the Senator agree to having a vote on my amendment at 12:30, if this amendment is not going to be called up?

Mr. JAVITS. I cannot consent to any other agreement on voting than what the leadership has already agreed to.

Mr. McCLELLAN. I do not know why I was not apprised of this situation. I came in here expecting to debate the proposed amendment. Now I do not understand what is happening.

Mr. JAVITS. Mr. President, I yield myself another 1 minute on the bill.

Whether or not the Senator from Massachusetts (Mr. BROOKE) calls up his amendment is a matter for the judgment or discretion of the Senator from Massa-

chusetts (Mr. BROOKE). He does not have to. This is the first time I have heard of it.

So I would suggest—and I am not making the unanimous consent request yet, but I suggest—that we have a brief quorum call so we may unravel this matter, and if necessary, we will pay for it in terms of time, but it is necessary in order to do this.

Mr. President, I ask unanimous consent that there may be a call for a quorum without the time being charged to either side, and without disturbing any other unanimous consent agreement.

Mr. McCLELLAN. Mr. President, reserving the right to object, I would like to have an understanding about the Brooke amendment. Is it to be called up or not to be called up before 12:15 today?

Mr. BROOKE. It will not be.

Mr. JAVITS. The Senator from Massachusetts (Mr. BROOKE) is the best evidence of that.

Mr. BROOKE. I do not intend to call up the amendment prior to 12:15 today.

Mr. McCLELLAN. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. McCLELLAN. If it is not called up at 12:15 today, would the unanimous consent agreement with respect to the vote on my amendment immediately following it be in order at 12:15?

The PRESIDING OFFICER. It would take another unanimous consent agreement to set a specific time for a vote on the amendment of the Senator from Arkansas.

Mr. McCLELLAN. Mr. President, another parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. McCLELLAN. What is the fate of my amendment during the next 45 minutes?

The PRESIDING OFFICER. Since the amendment of the Senator from Massachusetts was not called up, the agreement is violated.

Mr. McCLELLAN. That cannot be so—

The PRESIDING OFFICER. Therefore, the question before the Senate is on the amendment of the Senator from Arkansas now.

Mr. McCLELLAN. I ask unanimous consent, then, if that is the ruling of the Chair, that the amendment be scheduled for a vote at either 12:15 or 12:30, which would have been the very latest time on which it would have been voted under the unanimous consent agreement.

The PRESIDING OFFICER. Will the Senator state whether it is 12:15 or 12:30?

Mr. McCLELLAN. 12:30. That is the latest time when it would have been voted on. I make it 12:30. I make that unanimous consent request.

Mr. JAVITS. Mr. President, if unanimous consent is granted, what is the disposition of time from now until 12:30?

The PRESIDING OFFICER. The Senate could continue debating the Gurney amendment.

Mr. McCLELLAN. Mr. President, one other parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state his parliamentary inquiry.

Mr. McCLELLAN. Can the Brooke amendment be offered after the McClellan amendment is voted on, if it is adopted?

The PRESIDING OFFICER. It could be offered to another part of the bill. It cannot then be offered as an amendment to the McClellan amendment without unanimous consent.

Mr. McCLELLAN. Mr. President, I renew my unanimous-consent request that we vote on the McClellan amendment at 12:30.

The PRESIDING OFFICER. Is there objection? Without objection, the McClellan amendment will be voted on at 12:30.

Who yields time?

Mr. PELL. Mr. President, I suggest the absence of a quorum, the time for the quorum call to be charged equally to both sides.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. GURNEY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GURNEY. Mr. President, how much time would the distinguished Senator from Alabama like to use?

Mr. ALLEN. Ten minutes, I should say.

Mr. GURNEY. I yield 10 minutes to the distinguished Senator from Alabama.

Mr. ALLEN. Mr. President, further discussing the Gurney amendment and its equal educational opportunities feature, the probing Senators see in this act—and correctly so—a right created in individuals and power granted to the U.S. Attorney General to bring suits for a denial of equal educational opportunities, and they see jurisdiction vested in the U.S. district courts to hear such suits and the right of U.S. district judges to formulate remedial orders which include the power to order busing to vindicate the right to equal educational opportunities.

Now it is contended that the statutory enactment of Congress with regard to the use of busing cannot be used to overcome racial imbalance, which they contend is another way of saying that it is used to overcome de facto segregation. But the equal educational opportunities feature of the Gurney amendment would set up a cause of action which might require the use of busing to overcome de facto segregation, which, up to now, has been protected by the decisions of the Supreme Court.

In fact, the probing advocates see, and correctly so, that their long-practiced defense against Federal intervention in the assignment and transportation of students, resulting from de facto segregation, is threatening racial isolation in the South and is said to be attributable to "vestiges of dual school systems."

Racial isolation in areas outside the South is said to be the result of de facto segregation. A cause of action for the denial of equal educational opportunities

is created by the Gurney amendment, without regard to cost.

So this might crowd in a little bit on the protection that is offered to the segregated school systems of the North and East, which up to now have been protected because it is contended that segregation comes about as a result of neighborhood residence patterns rather than by the operation of law.

Of course, if segregation is bad, it ought to be eliminated, no matter what the cause of the segregation. That is what is difficult for the Senator from Alabama to understand. Why should segregation be protected, continued, and fostered in areas outside the South, but be rooted up in the South? We have no objection to that, but we do object to the use of busing to accomplish the desegregation process.

The amendment of the distinguished Senator from North Carolina (Mr. ERVIN) is going to put it under a freedom-of-choice approach, which I believe will solve the problem.

Probusing advocates see, and correctly so, that the proposed statutory remedies which may be applied in cases involving a denial of educational opportunity include not only busing, but also pairing schools and classes, closing schools, and construction of new schools, all of which are tried and effective methods employed by Federal court judges in the South to eliminate racial isolation attributable to vestiges of school systems.

They see, and correctly so, that Federal courts can say, by reason of the statutory power granted, that they are not assigning students to schools or ordering busing of students to eliminate de facto segregation, but to eliminate racial isolation and vindicate public policies and laws established by Congress which guarantee every person an equal educational opportunity regardless of race, creed, color, or national origin.

So this might offer a little threat to de facto segregation. I am sure that the probusing Senators want to protect de facto segregation, Mr. President. I do not believe you can find a Senator who supports busing who does not also support de facto segregation.

Let us just analyze that a little bit, and see if that is a correct statement. There is not a probusing Senator who does not also support de facto segregation, leaving that alone. If I am wrong on that, I hope my statement will be challenged. If you find a Senator who supports busing, you will find that Senator also supports the continuing of de facto segregation. But I think if segregation is wrong in the South, why is it not also wrong in the big cities of the East and the North?

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

Mr. ALLEN. I yield.

Mr. HATHAWAY. I think that I am a Senator who supports busing and does not also support de facto segregation.

Mr. ALLEN. What has the Senator done to eliminate de facto segregation? Has he voted a single time to do so?

Mr. HATHAWAY. Yes; any time any matter concerning de facto or de jure segregation has come up, I have voted

against both de facto and de jure segregation.

Mr. ALLEN. I think the Senator will be tested a little farther in a little while, then, when we vote on the Gurney amendment, because as the Senator from Alabama sees it, a vote against the Gurney amendment would be a vote for de facto segregation, because of its equal educational opportunities provisions.

Mr. HATHAWAY. One might foster something by voting against the Gurney amendment, but on balance, it is better to vote against the Gurney amendment and then to correct the inequities that may, if the Senator from Alabama is correct, result therefrom. But to me the Senator from Alabama has not made a convincing argument for voting for the Gurney amendment.

Mr. ALLEN. I see. Well, the Gurney amendment is directed against de facto segregation under its equal educational opportunities provisions, so if the Senator is going to vote against the Gurney amendment, it only proves what the Senator from Alabama has said, that the Senator is seeking to continue to foster de facto segregation.

Mr. HATHAWAY. That does not necessarily follow. The Gurney amendment may, in one way, partially temper the effects of de facto segregation. But certainly, on the whole, the Gurney amendment is a very bad amendment, and even though, as the Senator from Alabama points out, there may be some good aspects to it, I will vote against it. Then, if there are other amendments the Senator from Alabama would like to introduce to eliminate de facto segregation, I would be glad to support him on them.

Mr. ALLEN. I appreciate that. The Senator has had a number of opportunities. I wonder how he voted on the Scott-Mansfield amendment here in the last Congress.

Mr. HATHAWAY. I was not in the Senate at that time. I presume there were similar amendments in the House; I do not recall whether there was a separate vote on that amendment or not.

Mr. ALLEN. The Senator has not been too successful, then, in his efforts to do away with de facto segregation, has he?

Mr. HATHAWAY. I do not think the Senator from Alabama can point to any votes in my record that will indicate I supported de facto segregation.

Mr. GURNEY. Mr. President, I yield myself such time as I may require.

To continue this very interesting argument, I ask the Senator from Alabama—may I have the attention of the Senator from Alabama and the Senator from Maine? I was listening to the interesting colloquy between the two, and I would ask the Senator from Alabama, is it not his understanding, as it is mine, that the basic decision on school desegregation, which, of course, was the Brown case, Brown against The Board of Education, essentially struck down busing, that is, busing of black children past white schools; but now are we not in total violation today, in the Senator's home State of Alabama and my home State of Florida, by busing both black and white

children past schools they could easily attend?

Mr. ALLEN. Yes. In answer to the question of the distinguished Senator from Florida, the Senator from Alabama stated at the outset of his remarks at the next preceding time that he spoke, that far from the Gurney amendment seeking to shut down the Brown decision, actually it tries to get us back into the Brown decision, because all Brown did was say that the States should not make assignments of students on the basis of race. That is exactly what we are doing now. So if you follow Brown, it would cut the ground out, not from under the Brown decision, but from under these busing decrees, if we actually followed Brown.

Mr. GURNEY. Does not the Senator from Alabama agree with the Senator from Florida that if the Senator from Maine votes against the Gurney amendment here, he is really voting against the Brown decision, the very basic decision that ended segregation and was supposed to stop school busing?

Mr. ALLEN. That is the way the Senator from Alabama would judge it; and as he stated a moment ago, voting against the Gurney amendment would further seek to foster and protect, not remove, de facto segregation, as the Senator from Alabama understood it.

Mr. GURNEY. That is my understanding, too. I reserve the remainder of my time.

Mr. DOMINICK. Mr. President, will the Senator from Florida yield me 3 minutes?

Mr. JAVITS. Mr. President, I think the Senator from Maine wants to complete this argument.

Mr. HATHAWAY. I thank the Senator from New York.

Mr. DOMINICK. I am asking the Senator from Florida to yield me 3 minutes.

Mr. JAVITS. On this same point?

Mr. DOMINICK. Yes, on the same general subject.

Mr. JAVITS. He would like to complete his address, if you will allow us to yield him 3 minutes, just to complete his argument. I yield 3 minutes to the Senator from Maine.

Mr. HATHAWAY. I thank the Senator. Just to make clear my position on de facto and de jure segregation; I am opposed to both. My public statements have indicated that, and I believe my voting record has also indicated that, and I would like the Senator from Alabama or anyone else to point out where I have said or done anything that did not indicate that. To say that we ought not to vote against the Gurney amendment because it has some provision in it which might—quite questionably in my mind—help to eradicate de facto segregation, is a specious argument.

Taking the amendment as a whole, it is a bad amendment. As I mentioned to the Senator from Alabama, if he would like to come up with some kind of amendment that would prohibit any de facto segregation, I would be happy to support him—provided I believed it would really accomplish that.

Two or three years ago, when I was a Member of the House of Representa-

tives, I recall that you had in this body the so-called Stennis amendment that was directed against de facto segregation. It was agreed to by the Senate, taken to conference, and in some way compromised out. I think it was because the bad aspects of the Stennis amendment negated the good aspects of the amendment that the amendment did not prevail. That is often the case; you can point to a couple of lines in a 200-line amendment and say, "These are nice," but the other 198 are so bad you cannot afford to take the two good ones.

When the Senator from Alabama and the Senator from Florida say that this amendment restores us to what the Brown against Board of Education decision did, I differ with them. Brown against Board of Education simply concludes, as I read it:

We conclude that in the field of public education the doctrine of "separate but equal" has no place. Separate educational facilities are inherently unequal.

There have been many decisions since Brown against Board of Education which amplified this decision. This decision did not say, no busing. It says nothing about busing whatsoever. Subsequent decisions have stated, as the Senator from Alabama well knows, that in various areas there shall be busing to accomplish the purpose of the decision in Brown against Board of Education.

In my opinion, the Gurney amendment would retreat from what the Supreme Court has said the 14th amendment means. I do not think we can do that legislatively. If we want to amend the Constitution, in order to deny the right the Supreme Court has expanded over the years, then, of course, the Senator is perfectly at liberty to do that. That is the only way we can cut back and restrict the rights of individuals as they have been interpreted by the various court decisions since Brown against Board of Education. We cannot dilute that decision. We can expand it. If the Senator wants to expand it, fine.

Mr. ALLEN. Mr. President, will the Senator get some more time in order that I might ask him a couple of questions?

Mr. PELL. I yield 3 more minutes to the Senator from Maine.

Mr. ALLEN. I should like to ask the distinguished Senator from Maine (Mr. HATHAWAY) if the effect of the holding in the Brown case is not that the States or the boards of education, the local educational agencies, cannot make assignments of schoolchildren to schools on the basis of race? Is that not exactly what the case holds?

Mr. HATHAWAY. That is right. Separate but equal. Previous decisions are no longer in effect.

Mr. ALLEN. That is right.

Are not busing decrees ordering children to special schools to overcome racial imbalance, is that not making assignments on the basis of race, which is forbidden by the Brown decision?

Mr. HATHAWAY. The Brown decision says that we cannot make discrimination on the basis of race—separate but equal, it says—which does not give equal educational opportunity to the blacks. The

purpose of busing is to get the blacks, who are not getting a good education, into the white schools in order to get a good education.

Mr. ALLEN. Did they not forbid the transporting of black children to black schools? Did it not forbid that?

Mr. HATHAWAY. In Brown against Board of Education?

Mr. ALLEN. Yes.

Mr. HATHAWAY. I do not know whether it specifically states anything about that.

Mr. ALLEN. That assignments cannot be made on the basis of race, it says that, does it not?

Mr. HATHAWAY. The Senator will have to show me where it says that in the opinion. It says, ". . . the doctrine of separate but equal has no place." That is, it is no longer the law.

Mr. ALLEN. That is right, and assignments of black students to inferior schools could not be made. That is an assignment on the basis of race, is it not?

Mr. HATHAWAY. That is right.

Mr. ALLEN. Now, assignments are being made on the basis of race and are being upheld by the Supreme Court. That is what the Senator from Alabama says, which has resulted in a 180-degree change in course by the Supreme Court.

Mr. HATHAWAY. The Senator is misreading the decision. The assignments are being made on the basis of assigning black students to schools where they can get an education that is equal to that of whites. That is the gist of the decision in Brown against Board of Education.

Mr. ALLEN. I will have to beg to differ with the Senator there, because as a matter of fact the Supreme Court does say that they can depart from the constitutional requirements to overcome some imagined wrong and that they have a right to do what they said in Brown against Board of Education they could not do.

The PRESIDING OFFICER. (Mr. MUSKIE). The time of the Senator from Maine has expired.

The Senator from Colorado (Mr. DOMINICK) is recognized.

Mr. DOMINICK. Mr. President, will the Senator from Florida yield me 3 minutes?

Mr. GURNEY. I yield 3 minutes to the Senator from Colorado.

The PRESIDING OFFICER. The Senator from Colorado is recognized for 3 minutes.

Mr. DOMINICK. Mr. President, I have been listening to this debate with a great deal of interest. The Senator from Alabama, I know, has had court orders on racial integration in his State. I do not believe that the Senator from Maine has had any yet, but I am not sure that they have many minorities up there, to speak of, in terms of Spanish speaking or blacks. But we have a court order in effect right now in the metropolitan area of Denver. One of the provisions in that court order requires that children, including some from families I know very well, be bused from the south edge of town where they lived—and where they want to go to school—into the interior of town to one of the more rundown schools in the city. In the process of being bused

there, they go by at least five schools which could adequately handle the children.

My guess is that there will eventually be a general strike in protest to busing by parents who will refuse to let their children go to the public schools at all. It has already happened among the Chinese in San Francisco and I would not be at all surprised to see it happen in the metropolitan area of Denver.

For the life of me, I cannot see why, under any circumstances, either white or black children should be required to go beyond their school to some other school that they never heard of. In the Denver area, they will not only do this, but they will have some children going to two schools at once. They go to one school in the morning and another school in the afternoon.

For heaven's sake, that means that the children are not really a member of any school. That, to me, is just total nonsense. Whether black or white or brown, they cannot possibly get any kind of feeling for a school spirit or anything else under that procedure.

Mr. President, I hold in my hand a resolution from the State legislature of Colorado asking that a constitutional amendment be proposed by the Congress saying that—

No public school student, because of his race, creed, or color, be assigned to or required to attend a particular school, Congress shall have the power to enforce this article by appropriate legislation.

Mr. President, I ask unanimous consent to have the entire resolution printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. DOMINICK. Mr. President, how in the world have we increased privacy, the right to personal freedom, or anything else, including educational and racial equality, by saying to the children that because they are of a particular color, they cannot go to their own neighborhood school but have got to go to another one? How can we say that they cannot go to the school which is next to them, or even two schools away, and tell them they have got to go all the way across town?

How, and in what way, does that increase either educational quality or better relations between the races?

Until recently, in our own school districts, I do not think a Republican had ever won a school district seat for a number of years. Then the busing issue came up and Republicans swept the school districts. As I recall, in electing Republicans to those school district seats, Spanish-Americans, in effect, voted 4 to 1 against busing. Blacks voted even. Whites were 2 to 1 against it.

Mr. President, in our Senate Education Subcommittee, we had all the evidence to show that forced busing for racial purposes did not improve educational quality, but did increase racial tensions.

All I can say, Mr. President, is that unless we adopt something like the Gurney amendment, which I have cospon-

sored, we are heading for trouble in our schools.

## EXHIBIT 1

## HOUSE JOINT RESOLUTION No. 1012

Whereas, The children of this nation and their parents have experienced uncertainty, inconvenience, and in some cases severe disruption of their lives as a result of court decisions requiring the placement of students in schools to achieve racial balance; and

Whereas, It has not been demonstrated that student busing and other forms of mandatory assignment of students to particular schools are effective in advancing any valid educational goal; now, therefore,

*Be it Resolved by the House of Representatives of the Forty-ninth General Assembly of the State of Colorado, the Senate concurring herein:*

That the General Assembly hereby petitions the Congress of the United States to propose an amendment to the Constitution of the United States, and to submit such amendment to the state legislatures for ratification, in a form substantially as follows:

## "ARTICLE

Section 1. No Public school student shall, because of his race, creed, or color, be assigned to or required to attend a particular school.

Section 2. Congress shall have the power to enforce this article by appropriate legislation."

*Be It Further Resolved*, That copies of this Resolution be transmitted to the President of the Senate and the Speaker of the House of Representatives of the Congress of the United States and to each member of Congress from the State of Colorado.

Mr. GURNEY. Mr. President, I yield 1 minute to the Senator from North Carolina (Mr. HELMS).

Mr. HELMS. Mr. President, I offer only the observation that I wish that the Senators and the press who favor forced busing would take a look at some of the absurdities that occur as a result of this practice.

As my distinguished colleague from North Carolina (Mr. ERVIN) well knows, we have an instance in Mecklenburg County in which one student is bused 22 miles from his home to school in the morning and is bused 22 miles back home in the evening, and he is the sole occupant of the bus. In other words, he has his own private bus and his own driver, just to carry out the ruling of Judge McMillan, which, in my judgment, was an absurd ruling. Yet, the Charlotte-Mecklenburg case has been heralded across this land as a wise and prudent course to follow.

I wish the Senators who favor forced busing would take a look at the practice of it.

Mr. McCLELLAN. Mr. President, will the Senator yield me a half minute?

Mr. GURNEY. I yield 1 minute to the distinguished Senator from Arkansas.

Mr. McCLELLAN. Mr. President, I ask unanimous consent that the name of the Senator from Delaware (Mr. ROHR) be added as a cosponsor of my amendment No. 1304.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. PELL. Mr. President, I yield time until 25 minutes after 12 to the Senator from Iowa (Mr. HUGHES).

Mr. HUGHES. Mr. President, the circumstances under which we are discuss-

ing legislation to prevent the effective use of busing as a tool to further desegregation in our schools has an aura of routine business that is deeply disquieting to me.

The Gurney amendment before us has the strong support of the White House. It was passed by the House of Representatives by a vote of 293 ayes to 117 noes. Although the amendment is essentially the language of the measure the Senate debated at length in October of 1972 but did not pass, its supporters here today appear to be well-organized and confident. The moral urgency that animated the Congress and the Nation in the cause of racial equality in other times seems strangely absent. This legislation which goes to the heart of one of the most profound moral imperatives of our history has become just another amendment.

It is my hope, Mr. President, that whatever action we take on the school busing issue can be set in its proper moral and historical perspective. Whatever we do, let us do it with our eyes open. Let us admit that when the emotional political pressure got too hot, we retreated and turned the clock back in the long, difficult struggle to achieve racial equality in our schools.

I condemn no one in this matter. We all live in glass houses. We all share the collective responsibility. Obviously it is no longer a regional issue. As of 1972, 25 percent of southern black children were still enrolled in virtually all-black schools. In the North, 49 percent were in such schools, and in the border States, 53 percent.

It is a challenge of conscience for all Americans, a terribly difficult and complex one, admittedly. But when has the struggle for racial equality in this land ever been easy?

It seems only yesterday that our hopes were high that we had crossed the Continental Divide in the long struggle. The *Brown* decision, 20 years ago, opened a decade of hope for black people. Ten years later, the Civil Rights Act opened a decade of fulfillment. What kind of a decade will our action on school busing this week lead into? If we enact this legislation, I believe the answer is apparent. We will be taking the first, fatal step into a decade of retreat and disillusionment in the struggle for racial equality.

John A. Buggs, staff director of the U.S. Civil Rights Commission, put it in a nutshell.

He said:

Schools are socializing institutions. They are the only institutions where all the children are required to attend. If we cannot desegregate education, I don't think we can desegregate anything.

We have come a long way in the fight against Jim Crow in this country. The dual public school systems are gone. Public accommodations have been opened up; gone are the separate lunch counters and rest rooms. The theaters and playing fields have been opened to black performers and athletes.

But there is still a long way to go, and now we seem to have encountered a stone wall. The busing issue may well be the mortar of that wall.

We will be arguing many important

but nonetheless peripheral questions in the course of this debate, questions on which there is persuasive evidence on either side.

Does busing for purposes of racial balance impose an unacceptable trauma on children?

How does racial balance affect the quality of education?

Has integration of schools really worked?

It will be pointed out that there are blacks who oppose busing and reject school integration.

It will be argued, and with merit, that quality education for all children is the goal, not integration per se.

But when the smoke has cleared, the one basic question remains:

Are we or are we not committed as a nation to the goal of an integrated society wherein citizens of all races share equally in opportunity and the rights of citizenship?

I do not blame parents for being upset about busing for racial balance when it thwarts their own plans for their children. Yet, throughout most of the nation, the myth of "massive busing" has been blown far out of proportion.

In the meantime, no workable alternative has been proposed for the limited use of busing, as we have today, to meet constitutional requirements of racial balance.

Buses have carried almost half of U.S. public schoolchildren to class for years. So far as the success or failure of school desegregation is concerned, there is evidence on both sides. But the record nationwide is generally favorable.

As Prof. Robert L. Cain, of Johns Hopkins, designer of the "Southern Schools" study has put it:

When you try to make integration work it does. That's the story—we have not tried.

Despite the widespread, understandable, and deeply emotional objection of white parents to court-ordered busing, the fact remains that the majority of Americans do not want the country to take the degrading road back to Jim Crow in our schools.

Where then do we turn?

We cannot have desegregated schools and proscribe by law one of the reasonable tools necessary to achieve desegregation.

We cannot in good conscience affirm a goal of racial equality and enact laws that block its fulfillment.

School busing for purposes of racial balance is deeply objectionable to many people; nothing we can say here will change that.

But is it so objectionable that it is worth the appalling price that we must pay in stopping the momentum of progress that has been gained in the past two decades in the grim and bloody struggle for racial equality?

At a time when we desperately need moral leadership in our country, this is a historic test.

It is not just another amendment.

Mr. President, it cannot be questioned that there is heavy pressure on the Senate to acquiesce in the judgment of the House and of the executive branch. I daresay that the mail received by all of

us on this subject is running heavily in favor of passage. Large numbers of people are frightened by the specter of the yellow school bus arriving at their door to transport their children to far-away schools and then, once out of the reach of their parents, to be subjected to some kind of "social engineering" repugnant and contrary to parental wishes.

Why do so many Americans have this fear, Mr. President? I recognize that desegregation of our public school system has been a painful process in many parts of the country. It has meant, for many, a completely new way of life, to which adjustment has been difficult—often far more difficult for the adults than for the children. But because desegregation is a constitutional necessity, and because it is right, the agonizing process has been going forward, however slowly. A reading of the history of the implementation of title VI of the Civil Rights Act indicates clearly that no blunderbuss approach has been used. No guidelines at all were forthcoming for many months, because of a sensitivity to the magnitude of the problem and when the guidelines did appear, they indicated a "go-slow" approach. The highly sensitive and important problem of faculty integration, for instance, was not even considered for over a year. Moreover, there seemed to be an inclination to let our courts determine, through case law, the steps that must be followed.

And this, of course, the courts have done. I do not question the fact that some of the decisions have been unpopular, but I do question whether the decisions, by themselves, have created the climate of fear and uncertainty that has brought Congress to the brink of taking legislative action that could be disastrous.

I suggest, Mr. President, that one of the major reasons for our difficulty today is that the President of the United States, ever since he has been in office, has described the desegregation issue in inaccurate and extreme terms.

For example, in 1971 the President said:

I have consistently opposed the busing of our Nation's schoolchildren to achieve racial balance, and I am opposed to the busing of children simply for the sake of busing.

And in 1972, at the time the Senate was considering the education bill, he said of the school bus:

It has become a symbol of helplessness, frustration and outrage—of a wrenching of children away from their families, and from the schools their families may have moved to be near, and sending them arbitrarily to others far distant. It has become a symbol of social engineering on the basis of abstractions, with too little regard for the desires and the feelings of those most directly concerned: the children, and their families.

And again in 1972:

Many lower court decisions have gone far beyond what most people would consider reasonable, and beyond what the Supreme Court has said is necessary . . . some (court orders) have required that pupils be bused long distances, at great inconvenience . . . excessive transportation of students creates serious risks to their health and safety . . . the risks and harms created by excessive transportation are particularly great for children enrolled in the first six grades . . .

And, in his education message this year, the President used the words "forced busing" three times in two short paragraphs.

I suggest that this kind of rhetoric plays on the fears and prejudices of people rather than appealing to their sense of justice and fair play. I suggest that this Presidential rhetoric is one of the major reasons we are debating the proposal before us.

Mr. President, 20 years ago, in 1954, the U.S. Supreme Court in its landmark decision in *Brown against Board of Education* stated, very simply:

Separate educational facilities are inherently unequal.

The 20 years since then have been difficult, often traumatic, years for many communities as they have tried to adjust to the realities of desegregation. As I have said, for thousands of families, both black and white, new patterns of living became necessary, the comfort of the familiar way of life had to be exchanged for the disquietude of the unknown. But because the American people do have a deep sense of justice and because the American people do respect and revere our Constitution and Supreme Court as the final arbiter of the meaning of that document, they have, for the most part, accepted the changes that have come and have, in ever-increasing majorities, come to agree that segregation in our schools is wrong, both morally and educationally.

How hard it must have been for some parents to explain to their children why they would now be going to school with children of another race; and how hard it must have been for other parents to ask that their children take the risk involved in being among the first to break down the barriers of race. But those first steps were taken, the course was set, and I firmly believe that we can become a Nation wherein educational inequality no longer exists, because of separate school systems.

Our courts wisely understood that history cannot be changed overnight, and this was evidenced by the requirement of "all deliberate speed" for over 10 years. It was not until 1965, in *Bradley against School Board of City of Richmond*, that the Supreme Court announced that "delays in desegregating school systems are no longer tolerable." The series of decisions since then are well known to us all, and the issue before us today stems directly from the *Swann* decision holding that school boards could be required to use bus transportation as one tool of school desegregation.

Mr. President, as I stated in our last debate on this issue, I have great sympathy for the children who are riding the buses and for the families who feel the strain of busing, but I know that, for the most part, the courts have resorted to busing only where they have found an illegal pattern of officially imposed segregation requiring an immediate, but hopefully temporary, remedy.

To indicate how emotional an issue busing has become, I would like to quote from the June 1973 report of the Civil Rights Commission entitled "School De-

segregation in 10 Communities." One of the conclusions reached after studying these communities is the following:

There is a sharp contrast between the reaction of communities to their own experience in desegregation and their expressed feelings concerning desegregation as a general proposition, particularly when the issue of busing intrudes. Most parents interviewed by Commission staff are satisfied with desegregation as it affects their own children. The bus ride that their children take causes them no concern and they approve of the educational program offered since desegregation. Yet many of these same people, on local and State referenda concerning busing for school desegregation, vote overwhelmingly in the negative. So powerful is the rhetoric concerning busing that it has blinded them to the reality of their own experience.

Mr. President, I hope all of my colleagues have read this enlightening report by the Civil Rights Commission. It is true that only 10 communities are covered by this report, but these communities are, I believe, representative of the desegregation effort, its successes, shortcomings, and failures. The picture that emerges from this report indicates that with careful planning by the school boards, the local officials, and concerned citizens, school desegregation can succeed and the educational attainment of the black students can be improved without the loss in achievement by whites. Where parents have been involved in every stage of planning, where both parents and children have had explained to them why the changes being made are reasonable and necessary, desegregation has had its greatest success. Where community preparation did not take place, controversy replaced cooperation, and fear often replaced reason. Yet even in those communities which experienced the most violence and ill-will, often centered on busing, once desegregation was an accomplished fact, the passage of time saw the community settling down to the important business at hand—improving the quality of education for all children, without regard to race, color, or creed.

Listen to what has been said in these desegregated school districts.

From a superintendent:

There is no finer tribute to the staff, teachers and other personnel than the progress, unity and dedication to quality education emerging in 1972. From turmoil has come direction, from doubt a bold effort and from controversy has come reassessment and innovation . . . by the same token, the community has supported the schools. Volunteer workers in the schools, the Parents-Teachers Association and the Citizens' Advisory Councils have demonstrated that thousands of citizens are sincere friends of the schools.

From a principal:

Young people are slowly learning that they can have a decent relationship without living on a battleground.

From a transportation director:

We have taken a positive approach and have been repaid because the children have taken to riding buses like "ducks to water."

From a black teacher:

There are no people who are vocal against integration. The schools have pretty good standing in the community—there is basic trust. If there is dissatisfaction, it may be

with some of the teachers because under our system, they now have so much more responsibility.

And the rules of the students of "The Group" in Pontiac, Mich.:

I will look at my fellow students as individuals and not judge them by their skin color.

I will think before fighting and try to use a kind word of humor.

I will be proud of myself.

I will ask questions instead of making wild guesses about people and things that they do.

I refuse to exaggerate incidents. If I cannot tell it like it is, I will not tell it at all.

I sincerely pledge that I want to and can make it work.

Perhaps, Mr. President, our young people are wiser than we.

We can be proud of this record of achievement, incomplete though it is. But we must go forward. The amendment before us, however, calls for a turning back in time, for a halt and ultimate reversal of all that has been done in the last 20 years to advance the cause of equality before the law. It would reopen healed wounds and would prevent further treatment of the festering sores of racial injustice. The ultimate effect of this amendment would be the resegregation of those schools which have already desegregated and would prevent effective desegregation of those that are still undergoing the process. Is the Senate of the United States really willing, in this year of 1974—2 years before the 200th anniversary of that historic occasion when our forefathers declared that "all men are created equal"—to state for all the world to hear that the guarantees of our Constitution are not to be extended to all?

Equally as important, is the Senate willing to add its consent to legislation that is probably unconstitutional?

Let us examine some of the features of this amendment.

Among other limitations are the key words in section 815 (a):

No court, department, or agency of the United States shall, pursuant to section 814, order the implementation of a plan that would require the transportation of any student to a school other than the school closest or next closest to his place of residence which provides the appropriate grade level and type of education for such student.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. HUGHES. Mr. President, does the Senator from Rhode Island wish me to go on or yield the floor?

Mr. PELL. Mr. President, I am delighted to yield another 5 minutes to the Senator from Iowa.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. HUGHES. Mr. President, Members of the Senate are realists, Mr. President, and I think each of us knows what the effect of this provision would be if it were constitutional. It would effectively end the desegregation of our school systems until that day, probably far in the future, when there is no longer any discrimination in housing.

I hesitate to believe that Members of this body really wish to see this result, but even so, is the provision constitutional?

The Supreme Court has already struck down as unconstitutional a State law on busing limitations. Is it likely then that the court would uphold a similar limitation enacted by the Congress? Proponents argue that the Congress has this power through its enforcement powers under section 5 of the 14th amendment, that Congress is appropriately enforcing that amendment by delineating suitable remedies to violations of constitutional rights as proposed in the amendment. Does it then follow that Congress may limit such remedies? I think not, Mr. President. As the court stated in *Katzenbach against Morgan*:

SEC. 5 does not grant Congress power to exercise discretion in the other direction and to enact "statutes so as in effect to dilute equal protection and due process decisions of this court." We emphasize that Congress power under sec. 5 is limited to adopting measures to enforce the guarantees of the amendment; Sec. 5 grants Congress no power to restrict, abrogate, or dilute these guarantees. Thus, for example, an enactment authorizing the States to establish racially segregated systems of education would not be—as required by Sec. 5—A measure "to enforce" the equal protection clause since that clause of its own force prohibits such State laws.

Since the severe limitation on busing contained in this proposal would have the effect, in many cases, of maintaining an unconstitutionally segregated school system, it seems self-evident that the court would consider this an effort on the part of Congress to "restrict, abrogate, or dilute" the guarantees of the 14th amendment and that such limitations would therefore not be upheld. In other words, if busing is a necessary remedy to right a constitutional wrong, I for one do not believe the Congress has the power to enact legislation severely limiting or prohibiting it.

As I have indicated, I consider the prohibition on busing the heart of the Gurney amendment, and I also believe it is not within the power of Congress to enact such a prohibition. There are, however, other sections of this amendment which must give us concern:

There is the "re-opening clause" which would permit already desegregated school districts to reopen their cases before the courts so as to obtain modified court orders which conform with the remedy limitations of the amendment. The mischief here is apparent: What good has been done can be undone, and, to add insult to injury, the Justice Department must intervene on behalf of school districts to see that this occurs.

Another section provides that the transportation provisions of any court order shall be terminated upon a finding that the school system is not excluding any person from school because of race, color, or national origin. In other words, a court could order transportation as a cure to an illegal situation, but as soon as the court agreed that the transportation had effected the cure, the order would be terminated, thus permitting a return to the situation prior to the court order. This could produce a "merry-go-round" situation which would be intolerable for sound educational policies.

And what of the section which provides that "in formulating a remedy for a denial of educational opportunity or a denial of the equal protection of the laws—only such remedies as are essential to correct particular denials" shall be imposed? What do the words "particular denials" mean? Do they refer to denials to individuals, meaning then that each case must be litigated on an individual basis with the remedy applying only to such individual? Or do they mean that each type of denial must be litigated separately with the remedy determined separately? This is ambiguous lawyer-talk, Mr. President, and I can envision endless hours of discussion being consumed over the meaning.

These are but a few of the additional difficulties I find with this amendment. Clearly, however, the antibusing provisions are the heart and soul of the amendment, and are, in my judgment, clearly unconstitutional. If the Senate concurs in this amendment, there will be no dispute in conference committee and the President will, in all likelihood sign the legislation. What then, Mr. President? The fears in the suburbs will be allayed—temporarily; the dreams of the opponents to desegregation will be fulfilled—temporarily. Inevitably a court case will emerge wherein desegregation has been prevented because of this legislation or resegregation has occurred because of this legislation. The court decisions since *Brown I* in 1954 have built up a body of case law which, I believe, would not justify a belief that this proposal will be held constitutional.

In the meantime, of course, by our actions we will have disrupted the orderly processes now taking place. We will have exacerbated racial tensions. We will have put extraordinary burdens on our courts. And we will have undermined the 14th amendment to our Constitution.

I cannot believe the Senate wishes to take this road to the future. Nor do I believe that when they know all the facts the American people will want to take this road to the future.

What, then, can we do?

First, let us get the facts to the American people. Let us remind them that segregated public schools are a violation of the guarantees of our Constitution and that all vestiges of the dual school system which is being perpetuated because of official acts of segregation in whatever form must be eliminated.

Let us acknowledge that we understand the difficulties and strains desegregation may bring, but let us be honest by admitting with the Supreme Court that "desegregation plans cannot be limited to the walk-in school."

And when we talk about the court, let us remember that most of its desegregation decisions have been unanimous and that the court has not been insensitive to the concerns of parents. In the *Swann* case, the court said:

All things being equal, with no history of discrimination, it might well be desirable to assign pupils to schools nearest their homes. But all things are not equal in a system that has been deliberately constructed and maintained to enforce racial segregation. The remedy for such segregation may be

administratively awkward, inconvenient, and even bizarre in some situations and may impose burdens on some; but all awkwardness and inconvenience cannot be avoided in the interim period when remedial adjustments are being made to eliminate the dual school system. . .

Next, let us be honest about busing. Forty percent of all schoolchildren in America today are bused, but only three percent of these are bused for desegregation purposes. This comes out to about 1 child in 50 and yet, in a nationwide poll conducted by the Civil Rights Commission, only 44 percent understood that this was the case.

"Busing" in the United States really goes back to 1869 when Massachusetts became the first State to provide pupil transportation at public expense. Needless to say, these early trips were not by bus—they were by horse-drawn wagons or sleds. And as compulsory education took hold in our States, so, too, did pupil transportation. By 1972 the number of children bused had increased to some 20 million, the number of buses was at 256,000, and the number of school bus miles logged in a year was 2,200 million. And the use of the school bus is no longer limited to transporting children back and forth from school. Through the use of the school bus, handicapped children are brought to specially designed schools to help them; other children are given the opportunity to participate in extra-curricular activities by virtue of the "late" or "activity" bus; trips to museums and other cultural centers are now possible; sports activities flourish.

Unfortunately, the benefits of busing have not always been available to all students on an equal basis. As a prominent black Virginian has recalled, his earliest memory of school segregation was when he "walked 5 miles each way to a one-room school with one teacher and seven grades, while white children rode past me on the schoolbus to a modern, well-staffed school."

While it is true that busing for desegregation purposes has in many instances increased the number of students bused and has increased transportation costs, there is no overwhelming evidence that the average distance and time of ride for most students has changed. It is clear that most desegregation plans are very carefully drawn so as to alter these aspects of busing as little as possible. For instance, in Clark County, Nev., the longest ride before desegregation was 1½ hours over a distance of 50 miles, with the average of distance and time being 11 miles and 30 minutes, respectively. This situation is unchanged as a result of desegregation. In Riverside, Calif., where 29 percent of the students are bused for desegregation purposes in 1971-72, the bus run for such purposes was 5 miles as opposed to a regular bus run of 10 miles when unassociated with desegregation. In each case, the time involved was approximately 30 minutes. In Glynn County, Ga., the average bus ride is 5 miles, taking 20 minutes, with the longest bus ride being 20 miles and taking 1½ hours. This situation also prevailed before desegregation. And

in Pontiac, Mich., prior to desegregation, round trip mileage was about 12 miles and average round trip time was 60 minutes. After desegregation mileage decreased to 8 miles and round trip time was reduced to 40 minutes.

It is probable that other cases can be cited giving a different picture of the busing picture insofar as desegregation is concerned. However, what I think should be borne in mind is that "massive busing" is only considered evil when it is associated with desegregation; Americans have bused children to school on a massive scale for decades for a variety of reasons.

When it comes to safety, the report of the National Safety Council in 1968 revealed that the schoolbus is by far the safest mode of transportation, with an occupant death rate per 100 million passenger miles of 0.06, compared to 0.24 for regular buses and 2.40 for automobiles. In the poll referred to above, 49 percent understood this fact, although this percentage was admittedly boosted by the 5-to-1 margin registered in rural areas.

And what of the cost of busing? Here, the American public appears to be badly misinformed. By a 6 to 1 margin the belief was expressed that busing for desegregation adds 25 percent or more to local school costs. The actual figure, of course, is far less—no more than 1 to 2 percent, with the overall costs of all forms of student transportation amounting to about 3.5 percent of the operating costs of school budgets.

In this regard, Mr. President, I find the "findings" of the Gurney amendment somewhat disturbing since they appear to perpetuate the mistaken bias about busing that is held by so many.

Let us also talk to the American people about the neighborhood school. I agree with Professor Bickel when he testified about the widespread parental desire "for a sense of community in the schools." But only since the busing controversy has arisen has this sense of community been particularly associated with the "neighborhood" school. Parents on many occasions have demanded the right to send their children to the school of their choice, but this has not always meant the "neighborhood" school. The right of parents to send their children to a private or parochial school is, of course, well-established. But in the case law that exists with regard to public schools, the courts have ruled that the school board, and not the parents, has the right to determine which school a child will attend. In a Michigan case which involved overcrowding, for example, the court ruled that the board had the right to send the students to a school other than the "neighborhood" school.

And, of course, in all the years of the dual school system, the "neighborhood" school was nonexistent, since both black and white students were sent to schools designated by race, very often not the nearest school.

And let us tell the American people we share their concern about possible crime, racial discord among students and poor educational facilities. But let us ask

them to study the school districts that have successfully undergone desegregation, to learn from their experiences and solutions to these problems. Crime, of course, knows no boundaries, and the experience of our suburbs in recent years can testify to this fact. It can be kept at a minimum in all schools by various means, including the use of hall monitors.

Experience has shown that racial discord among students usually occurs at the beginning of a school year under newly desegregated circumstances, whether on the bus or in school. Again, monitoring has been an effective tool in keeping such discord at a minimum. And in case after case, once a previously all-black school has been desegregated, its physical plant and school supply situation has improved dramatically because of the insistence and cooperation of the white parents whose children now attend that school.

With reference to learning, the studies that are now available appear to indicate that the achievement of the black student increases under a desegregated condition and that the achievement of the white student does not suffer. However, since schools have not been desegregated on any large scale for but a few years, it is obvious that no definitive judgment in this area can be made nor do I believe it can be made until at least one generation of students has undergone the desegregation experience from kindergarten through senior high school.

Mr. President, in addition to getting the full story to the American people, we can take further action. We can, through the legislative process, make certain that those Federal programs which are designed to help the process of desegregation are fully funded. We can make certain that all technical assistance necessary is available to those desegregating schools requesting it. We can fund and encourage desegregation plans which appear to be innovative and least disruptive to the community. We can, in short, encourage educational equality and educational opportunity and at the same time fulfill the rights guaranteed to all under our Constitution. The pending amendment, however, cannot accomplish this, and I therefore cannot give it my support.

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

Mr. HUGHES. I have no more time.

Mr. MANSFIELD. Mr. President, I yield 2 minutes to the Senator from Minnesota.

Mr. HUMPHREY. I need only 1 minute. I merely wanted at this time to join fully and associate myself with what the Senator from Iowa has had to say. It is a brilliant statement. It is a call to exercise a positive force rather than a retreat. I thank the Senator for his statement.

Mr. HUDDLESTON. Mr. President, the issue before us is one of the most emotional and difficult issues facing our Nation. The sociologist Gunnar Myrdal long ago termed it part of "the American dilemma" and that is, if anything, an understatement. The issue involves the hopes, the dreams—and the fears—of

citizens throughout the land. It involves an area where the rights of one group often appear to conflict with the rights of another and where requirements imposed in an effort to benefit some present what others consider an intolerable burden.

It has now been 20 years since the Supreme Court, in the landmark case of *Brown* against Board of Education declared that separate but equal school systems were inherently unequal and that their existence violated the equal protection clause of the U.S. Constitution.

In those years, we have seen many moves to eliminate dual school systems and the vestiges of laws and procedures which classified men by race. I believe in the 1954 decision and in actions to eliminate those practices and procedures which discriminate against men and women because of the color of their skin, their sex, their wealth or lack of it or their station in life.

I believe in equal opportunities in the education system. There is, in fact, probably no single institution of our society in which discrimination or denial of equal access is more insidious. Education is undoubtedly the single greatest means of enabling a person to develop to his full potential, whatever that may be, and to compete successfully for the benefits and rewards which a society has to offer its citizens.

I am also all too aware of the past failures of education—of a time and system which forces a significant portion of our people into inferior buildings, with fewer supplies, offering few services and often with fewer specialized personnel.

I am aware of the concerns among our minorities that many of the gains which they have made in recent years will be lost and that their aspirations for themselves and for their children will be thwarted. That must not be allowed to happen.

In those years since 1954, however, questions reaching far beyond the elimination of officially sanctioned discrimination have been raised. A review of recent court decisions suggests quite clearly that the momentum is toward racial balancing plans and the forced busing of large numbers of public school children. The discriminatory technique of the past is now being used in a reverse manner. It is being used in an effort to force our schools and school children to resolve a problem which we as a society have failed to resolve.

And the result is all too often the disruption of the educational process, the misdirection of needed but limited educational funds, and constant confusion over legal requirements or satisfaction of court orders. The result is all too often the weakening of the educational institution at a time when its strengthening is needed.

As we all know, there is a large body of literature on the advantages and disadvantages of massive busing. Much of it is conflicting and contradictory. Much of it raises questions about the basic educational value to the student resulting from the shuffling of large numbers

of children to schools outside their normal areas. Certainly there are enough questions regarding it to preclude its use as a base for a national policy.

As we all also know, there are cogent health and safety arguments against sending children—black or white—far from their homes, lengthening the schoolday with travel time, removing children from ready access to their homes and parents in case of emergencies, and eliminating the likelihood of close parental involvement in school-related activities.

I have always opposed the forced busing of public school students, because I believe such busing is educationally counterproductive, unnecessarily disruptive of family life and not the best use of limited educational resources. I will continue to do so.

I remain a firm believer in integration, equal opportunity, and equal protection of the laws, but I simply do not believe forced busing will either achieve or advance those objectives. Instead, I think it will erect additional barriers to real integration.

Unwise public policy in the pursuit of worthy objectives is still unwise policy. And I believe forced busing is unwise public policy.

Mr. BAKER. Mr. President, this week marks the 20th anniversary of the landmark ruling by the Supreme Court that the assignment of children to particular schools because of their race is unconstitutional.

In the two decades since the *Brown* decision, dual school systems have been effectively dismantled throughout the country. Yet today, in an ironic, judicially contrived reversal of that historic decision, children are again being uprooted from their neighborhoods and forced to attend certain schools solely on the basis of their race.

The House of Representatives has already passed by a substantial margin legislation to relieve the hardships imposed by massive crosstown busing of schoolchildren. The Senate now has the opportunity and, I believe, the responsibility to reaffirm our national commitment to quality and equality in education by bringing about a reasonable remedy to the problems of busing.

In the language of the House-passed bill and of amendments proposed in the Senate, busing would clearly be designated as a tool of last resort. It could be used only after the effectiveness of a number of other measures to implement desegregation plans had they been proven inadequate. In any event, court-ordered busing to any but the next closest school to a student's home would be prohibited—and busing would not be permitted at all if it endangered students' health or educational progress.

This attempt to deal with the problems of busing would not diminish the drive for equal educational opportunities. Indeed, the very proposals which would prohibit forced busing contain companion provisions which would also prohibit deliberate segregation, discrimination in hiring and assigning faculty members, and failure to take action to overcome language barriers.

There have been some attempts in the past to dismiss busing as a racial or regional issue, perennially put forth for its election-year appeal. Black and white parents and children from throughout the country who have personally experienced the continuing family disruption brought about by massive busing rightly dispute that claim.

A September 1973, Gallup poll reported that although a majority of our citizens favor desegregated public school systems, only 5 percent support the use of busing.

This survey, taken at the beginning of the current school year, indicates that "much of the opposition to busing stems from reasons other than racial animosity. These include the belief that busing is an infringement of personal liberties, worry about busing children to schools in different neighborhoods, and concern that busing will increase local school taxes."

The National Congress of Parents and Teachers has expressed strong opposition to busing, and PTA organizations across the country have registered their support for proposed legislative solutions to the problem.

Delegates to the last PTA national convention adopted a resolution pledging that the organization would "reaffirm its strong commitment to integrated quality education for all children and oppose the reassignment of students solely to achieve racial balance."

By now, it should be abundantly clear that to be against busing is not to be against providing a quality education for every child, black and white. To be against busing is to place a common-sense concern for orderly education above the caprice of transportation orders.

Legislation prohibiting the assignment of a child to a certain school because of his race is in keeping with the spirit of our historic advances in the progress of the civil rights struggle.

We must not turn our backs on our national commitment to a plural society and to desegregated public school systems. Rather, we must open our eyes to evaluate the effects of busing on children, their families, and their communities.

For thousands of Tennessee families, the problem of busing is not a hypothetical one. It is not something to be viewed on the news broadcasts or read about in the newspapers and then forgotten. It is, regrettably, a fact of life.

I can testify first-hand that many citizens of Nashville and Memphis who are dedicated to the purposes of civil rights strongly oppose massive busing. Some of the members of the community who spoke out most eloquently and forcefully against the evils of forced segregation are equally outspoken against the evils of forced busing.

In cities which have experienced court-ordered busing, there is now a general agreement that enormous hardships have been worked on the children involved, on their parents, and on the financial resources of the community—in that order of importance.

The dislocations of crosstown busing

are especially grave because the burden falls hardest on the children themselves. They are the ones who are uprooted from their neighborhoods, forced to get up before daylight, and wait on street corners for buses to carry them past their neighborhood schools to unfamiliar destinations.

For local communities, busing orders have often meant that funds which could be used to make needed improvements in educational facilities or to provide better pay for teachers are instead spent to buy, fuel, and maintain buses. I believe that the recent gasoline shortage and the increase in fuel prices makes unnecessary busing even more indefensible.

The theoretical benefits of busing are being increasingly questioned now that busing plans have been translated into reality. The hardships, frustrations, and dislocations are undeniable.

Because of the actual experience of Tennesseans and other citizens in localities which have had to deal with the problem of busing, I believe it is imperative and the proposed solutions receive the priority which they deserve.

Earlier this week, the Washington Post published an extensive study of the progress of school desegregation under the heading, "The Brown Decision: 20 Years Later." Ms. Linda Brown, whose name is associated with that decision, was asked her views on busing. This was her reply:

I am not for it at all. To me this is a reversion to what we were getting into before Brown. It might just be me, but I had to walk all this distance to catch a school bus and be bused across town. If this is what it comes to here in Topeka, I will conform to it, but . . . if there is another solution that would give us our neighborhood schools and still give us an integrated school system, I would rather see that.

I believe that the vast majority of parents, both black and white, would associate themselves with Ms. Brown's statement. Racial school assignments were declared wrong by the courts two decades ago. They are wrongly required and perpetuated by some courts today. It is time for the Senate to act immediately and to act conclusively.

I remain convinced that our national goals of providing a good education for every child and assuring equal educational opportunities for all are not furthered by the judicial mischief of busing.

M'CLELLAN TITLE I AMENDMENT TO S. 1539

Mr. DOLE. Mr. President, I wish to express my support for the amendment proposed by the distinguished Senator from Arkansas. The Kansas Department of Education favors the substitute proposal, and I concur in their opinion for several reasons.

The most obvious of these is that the substitute formula will provide an increase of nearly \$1 million in the Kansas title I entitlement. But there are other reasons for supporting the House-adopted language, too. The House formula reduces the emphasis placed on welfare and AFDC figures, whereas under past formulas, States with more liberal welfare programs have been rewarded with a higher level of title I funding. Rural States, such as Kansas, which do not have a comprehensive welfare pro-

gram, are penalized under these formulas. I feel there are factors other than welfare statistics which can serve as proper indices for the need for compensatory education, and believe that the House formula more properly reflects those needs in the State of Kansas.

Second, the substitute formula allows greater latitude in the administration of the title I program within the State. By stipulating an 85 percent hold-harmless funding level from the previous year for each local education agency, the bill assures the stability necessary for maintenance of an effective program, while providing the flexibility needed to focus the program in areas of extreme need. The substitute formula now under consideration does not provide for funding of the part C special incentive grant program, but by providing more part A funds to the State of Kansas with State discretion in their use, the areas of special need can be met.

The pending amendment, when read in conjunction with the provision of S. 1539, authorizing advance funding of the ESEA programs, will provide substantial improvements in the title I program. In the past, one of the biggest problems plaguing the Kansas title I program has been the delay in settling the title II funding levels. School budgets are planned and prepared in March for the next school year, but title I funding level were often settled in the middle of the schools year. If the funding level were set below the amount budgeted, the fiscal restraints required that teachers be laid off and the program be disrupted.

In Kansas, the impact has been especially significant because 85 percent of the title I funds go for the salaries of professional and nonprofessional personnel who work directly with disadvantaged students. Last year, more than 2,500 persons were employed with title I funds and approximately 75 percent of these were certified teachers. However, a reduction in title I funds in midyear interrupted contracts for teachers and interrupted programs for students who can least afford disruptions in their training.

The pending amendment will mean additional funds for the Kansas title I program, and the advanced funding provision of S. 1539 will eliminate the disruptions which have previously plagued the program. I, therefore, wish to indicate my support for the pending amendment, and the advance funding provision of the bill. These measures will go a long way toward meeting the needs of disadvantaged students in Kansas and eliminating the many headaches of the State's title I teachers.

I ask unanimous consent that a statistical statement be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### STATISTICS

Title I use in Kansas last year--85% salary:  
2,500 professional and paraprofessional  
Full time:  
33 preschool teachers  
432 elementary teachers  
59 secondary teachers  
19 teachers for handicapped  
200 teacher aids  
22 counselors

Part time:  
156 elementary teachers  
130 teacher aids  
56 secondary teachers  
Summer:  
800 certified teachers employed full time

#### ESEA AMENDMENTS

Mr. MONDALE. Mr. President, I arise to speak in support of the committee bill in general, and in support of the title I formula in the committee bill in particular.

As a member of the Education Subcommittee, I want to begin by expressing my appreciation for the tireless and thoughtful leadership which the junior Senator from Rhode Island (Mr. PELL), chairman of the subcommittee, has provided throughout the consideration of this piece of legislation. He chaired 18 days of hearings on this bill and numerous and lengthy executive sessions. It has not been an easy job. This is a major and very important piece of legislation and because of that there are many areas within the bill in which different Members of the Senate will have different opinions. I believe the consensus that was reached in the subcommittee and the full committee, in view of the complexities and differences involved in this bill, is a credit to Senator PELL, and I believe all of us are indebted for his guidance and leadership.

Mr. President, this bill is commonly referred to as the elementary and secondary education bill. It does indeed strengthen the Federal program of aid to elementary and secondary education. But the bill covers far more than that. It extends and amends Public Laws 815 and 874 commonly known as the impact aid program. It extends and revises the adult education program. It proposes three forms of consolidation of existing educational programs. It establishes a national center for education and statistics. It extends the programs for the education of the handicapped. It establishes a new national reading program and it reaffirms the language concerning student assignment and transportation adopted by the Congress in the Education Amendments of 1972. As a member of the Education Subcommittee, I am proud to have been involved in the preparation of this legislation and I am particularly proud that it includes one promising new program and several important amendments, which I authored.

The new program to which I refer is the Women's Educational Equity Act which was introduced and sponsored in the House by a distinguished Congresswoman from Hawaii (Mrs. MINK). This bill authorizes the Commissioner of Education to make grants and enter into contracts aimed at achieving education equity through development of new educational materials; preservice and inservice training; research and development; guidance and counseling; programs for underemployed and unemployed women; and improvement of educational administration, and vocational, career, and physical education programs.

The bill would also create, within the Office of Education, an Advisory Council on Women's Programs. The council would help to oversee the program and

make recommendations for improvement of educational equity by HEW. Another important provision of the bill is the requirement that the Commissioner conduct a "national, comprehensive review of sex discrimination in education, to be submitted to the Council not later than a year after the date of enactment" of the legislation. The Congress has already established its position on the question of sex discrimination in education—and this type of discrimination is against the law. The Women's Educational Equity Act can help to make that policy—which is now only a statement of purpose—a reality.

The amendments to which I refer include an amendment to impact aid concerning Indians living on Federal lands, and an amendment concerning target schools under title I. The first assures that Indian students whose parents live on Federal property are counted as "A" students under the Federal act whether or not their parents are employed. Currently, the children of Indians living on Federal property are counted as "B" students and reimbursed at a lower rate if their parents were unemployed. Because these students place at least a high if not higher financial burden on school districts than children of Indian parents who live on Federal lands and who are employed by the Federal Government, I believe this a long overdue improvement. This amendment would help an estimated 10 to 15 thousand Indian students across the country by providing an estimated \$2 million additional Federal aid to the schools they attend.

The second amendment to which I refer would give local educational agencies discretion to designate as a target school a school not located in a school attendance area in which a high concentration of low income families reside, which, except for such requirement, would otherwise have qualified as a target school. Existing law links eligibility as a title I school with the location of the school in an attendance area with a high concentration of children from low-income families. However, in some school districts, because of attendance of children in nonpublic schools, the economic composition of the attendance area served by a public school is not reflective of the economic level of the children actually enrolled. Existing law would bar the designation of such a school, even though its actual enrollment would qualify it to be a title I target school under the poverty criteria utilized by the school district. My amendment, contained in the committee bill, would correct this situation, if the local educational agency exercised the discretion given it.

#### TITLE I

Mr. President, the issue before us today involves the formula to Title I of the Elementary and Secondary Education Act. Title I is the largest single program of Federal aid to our schools.

The availability of new 1970 census data has required the committee to update and improve the formula for distributing the funds under this title.

The proposed new title I formula consists of two parts. The first part involves the base year concept. The committee bill provides for a base year of 1974 for each local educational agency. Under this base year concept, no school district would receive less in future years than it did under the 1974 Appropriations Act. This base year will provide some continuity for local school officials. With passage of S. 1539, they will have a basic amount they can expect to receive, and will, therefore, be able to plan programs and hire teachers without substantial fluctuations in title I funds from year to year.

Funds appropriated above the base year would be distributed on a new formula in fiscal year 1975, based on the President's budget request, such new money would amount to more than \$158 million.

The census data used in the new formula would be the 1970 poverty level, often called the "Orshansky" level. This definition takes into account the size of the family, the sex of the family head, and farm/nonfarm residence. Thus, an urban family of seven could be counted under title I even though the father earned more than \$6,000 in 1969. This flexibility is more reflective of actual poverty than the arbitrary \$2,000 cutoff contained in existing law.

In addition, the formula would count on the amounts available from appropriations for local educational agency grants, 60 percent would be paid on the basis of a district's relative number of census children and 40 percent on the basis of its children on AFDC. This would assure a constant ratio between the two formula factors, and would guarantee that in the future AFDC will not overwhelm the formula, as occurred under existing law when the shift to the 1970 census took place.

The Federal payment level remains at 50 percent of the State or national average per pupil expenditure, whichever is higher. This factor recognizes the higher costs of education in States like Alaska and New York, and provides higher Federal payments to reflect those costs. At the same time, it raises low-expenditure States to the national average expenditure, thereby providing a measure of equalization.

Mr. President, we are now considering an amendment offered by the distinguished Member from Arkansas (Mr. McCLELLAN) to change this formula. I believe it would be a mistake to adopt that amendment. I want to underscore briefly why I think the committee formula should be retained.

First, the base year concept and formula was designed to provide a long overdue assurance of stability to title I—stability to State and local educators who are responsible for planning and administering title I programs in the communities across the country. All of us concerned about education want to make sure that funds available can be used in the most effective manner possible, yet recent combinations of vetoes, impoundments, and late funding has made it difficult if not impossible for local educa-

tors to plan and use Federal funds as effectively as we all would hope. The committee bill with its base year concept will assure that every school district currently receiving title I funds will get at least as much as it is receiving during the current school year. If the school officers, superintendents, principals, and teachers can count on that amount, they can plan in advance, for once, to use it to its greatest effectiveness.

That stability to permitting our local educators to plan ahead with certainty is absolutely essential. The committee bill spells out in more detail the arguments I am offering and I include parts from pages 20 and 22 of Senate Report No. 93-763 at this point in my remarks:

The base year concept is intended by the Committee to provide a measure of stability for local educators in planning Title I programs. Under State law, most teachers, and other educational personnel must be hired for the succeeding school year in March or April of the preceding year. Yet rarely if ever are Federal appropriations for education programs enacted into law by this time. The resulting uncertainty requires school officials to gamble that sufficient funds will be forthcoming under title I to support the compensatory education program for which they have planned and for which they have contracted for personnel.

With a base year, this uncertainty would be removed. School boards could rely on a basic amount of title I money annually, and could engage in meaningful advance planning for the expenditure of such funds. Compensatory education programs could be developed in an analytical manner, rather than on a "catch-as-catch-can" basis as funds become available too late in the school year for rational planning.

It is in large measure because of the lateness and uncertainty as to the level of title I funding that the program has been the subject of criticism that it merely "throws money at the problem" of educational disadvantage. The Committee bill's base year would blunt such criticism by allowing for on-going planning for title I programs for the first time in the program's history.

Given the base year, all States would share in any additional money appropriated for local educational agency entitlements under title I. The Committee bill adopts a totally new title I formula for the distribution of such new money.

A second reason for retaining the committee formula concerns the way it distributes new money. Sixty percent of any new funds will be distributed according to the sophisticated Orshansky property level which takes into account the number of children, the family, the sex of the family head, and the farm/non-farm residence. Forty percent of the new money would be distributed according to the numbers of children whose families receive AFDC, regardless of the level of the payment received by such a family.

In short, this formula for the new money, has several advantages over the existing formula: First, it uses the up-to-date flexible and highly sophisticated Orshansky poverty measure; second, it counts all families receiving AFDC rather than simply those receiving AFDC payments of \$2,000 or above, so that AFDC families in all States will be counted; and third, it retains a con-

sistent ratio of 60 to 40 percent between the Orshansky children and the AFDC children. This will assure that we will not experience in future the same major shifts in title I allocations that we did in the past—as AFDC grew from less than 10 percent of the children counted for title I purposes in 1965, to 38 percent of the total number of children counted for title I purposes in 1973.

Mr. President, there are some other reasons for staying with the committee formula. It is important, I believe, to note that the funding distributions under this base year concept are based on very solid ground. The distributions that this bill would guarantee for the future are not just pulled out of the air. The distributions under this base year concept are precisely the distributions agreed to by the representatives of the House and Senate Appropriations Committee meeting in conference on last year's appropriations bill. They were the ones who agreed to the distribution formula and funding levels that local educational schools are receiving during the current school year. Our committee simply accepted their judgment and took it as the base year.

In addition, Mr. President, I would close by noting that the title I formula in the committee bill was adopted unanimously by the committee on a rollcall vote. That point should not be overlooked. It is rare for this kind of consensus to form on an issue that affects every State as directly as this one.

Mr. President, let me conclude by urging my colleagues to support the committee position on this bill.

#### TITLE I OF THE ELEMENTARY AND SECONDARY EDUCATION ACT

Mr. SCHWEIKER. Mr. President, the funds provided by title I have had a dramatic impact on the major urban centers of our country. These funds have provided the incremental difference between success and failure for hundreds of thousands of children.

It must be clearly understood that with shrinking tax bases and the inability of many urban districts to mount any type of new undertaking, the funds provided by title I are the difference between success and failure for many disadvantaged children.

Although still in their infancy, title I projects have reversed the trends toward drastic underachievement and have enabled school administrators and teachers to create favorable learning environments which maximize the probability of future success for our target-area children. Furthermore, evaluations indicate that community attitudes and parental participation have dramatically increased in a most positive way.

I would like to call to the attention of the Senate examples of some of the changes produced by title I projects in Philadelphia.

Over the past 5 years, comprehensive evaluations of the progress of ESEA title I children in Philadelphia have been undertaken on both programwide and project-by-project bases. A programwide assessment indicated that the negative rates of performance in reading for tar-

get-population children have been halted, and in their place exist consistently positive rates of change. Gains in reading achievement have increased by 75 percent since the inception of title I.

The contributions of ESEA title I can be seen even more dramatically in some of the individual projects.

Evaluations of a reading skills centers project have shown that pupils with the most serious reading problems have made substantial gains in reading achievement whereas nonparticipating students have not. The goal of improving reading comprehension at an average rate of two-book levels per year was reached by 47 percent of the pupils with severe reading problems. In addition, the goal to raise 80 percent of the pupils' oral reading skills to mastery level was achieved over a 3-year period.

English as a second language is an ESEA title I project which has successfully improved the English-speaking capacity of native Spanish-speaking pupils. Participating students made significantly greater gains than nonparticipants in all areas.

A paired schools science project is a science learning experience of 4,200 sixth-grade children. The funds provided for the project permit these children to attend morning sessions at the Franklin Institute on 7-week cycles. Evaluations for the past 5 years have found the paired schoolchildren scored significantly higher than matched nonparticipating students with respect to science achievement. More than 120 teachers in 40 schools have been involved in the use of the facilities as an extension of their classroom as well as learning new instructional procedures.

The findings of a 2-year longitudinal study of the attitudes and perceptions of 5,000 parents of Philadelphia schoolchildren indicate that parents of title I children are accurately informed about school affairs—including a knowledge about the ESEA title I projects in their school, and are active participants in school activities, and have positive opinions about their schools. It is important to note that these levels of participation and attitudes did not exist in 1965.

Evaluations required under title I have given administrators an opportunity to discover and choose among alternatives in order to improve instruction. The variety of projects developed and administered through compensatory education and the use of evaluation data have led to an era in which decisionmakers can apply new instructional strategies and practices in the deployment of available resources.

ESEA title I projects are helping us to determine what kinds of instructional programs and operational factors represent optimal learning conditions for the children in the target area. For example, target area children with severe emotional problems are most productive in a totally individualized instructional setting. For target children whose standardized test scores are more than 1 year below the national norm in reading, small group instructional settings are most effective. The rate at which target

children—taught in these kinds of instructional settings—acquire reading skills is proportional to the amount of time spent in the setting.

Teachers in ESEA title I schools are learning how to refine these promising techniques into more effective strategies, how to allocate their instructional material in a more individualistic manner. Furthermore, teachers are becoming more proficient in accurately diagnosing pupil needs and in exposing each child to a sequence of experiences that will maintain his motivation to learn.

There can be little doubt that title I has improved both the quality and quantity of services that the schools deliver. Pupils are also beginning to demonstrate proficiency in terms of what they are able to do with the services that are provided by the school.

This bill addresses itself to urban needs. It recognizes the impact that large concentrations of disadvantaged children have on a community. Although I have focused my earlier remarks on the Philadelphia public schools, I would like to insert at this point in the RECORD statements of several urban school district superintendents regarding the impact of title I on their cities.

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

DETROIT, MICH.

(By Dr. Charles Wolfe, General Superintendent)

Detroit schools are divided into Priority A (large amount of Title I funding), Priority B (moderate amount of Title I funding, and non-Title I). The school system tested all its fourth graders in 1968, 1970, and 1972. The results showed a substantial and continuous reduction in the percent of pupils more than one year below grade placement in reading in Title I schools. In four years, the number of Priority A students more than one year behind in reading fell from 66% to 43%. In Priority B schools, the corresponding reduction from 66% to 48%. By comparison, the reduction in non-Title I schools was from 44% to 38%.

The number of Title I schools reading at or above the city-wide mean increased from 15 to 30 in four years. The number of Title I schools whose percentage of low-achievers was lower than the national average increased from 0 to 18 in four years. Detroit also found a strong positive relationship between the amount of Title I services received and the reduction in reading retardation.

ESEA, Title I stopped the downward trend in reading and academic achievement and the gains must be converted to larger and permanent ones.

CLEVELAND, OHIO

(By Dr. Paul W. Briggs, Superintendent of Schools)

Title I students in Cleveland were compared on reading tests to students not in the Title I program. All comparisons were made between students starting at the same level. First graders in Title I reading projects advanced eight months; first graders not in Title I advanced six months. Second graders in Title I reading projects advanced 10 months; second graders not in Title I advanced seven months. Third graders in Title I reading projects advanced 10 months; third graders not in Title I advanced six months. To summarize, at the end of a year of reading instruction, Title I youngsters

surpassed non-Title I youngsters by an average of three months.

Similar comparisons were made of the mathematics achievement levels of third, fourth, and fifth graders. Third grade Title I students advanced nine months; those not in Title I advanced six months. Fourth grade Title I students advanced 12 months; those not in Title I advanced 10 months. Fifth grade Title I students advanced 11 months; those not in Title I advanced seven months. In mathematics as well as in English, after a year of instruction, Title I students were an average of three months ahead of non-Title I students.

As Dr. Briggs pointed out, "Title I children are achieving at a higher and better rate than non-Title I children from the same neighborhoods in the same schools—exposed to the same environment, but we have picked in Title I, of course, the children with the greatest problems and the most severe economic background . . ."

WASHINGTON, D.C.

(By Hugh Scott, Former Superintendent of Schools)

The George Washington University Research group investigated reading and mathematics gains over one school year. Title I students in the second, third, and seventh grades in Washington, D.C. schools averaged more than a one year gain during the year of instruction. In other words, Title I students surpassed the national average. In addition, students in the bottom quarter of the population gained an average of one year, three months in reading, and one year, four months in mathematics.

PORTLAND, OREG.

(By Dr. Robert Blanchard, Superintendent of Schools)

Students in disadvantaged schools in Portland were compared to students in non-disadvantaged schools. Disadvantaged pupils' reading and arithmetic scores were graphed relative to non-disadvantaged pupils' scores. For grade three, the graph shows a steady upturn beginning in the 1966-67 school year. In other words, beginning in 1966-67 Portland's first full year of compensatory education, disadvantaged third graders began catching up to the citywide average. The graph for seventh graders began a similar upturn in 1967-68. Fifth graders have stabilized their previous dropping scores.

Mr. SCHWEIKER. These data dramatically portray the enormous impact title I has had on our urban schools. The program must be continued with the formula in S. 1596 so that gains achieved with this funding can be sustained and expanded.

Mr. STEVENSON. Mr. President, the amendment offered by the Senator from Arkansas does not distribute funds equitably among all States. It takes substantial sums from some States and increases others by sizable amounts. This may make political sense, but it does not make educational sense.

School administrators have already hired teachers for the fall semester. Programs are already planned and materials already ordered. The amendment would create chaos in school districts across the country, if as a result of its adoption expected funds were suddenly not forthcoming. What are local educators to do, when teacher contracts can no longer be supported with Federal title I funds? Will local property taxes have to be raised to make up the gap?

The formula in the bill would give each school district in the country the same

amount of money it received this fiscal year. Each school district in the country would share in any increase in appropriations.

The largest areas in my State would be severely hurt by the adoption of the amendment of the Senator from Arkansas. Chicago, for example, would receive less funds under the amendment than it is currently receiving—\$50.7 million as compared to \$51.9 million. This is a loss in real dollars, in jobs of real teachers, counselors, and paraprofessionals and above all for the disadvantaged children. I see no justification for such a devastating cut. No one can argue that Chicago, Rockford, Peoria, East St. Louis do not need funds for the compensatory education of disadvantaged children. The children need the help if they are to become productive citizens.

This is not an urban-rural issue. Title I recognizes the national character of educational deprivation and a resulting Federal responsibility for assisting in meeting the costs of compensatory education. In order to survive and grow, title I must retain this national character, with all sharing in appropriations increases. This is only possible if my colleagues join in defeating the amendment and adopting the formula for distribution of funds contained in the committee bill.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the time for the vote on the McClellan amendment be transferred from 12:30 to 12:37.

The PRESIDING OFFICER (Mr. CHILES). Without objection, it is so ordered.

#### VISIT TO THE SENATE BY MEXICAN MEMBERS OF 14TH MEXICO-UNITED STATES INTERPARLIAMENTARY CONFERENCE

Mr. MANSFIELD. Mr. President, it is a great honor and a personal privilege to have the opportunity to present to the Senate of the United States our parliamentary colleagues from the United Mexican States. They are here under the chairmanship of Senator Enrique Olivares Santana, Chairman of the Senate Delegation, and Congressman Luis Danton Rodriguez, Chairman of the Delegation of the Chamber of Deputies.

We have just completed the business of the 14th Mexico-United States Interparliamentary Conference and the proceedings have, as always, been conducted with dignity, mutual understanding, and a mutual awareness of the problems which confront our two great Republics. As always, we have learned much from our Mexican colleagues and benefited greatly from their advice and counsel.

This interparliamentary conference is one of only two—the other being Canada—which is based on formal approval of the legislative bodies of the two countries. It is a heartwarming experience to be associated with such able and dedicated men and women who have represented their country with distinction, with integrity, and with honesty. To be associated with them is, indeed, an honor.

Mr. President, I would like at this time

to ask our colleagues from Mexico to stand, and I ask unanimous consent that there be a recess for a period not to exceed 5 minutes so that Senators, individually, as well as the Senate as a whole, can extend their respects to our neighbors and friends.

The PRESIDING OFFICER. Without objection, it is so ordered.

[Applause, Senators rising.]

RECESS

By unanimous consent, at 12:32 p.m. the Senate took a recess until 12:37 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. CHILES).

#### EDUCATION AMENDMENTS OF 1974

The Senate continued with the consideration of the bill (S. 1539) to amend and extend certain acts, relating to elementary and secondary education programs and for other purposes.

The PRESIDING OFFICER. Under the previous order, the question before the Senate is on the adoption of the amendment of the Senator from Arkansas (Mr. McCLELLAN), as amended. The yeas and nays have been ordered, and the clerk will call the roll.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The question is on agreeing to the amendment of the Senator from Arkansas, as amended. The yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. METZENBAUM. On this vote I have a pair with the Senator from Arkansas (Mr. FULBRIGHT). If he were present and voting, he would vote "yea." If I were at liberty to vote, I would vote "nay." I, therefore, withhold my vote.

Mr. MANSFIELD. On this vote I have a pair with the Senator from Alaska (Mr. GRAVEL). If he were present and voting, he would vote "nay." If I were at liberty to vote, I would vote "yea." Therefore, I withhold my vote.

Mr. ROBERT C. BYRD. I announce that the Senator from Arkansas (Mr. FULBRIGHT), the Senator from Alaska (Mr. GRAVEL), the Senator from Hawaii (Mr. INOUE), and the Senator from Michigan (Mr. HART) are necessarily absent.

I further announce that, if present and voting, the Senator from Michigan (Mr. HART) would vote "nay."

Mr. GRIFFIN. I announce that the Senator from Illinois (Mr. PERCY) is necessarily absent.

I also announce that the Senator from Arizona (Mr. GOLDWATER) is absent on official business.

I further announce that, if present

and voting, the Senator from Arizona (Mr. GOLDWATER) would vote "yea."

The result was announced—yeas 56, nays 36, as follows:

[No. 196 Leg.]

YEAS—56

Allen	Domenici	McClure
Baker	Dominick	Montoya
Bartlett	Eagleton	Nelson
Bayh	Eastland	Nunn
Beall	Ervin	Packwood
Bellmon	Fannin	Pastore
Bennett	Fong	Pearson
Bentsen	Gurney	Proxmire
Bible	Hansen	Roth
Biden	Hartke	Scott
Brock	Haskell	William L.
Byrd	Hatfield	Sparkman
Harry F., Jr.	Helms	Stennis
Cannon	Hollings	Symington
Chiles	Hruska	Talmadge
Church	Huddleston	Thurmond
Cook	Johnston	Tower
Cotton	Long	Young
Curtis	Mathias	
Dole	McClellan	

NAYS—36

Abourezk	Humphrey	Pell
Aiken	Jackson	Randolph
Brooke	Javits	Ribicoff
Buckley	Kennedy	Schweiker
Burdick	Magnuson	Scott, Hugh
Byrd, Robert C.	McGee	Stafford
Case	McGovern	Stevens
Clark	McIntyre	Stevenson
Cranston	Metcalfe	Taft
Griffin	Mondale	Tunney
Hathaway	Moss	Welcker
Hughes	Muskie	Williams

PRESENT AND GIVING LIVE PAIRS, AS PREVIOUSLY RECORDED—2

Mansfield, for  
Metzenbaum, against

NOT VOTING—6

Fulbright	Gravel	Inouye
Goldwater	Hart	Percy

So Mr. McCLELLAN's amendment (No. 1304) was agreed to.

Mr. McCLELLAN. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. MANSFIELD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The question now recurs on agreeing to the amendment of the Senator from Florida (Mr. GURNEY). Who yields time?

Mr. PELL. Mr. President, I yield to the Senator from Florida.

Mr. GURNEY. Mr. President, I ask for the yeas and nays on my amendment.

The yeas and nays were ordered.

The PRESIDING OFFICER. Who yields time?

Mr. PELL. Mr. President, I yield 1 minute to the Senator from Oklahoma.

Mr. BARTLETT. Mr. President, I ask unanimous consent that Tom Cantrell of my staff be accorded the privilege of the floor during the consideration and vote on the FEO bill and also the Emergency Energy Authorities Act.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. PELL. I yield to the Senator from Hawaii.

#### SPECIAL COMMITTEE ON AGING MINORITY REPORT

Mr. FONG. Mr. President, printed copies of the 1974 Special Committee on Aging annual report, "Development in

Aging: 1973 and January-March, 1974" filed with the Senate Monday, will be released to Congress and the public tomorrow.

The entire report, including minority views and appendices which include reports by Federal agencies on activities during 1973, deserves attention by all Members of the Congress.

I especially urge careful review of the minority views by Senators HANSEN, GURNEY, BROOKE, PERCY, STAFFORD, BEALL, DOMENICI, BROCK, and myself. Because of their importance, I ask unanimous consent that they be printed in their entirety as part of the CONGRESSIONAL RECORD immediately following these remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. FONG. While reiterating our strong support of prompt action to meet immediate needs of older Americans, including problems generated by inflation—which we have pointed to as the No. 1 public enemy of the elderly for almost 10 years—we decided to use our statement to raise questions to which all of America should give prompt answers in developing both near- and long-term solutions to the problems of aging.

Through a series of more than 200 questions, we advance the position that our Nation must take a new look at aging to develop a social and economic policy which will offer all older Americans maximum opportunity for independent living with dignity, comfort, honor, and freedom of choice.

We emphasize our conviction that America has failed to recognize the individuality of its 21 million citizens past 65. Responsibility for this failure must be accepted by leaders in the nongovernmental sector of national life and by Government agencies at all levels.

If our Nation is to pursue an enlightened policy on aging, consistent with realities of the 20th century and lifelong needs of young and old, it is essential that we stop thinking of the elderly simply as problems and begin seriously examining their individual needs and capacities as persons. We must stop arbitrary discrimination against older Americans on the basis of age. Even as we develop programs to help the elderly, we must be sure that such programs are not so devised as to erect barriers to self-fulfillment.

In this process, it is not enough for policies aimed at first-class citizenship for America's 21 million persons past 65 to be examined by Government agencies alone. Leaders in the private sector must engage in a soul-searching look at individual rights of older persons. This is especially important with reference to policies on pensions, retirement, and employment.

Positive attitudes toward aging in the long run are no less important to the young and middle aged than to those who are now old. In view of possible further increases in life expectancy and the need for lifelong preparation for later years, the challenges of aging clearly become challenges for all Americans.

The latter is partially emphasized by

estimates which show that within the next 75 years over 220 million Americans now living or yet to be born will celebrate their 60th birthday. By the end of that period more than 15 percent of the population are expected to be over 65. At least 75 percent of persons now aged 30 will reach age 65. The young and middle aged have a stake in the Nation's policies on aging which goes far beyond their responsibilities for giving financial support to programs in support of the elderly. The quality of life which the young shall enjoy in the future when they become aged is also at issue.

The questions raised in our minority report—which range from such broad items as the future of social security, private pensions, retirement policies, transportation problems among the elderly, housing, medical care, and Federal tax treatment of persons throughout life to such specifics as the range of services within a senior citizens center—call for an informed populace. We believe the questions we raise have too long been the special province of older persons themselves, or professionals in aging and other narrow disciplines.

Solutions of America's "problem of aging" demand a new social consciousness based on facts, on the best available professional opinions and on understanding of older Americans' own goals in life.

In the very important section of the minority report concerned with expanding individual opportunity for satisfying life roles for older Americans, we emphasize the plurality of this need. Too often national policies, as laid down in public laws and as set forth in social and economic custom with sometimes even more devastating effect, have been developed as if there should be a single role for older persons. Short of total neglect, nothing in aging is more injurious to the interests and needs of either the Nation or its elders than this oversimplification.

It is true that there are special problems which face many older Americans for which valid group responses must be developed, but such group responses should take into account the individual variations among those past 65—variations which may be greater than those within any other age group.

#### EXHIBIT 1

SPECIAL COMMITTEE ON AGING 1974 ANNUAL REPORT—MINORITY VIEWS OF MESSRS. FONG, HANSEN, GURNEY, BROOKE, PERCY, STAFFORD, BEALL, DOMENICI, AND BROCK

It has been our custom in the annual Special Committee on Aging Minority Reports since 1961 to review progress and make specific recommendations for improvement in national efforts to meet needs of older Americans. This year, instead, we raise some questions to which neither society, nor government, has given proper attention.

We reiterate our support of the positive philosophy of aging inherent in our previous recommendations. We endorse continued effort to enact our proposals which have not yet been accepted and further action on those which have been fulfilled only partially.

Even as we press for prompt action on immediate needs of older persons, we believe that truly acceptable policies in aging are unlikely of fulfillment until Americans of all ages understand how questions such as

we shall raise here affect them collectively and individually throughout life.

Our decision to emphasize now a plea for public attention to questions comes in part from our belief that the issues too long have been the special province only of older persons themselves or of professionals in aging and other narrow disciplines. In no way is it to be construed as minimizing our concern for immediate and serious problems now facing the elderly.

On the contrary, we believe that America's debt to its aged is overdue and should be paid as rapidly as practical. But all of the specific problems in aging—*income adequacy, health care, housing, transportation, social involvement, work opportunities, social services and a host of others*—must be examined in the broad context of life-quality goals for all citizens and recognition that the issue in aging is the right of older Americans to fully-equal status in our national community. We believe this issue has not been faced squarely by society.

**MOST IMPORTANTLY THE NATION HAS FAILED TO RECOGNIZE THE INDIVIDUALITY OF ITS 21 MILLION CITIZENS PAST 65.** Responsibility for this failure must be accepted by leaders in the non-governmental sector of national life and by government agencies at all levels. Both private and public forces that influence individual destinies have too long ignored positive elements in aging brought by the 20th century.

Full review of the questions we raise is imperative to a proper response to problems faced by older Americans today. Intelligent answers to them are equally essential if today's young and middle-aged Americans are to avoid for themselves the type of second class citizenship which too often faces their seniors today.

America should address the questions with recognition that all of life is a continuum—**A CONTINUUM CHARACTERIZED BY CHANGE, BUT ONE WHICH SHOULD NOT INVOLVE SHARP DIVISION AND SEGREGATION OF PERSONS BY REASON OF AGE.**

It is not enough that many older Americans do have satisfying lives in society. There are millions to whom opportunity for this basic right is denied. This denial probably will continue as long as we pursue segregation based on age, push the elderly outside of America's mainstream and fail to respond adequately to their needs as individual citizens.

#### RECENT PROGRESS

Re-direction of attention to broad questions in aging is particularly appropriate now in view of major positive specific actions on behalf of older Americans in recent years.

Substantial forward steps during the past year have included:

(1) Social Security benefit increases of 11 percent, continuing a process which has brought an increase of 67.5 percent in the past 4 years and 100.7 percent during the past 10.

(2) A new Supplemental Security Income (SSI) program has been inaugurated, which offers a federally guaranteed monthly income of \$140 per individual and \$210 per couple past 65. For the more than two-thirds of the elderly who receive regular social security benefits, respective monthly income guarantees for individuals and couples are \$160 and \$230. Because \$65 of monthly earned income is disregarded (and half of earnings above \$65), the Federal supplement can raise income levels subject to SSI to over \$225, individual and \$295, couple. All of these monthly income levels will rise \$9 effective June 1, 1974.

(3) The federally financed hot meal service—in congregate settings and with delivery to home-bound individuals—has been expanded so as to provide five meals a week to approximately 200,000 older persons.

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(4) H.R. 3153, in conference between the Senate and the House of Representatives to resolve differences, offers further Social Security Act amendments, including improvements in Medicare.

(5) Private pension reform legislation in H.R. 2, likewise in conference, promises significant improvement in non-governmental efforts to provide retirement income with safety and equity.

Action in aging during the past 10 or 20 years, particularly since the Eisenhower White House Conference on Aging in 1961, shows a growing public awareness of the "problem of aging." This is far from surprising with 15 percent of the adult population now over 65 and 36 percent over 50.

"The problem of aging" receives increasing attention from individuals, discussions by communications media, and action programs by various organizations. Often the ideas emerging from public concern with the "problem of aging" unfortunately have been at cross purposes, have ignored root causes of the "problem" and valid concepts of what older persons are or want.

#### THREE BASIC QUESTIONS

What is needed now is a new look at aging to develop a new national social and economic policy which will offer all older Americans maximum opportunity for independent living with dignity, comfort, honor, and freedom of choice.

Equality of status for older persons must be the key ingredient. This should carry with it all the rights and life-style alternatives inherent in first class American citizenship. Intensified public attention should be given to three basic questions:

I. How can expression of their singular personality by the 20 to 30 million older Americans be strengthened through wide individual opportunities for satisfying life roles?

II. How can America's private sector and government at various levels meet their several responsibilities for expanding freedom of choice by older Americans in society's economic and social life?

III. How can the people as a whole, young and old, come to awareness of new 20th century implications of aging in relationship to social policies and their own individual needs throughout life?

Our attitude is reflected in two key words which appear in each of our three initial questions: *individual and life*. We abhor the too prevalent practice of looking at older Americans as statistics or objects of obsolescence. As long as there is life, there is individuality. Social rejection of persons because of age is indefensible even in a "throwaway" society.

Solutions of America's "problem of aging" demand a new social consciousness based on facts, on the best available professional opinions and on understanding of older Americans' own goals in life.

#### OPPORTUNITY FOR SATISFYING LIFE-ROLES

I. How can expression of their singular personality by the 20 to 30 million older Americans be strengthened through wide individual opportunity for satisfying life roles?

As the Nation addresses itself to this question it is important to emphasize its plurality. Too often national policies, as laid down in public laws and as set forth in social and economic custom with sometimes even more devastating effect, have been developed as if there should be a single role for older persons. Short of total neglect, nothing in aging is more injurious to the interests and needs of either the nation or its elders than this over-simplification.

It is true that there are special problems which face many older Americans for which valid group responses must be developed, but such group responses should take into

account the individual variations among those past 65—variations which may be greater than those within any other age group.

In this connection quotation from the Report by the Retirement Roles and Activities Section to delegates of the 1971 White House Conference on Aging appears appropriate. The introduction and recommendations of this section report said:

As we grow older, we continue to need to occupy roles that are meaningful to society and satisfying to us as individuals. However, we emphasize the primacy of such basic necessities as income, health and housing and these needs must be adequately met.

Twenty million older people with talents, skills, experience and time are an inexhaustible resource in our society. We represent all segments of the population; our abilities, our education, our occupational skills, and our cultural backgrounds are as diverse as America itself.

Given proper resources, opportunities and motivation, older persons can make a valuable contribution. We are also capable of being effective advocates of our own cause and should be included in planning, in decision making and in the implementation of programs. Choice of roles must be available to each older person despite differences in language and ethnicity, and limitation because of disability or level of income. The lives of Americans of all ages will be enriched as the Nation provides opportunities for developing and utilizing the untapped resources of the elderly.

#### RECOMMENDATIONS

1. Society—through government, private industry, labor, voluntary organizations, religious institutions, families and older individuals, must exercise its responsibility to create a public awareness of changing life styles and commitments in a continuous life cycle. Together they should discover and implement social innovations as vehicles for older persons to continue in, return to, or assume roles of their choice. These innovations should provide meaningful participation and leadership in government, cultural activities, industry, labor, welfare, education, religious organizations, recreation and all aspects of volunteer service.

2. Program efforts to meet role problems and to create new role opportunities should be designed to serve all segments of the older population. Priorities should be determined according to local and individual needs; special effort must be made to include persons who might otherwise be excluded—the impoverished, the socially isolated, the ethnic minorities, the disabled and the disadvantaged.

3. Society should adopt a policy of preparation for retirement, leisure, and education for the life off the job. The private and public sections should adopt and expand programs to prepare persons to understand and benefit from the changes produced by retirement. Programs should be developed with government at all levels, educational systems, religious institutions, recreation departments, businesses and labor to provide opportunities for the acquisition of the necessary attitudes, skills and knowledge to assure successful living. Retirement and leisure time planning begins with the early years and continues through life.

No one would quarrel with the essential need for income adequate to purchase the necessities of life nor with the need for access to goods and services necessary to quality in life—*food, housing, medical care, social opportunities*. The real question is "How can we meet these obvious common needs without creating new barriers to individual fulfillment, without so segregating older Americans that they become second class citizens or virtual wards of the State?"

THE GOAL: FULFILLMENT OF INDIVIDUAL PURPOSE

ANY DISCUSSION OF ECONOMIC AND SOCIAL ROLES OF OLDER AMERICANS MUST BEGIN WITH SENSITIVITY TO THEIR LIFE-LONG HOPES AND OBJECTIVES. IT MAY BE THAT THE MORE MODEST THEY ARE, THE GREATER ATTENTION THEY SHOULD RECEIVE. THERE SHOULD BE A DELIBERATE CONSCIOUSNESS OF THE ELDERLY AS PERSONS WHO HAVE DIFFERING PURPOSES IN LIFE. OUR NATIONAL PURPOSE SHOULD AIM AT FULFILLMENT OF INDIVIDUAL PURPOSE

It is appropriate, therefore, to look at some of the kinds of dreams which older Americans have had. What clues may they offer, even in their variations, to sound national policies in aging? To what extent have dreams of the past been achieved? To what extent have aging policies created barriers to their fulfillment? Are there common factors to which, nonetheless, different kinds of responses should be made?

For many, but not all, the dream has included ownership of a home, free and clear. What is our responsibility to the many who succeeded? How can we meet the problem of rising property taxes which now threatens hundreds of thousands who have attained this goal? With whom does responsibility for appropriate answers rest?

How do Federal tax laws impede free use of assets in homeownership by the old? How serious a problem is such inflexibility? When an older married couple, who have placed all their life savings in purchase of a home adequate for a growing family, finds it appropriate to sell that home and purchase a smaller one or use the savings it represents in other beneficial ways, how much of their assets are expropriated through capital gains taxes on paper increments related to inflation? How do such losses in real wealth interfere with life styles they have earned? This, discussed more fully later, and the comparable paper increment problem which may be faced by an older farmer or other small business operator, illustrates how tax policy can impede freedom of choice by those who have succeeded in preparing for retirement.

Many older Americans, but not all, have dreamed of the day when they could leave the pressures of a job at which they had to work to pay family bills whether they like it or not, and could relax doing the things they always wanted to do but could not—education, travel, recreation.

For some in business, professions or other skilled vocations, the dream may have included a hope for a life-style change permitting them to share their practical knowledge with the young. For some, who worked at a sedentary occupation, it may have been a desire to use their hands, with or without pay. For some in manual work, such as the autoworker facing the assembly line's monotony, it may have been a chance for mental activities or opportunities offering a wide variety of experiences.

How well are we meeting the needs associated with desires for such life-style changes? How does government policy at all levels encourage or impede fulfillment of such dreams? How fully is the private sector, business, labor, et cetera, opening or closing doors to personal fulfillment in later years?

Still other older Americans have given clear expression to their dream that they be permitted to continue their chosen vocations as long as and to the extent that their personal abilities permit. Hundreds of thousands successfully pursue this choice in later life. How many more are there who would like to do so, but are denied the right by corporate decisions, especially in the private sector of society?

How can policies and individual actions related to age best permit full expression of such varied dreams?

ESSENTIAL TO ADEQUATE NATIONAL RESPONSE TO THIS KEY QUESTION IS A NEW LOOK AT RETIREMENT AS SUCH AND WHAT IT MAY OR SHOULD MEAN TO SATISFYING LIFE-ROLES FOR OLDER AMERICANS

TIMING AND CHARACTER OF RETIREMENT

A most obvious question for both society and the individual is: "When should a person retire?"

Neither public nor private leadership has given adequate attention to this question or current research findings on it. Instead society has denied the individual a choice through blind adherence to 19th century concepts of aging.

It is well known that Germany's Bismark selected age 65 as the retirement age for his social programs a century ago because in his day so few people reached that age. What does our scientific community, as represented by both physical and social scientists, think of its validity today?

Is 65 too high or too low an age for division between "young" and "old"? In view of diversity among individuals, can any age properly be designated as a dividing line?

Does it make sense to force the professor into full retirement at 65 or 70, when he may then be at the height of his teaching powers? Is it reasonable to expect the steelworker who has been facing a blast furnace since he was 18 to wait until he is 60 or 70 before leaving its heat? Are different retirement provisions desirable for American Indians who have a life expectancy of little more than 40 years, or for members of the Mexican-American community for whom the age 60 may, as indicated in Committee on Aging hearings, be far advanced? How shall we approach special problems of other minorities, including the important 10 percent of our population who are black and have faced deprivation throughout their lives?

Related to these questions are they may affect individuals or special groups are the broadgaged social and economic implications of current trends toward earlier and earlier retirement.

Are practices which tend to place persons "totally in" or "totally out of" the work force, by reason of age, in the best interest of older persons? Of employers? Of the Nation as a whole? Or should there be a conscious effort to provide opportunities for flexibility in retirement and employment practices aimed at gradualism in work-force withdrawal and greater individual choice?

Some gerontologists suggest that lengthening life and expanding living capacities during later years call for delay in age of retirement. Some suggest policies by employers which will permit and encourage a gradual phasing out in employment through such devices as periodic reductions in days or hours of work, use of longer vacation periods and sabbatical leaves in middle and later years.

How do these ideas relate to recent experience which has seen average retirement age falling steadily?

Since probable income required to satisfy normal desires may be higher when an individual retires early, how does the trend toward earlier retirement affect ability of older persons to pay their bills? How far can the Nation go in expecting the producers in society to carry the load for nonproducers? To the extent that producers may be caught in the squeeze created by simultaneous later and later entrance into the work force by the young on one side and earlier and earlier departure from it by the old on the other, what may be the workers' reactions as new demands are placed on them?

Will their own hopes and expectations of

early retirement make the young and middle-aged worker willing to pay the bill? Or is there risk that continuation of retirement trends may so overburden retirement funds as to threaten decent living standards for the old as a whole? What may be the effect on those who need help most? Is the claim sound that the Nation can easily support a policy of earlier retirement because of increasing production, or will the old still be denied their fair share because of heightened personal demands by their juniors?

It goes without saying that rising levels of education and health stimulate interests and appetites among older Americans which will not be satisfied with yesteryears' simple standards of food, clothing, and shelter. This is evident among today's elders. Progress in living standards has both increased their numbers and strengthened their capacities in comparison with their grandfathers. It has brought them a zest for living rarely satisfied by three meals a day and a comfortable rocking chair. How do the implications of this continuing revolution in aging relate to retirement patterns in America?

IMPLICATIONS OF INCREASED LEISURE TIME

The question of increased leisure time resulting from greater use of labor-saving devices and techniques and prospects for further automation has long been a serious concern to social scientists. How can both young and old be made aware of life-long implications of this issue to them as individuals and to society?

How shall increased leisure time be apportioned? Shall it be concentrated mainly during the later years through earlier and earlier retirement? Should leisure time, instead, be spread more evenly throughout a life-time by emphasizing shorter hours and shorter work weeks?

What are the social responsibilities of business and labor in strengthening individual choices in use of leisure time? Are their decisions, which dominate national practices, being made with full understanding of long-range changing patterns of aging as seen by economists, sociologists, gerontologists, and other experts?

Whatever decisions are made on use of leisure, it will continue as a major factor in lives of older Americans. Their needs will require increasingly effective responses by society.

Leisure without income sufficient for its joyful use is a hollow sham. Leisure without ready availability of services can be negative even when income appears adequate. How can society meet its responsibilities toward assuring retirees opportunity for the golden years?

When will we give proper priorities to development of service programs to strengthen retirement activities for all older persons?

How should such responses acknowledge unique problems faced by minority groups? How can they be modified to accommodate differences in community settings—urban, suburban, rural?

The recently expanded hot meals program is one example of the kinds of programs to which such questions might appropriately be applied. This program has clearly demonstrated its value for many older persons both nutritionally and socially. Another example is offered by senior citizen centers sprinkled throughout the land. In the inevitable competition for limited tax dollars, how far can government, Federal, State and local, go in providing for such activities? Is there an untapped capacity for meeting such needs within the private sector? If so, how can it be activated?

Adequacy of response to needs in housing, medical care, social services and other essentials to acceptable living standards—discussed elsewhere in the Special Committee on Aging report and in previous minor-

ity reports of the committee—are obviously of consequence to the status of older Americans. Equally obvious is the fact that so far the record in these areas has been spotty.

How can the young and middle-aged, business, labor and government, be made fully aware of the transportation problems faced by the old, and their relationships to life quality? How can America solve them?

This "sleeper" problem, brought out by the 1971 White House Conference on Aging, because of its almost universal impact deserves special re-emphasis at this time.

As the Nation grapples with transportation needs for all, can we hope that unaccustomed problems faced by the young because of energy shortages will give them a new understanding of the kinds of privations long suffered by hundreds of thousands, perhaps millions, of older Americans?

Isolation and loneliness, the terrifying twins that can threaten the elderly are perhaps the most negative element in aging. They are realities far too often for far too many older persons, and are commonly a direct product of inadequacies in transportation. To them must be added difficulties faced by the elderly even in such simple chores as getting to the grocery, drug store, or to the doctor.

How can Americans meet the critical need for dependable, economical transportation? What are the full dimensions of the problem? How does the problem vary in different types of communities—inner city, rural, suburban? To what extent can the issue of transportation for the elderly be divorced from unmet transportation needs of the total population? Can special transportation services for the elderly be effective without more adequate public transportation facilities for all?

Our brevity in raising these questions on transportation does not minimize their importance. On the contrary, the complexity of the problem almost staggers the imagination. But few issues are more important in helping the aged attain even the simplest satisfactions in life.

#### VARIABLES WITHIN THE OLDER POPULATION

How important are differences in age, sex, social circumstances and geographic location within the over 65 population?

How much do such needs among the retired population differ by reason of age? Is or is not a more vigorous type of activity needed by those below age 75 or 80 than among the most elderly? How does the ability to meet their own needs differ among older persons of various ages? How do such age differentials apply among minority groups? What are implications of such questions for the design of services?

More than 60 percent of those past 65 are under 75; 20 percent are over 80; 8 percent are over 85. Disregarding individual variations are there any general patterns which distinguish such age groups? Are there differences in aspirations, appetites, needs, abilities or sense of responsibility? Do census and other reported data give us accurate clues relating to who, what and where they are, or is statistical grouping too imprecise?

Are there differences between older men and older women in achievement of satisfying social and economic roles for each? How are these influenced by their respective patterns of life prior to 65? If so, are changing work patterns by women narrowing or broadening such differences?

How do differences in family status affect the aspirations, needs, and social or economic roles of older Americans? To what extent, if any, do we discriminate in aging policies for or against married couples, single persons, widows and widowers?

In their concern for satisfying roles in society and individual sense of worth, persons past 65 appear little different from their younger fellow-citizens. As has been ob-

served earlier, for those who retire it may be that the emphasis is shifted from work-a-day job to voluntary service or service within their own families. It may be that retirement is used as a base for second careers, or appropriate modifications of lifelong pressures. It may be that retirement is used for personally satisfying leisure and learning activities denied in youth or for personal growth unrelated to a job.

To what extent, in the various possible groupings of the 21 million persons past 65—does a sense of worth and happiness depend on service to others?

How can individuals who strongly feel this need be helped through opportunities for non-paid volunteer services such as those which have had increased Federal emphasis in recent years? To what extent is it practical for willing older persons with limited economic resources to participate? Is it necessary to expand earnings opportunities as part of volunteer programs?

To what extent does opportunity for continued productive activities, with or without pay, influence the health of older persons? How can this balance against costs of such programs? Again, are there differences in this regard related to age, sex or ethnic factors among persons past 65? How do they interrelate to such other influences as personal income and education levels?

How important to older Americans are opportunities for jobs, full time or part time?

At best the answers to this question are not clear. It is apparent, however, that the vast majority of persons past 65 strongly resent business customs and government actions which limit their rights to jobs. This resentment of second class citizenship is voiced by persons over 65 who are fully retired, persons who are out of work only because of compulsory retirement and persons who are actually working full time or part time.

Our purpose here is to re-raise broad questions to which national leadership, private and public, should give priority in decisions related to older persons in a changing world.

To the extent that efforts have been made—by Congress, by White House Conferences, by labor leaders, by business, by organizations of older persons—to develop answers, there has always been a risk of oversimplification. In the days ahead we believe it imperative that policymakers give new emphasis to the complex pattern of life among today's 21 million persons over 65 and those who will take their places in the future.

When we talk about policies in aging, we give concern to hundreds of millions of Americans including those now in their infancy. If society continues to ignore the wide variations in hopes, aspirations and unmet needs among those who are now old, it denies them their valid rights as Americans to life, liberty and the pursuit of happiness. If society ignores the individuality of those who will become old tomorrow, it no less denies their rights to personal versions of the American dream.

Inherent in our questions on roles in aging is our long-time insistence as members of the Senate Special Committee on Aging that older Americans are entitled to first class citizenship with maximal individual choice. We raise these questions, some of which will be re-emphasized below because of our growing concern about our Nation's persistence in outmoded concepts of age and older persons.

#### PRIVATE SECTOR AND GOVERNMENT RESPONSIBILITIES

II. How can America's private sector and government at various levels fulfill their several responsibilities for expanding freedom of choice by older Americans in society's economic and social life?

The wording of this question rejects the idea, voiced too often, that there are specific areas of responsibility in aging which should be assigned exclusively to any of America's

social institutions—be they Federal, State, or local government agencies or labor unions, professional societies, business corporations, or other private agencies. Few if any of the thousands of impediments to free choice by older Americans can be successfully attacked through simplistic approaches or allocations. The people and their needs are pluralistic; so too must be responses to them.

America's approach to needs of older persons calls for effective partnership of all its great social forces using the strengths of each even as we avoid their weaknesses.

#### TRANSPORTATION

Transportation needs of older Americans, to which emphasis was given in the previous section of these views affords a good example.

Is the transportation problem one which can be met only through massive Federal expenditures? Or should Federal emphasis be given to creation of a climate in which the resources of private enterprise can be stimulated to meet the problem? Or should there be a combination? How does experience with the postal service, which sees profit-oriented companies successfully competing for its business, relate to these questions?

How do alternative solutions to the unique transportation problems of the cities and the rural areas, where public transportation is sometimes nonexistent, relate to basic financial problems local communities face? Is Federal or State subsidy needed? If so, to what extent and in what form? Can such subsidies be devised so as to give equitable treatment to all citizens regardless of residential circumstances? If not, whose needs should receive greatest or first attention?

To what extent have Federal, State, or local regulatory agencies stimulated or stifled development of public transportation?

The transportation problem, as observed previously, deserves special emphasis now because of the possibility that recent developments may bring to the young and middle-aged a new understanding of long-time problems faced by the elderly. Some of the special characteristics of this problem in aging are discussed at length elsewhere in this Special Committee on Aging report. We concur in the importance of seeing that new responses to the problem give full consideration to these needs.

Elsewhere in this committee report there appear detailed discussions of many other problems faced by older Americans. We agree emphatically that there should be prompt action to meet them. Action which fails to respond to the kinds of broad questions we are now raising, however, invites continued short-fall or misdirection in problem responses.

#### INFLATION

Before pursuing the complicated questions about interrelated private and public responsibilities for adequate incomes among older Americans, it is appropriate that we reaffirm our serious concern about rising costs of living.

The most serious problems of today's older Americans are those generated by the continuing inflation spiral. As repeatedly observed in previous Special Committee on Aging minority reports over the years, inflation is the No. 1 Public Enemy of older America. No one needs to be told that for many the problem is reaching crisis levels.

That inflation rates have been lower in this country than elsewhere is small comfort. That much of the recent inflation acceleration has sprung from factors beyond our own control, such as the petroleum shortage, in no way reduces need for positive action by America. Control of rising living costs demands highest national priority.

We have noted in the past that unnecessary Federal expenditures and costly involvement in foreign wars contribute seriously to erosion of the dollar's purchasing power. We shudder at the thought of inflation problems

which would now prevail if we were still involved in the Viet Nam War.

Essential as reduction in ill-considered, unjustified and wasteful Federal expenditures is, however, it is apparent that sound fiscal policies alone are not enough. In the face of sharply increased worldwide demand for goods and services, meeting the challenge of inflation also calls for increased productivity by America. Perhaps one source of increased productivity may be wider use of older Americans who want to continue work, full time or part time. Unquestionably, full cooperative effort by all elements of society, public and private, is needed to control the complex factors which fan the fires of inflation.

#### SSI: SUPPLEMENTAL SECURITY INCOME

Even without the universal reductions in older Americans' purchasing power to which they have been seriously subjected since 1965, there are many elderly whose incomes have always been inadequate for even the barest necessities of life. There are others for whom minimum subsistence may be available, but who lack simple comforts and amenities of life to which they should be entitled.

The recently inaugurated Supplemental Security Income (SSI) program establishing a new Federal income floor for persons past 65 is a giant stride to help those with lowest incomes. Although improvements are needed to meet the goals as originally envisioned by the administration and Congress, SSI reflects new national recognition of one major responsibility of the Federal Government.

New as SSI is, several questions about its performance and future deserve early answers. Is the SSI income floor adequate? How many people are benefiting? How many are receiving supplements which give them only the minimum SSI income standard? What is the numeric distribution at various levels for those who qualify for more than the minimum because of "disregarded income," such as \$20 of Social Security benefits and part of earned income? How clear is the understanding of such "disregards" among potential SSI beneficiaries? How many of the people expected to benefit have failed to qualify? Are all who are entitled to SSI aware of its availability to them?

Without answers Congress and the administration will be unable to make modifications required if SSI's response to income needs is to be fully effective.

Government acceptance of responsibility for basic minimum incomes through SSI, and individual State supplements to it, is only part of the picture. Society has an income responsibility to older Americans which goes far beyond acceptable subsistence standards.

Effective combination of private initiatives and Government programs are necessary if we are to attain our goal of incomes that offer older Americans fullness of opportunity in vigorous pursuit of personal objectives.

How shall an appropriate mix of public and private income programs and other income sources, including earnings and individual savings, be developed to achieve this purpose with fairness to all? This question deserves thoughtful re-examination by all segments of society with recognition of the special genius each may offer in meeting the need.

#### OASDI UNDER SOCIAL SECURITY

Any appraisal of income adequacy must include questions about the old-age, survivors and disability insurance (OASDI) provisions of the Social Security Act. Since roughly two-thirds of the current elderly now receive benefits and 90 percent of the younger population is covered under OASDI, it is a national imperative that there be constant reassessment of its performance and ways to improve it.

Questions about OASDI which follow—including those about its interrelationships to

other economic factors in American life—are among those which we felt should be given continuing full-time review by an independent bipartisan Social Security Commission when we recommended its creation in our minority report 2 years ago.

We believe that Social Security, as the Nation's biggest and most pervasive income program, deserves no less than constant scrutiny and overview by a competent agency independent of its administration.

As we said 2 years ago, nothing in our recommendation implied criticism of the program's mechanical operation under the Social Security Administration. To the contrary, we believed that the Social Security Administration, under both Republican and Democratic Presidents, had been a model of efficient and fair performance. We did raise a major question, however, as to the propriety of leaving in the hands of the administering agency the evaluation of its economic effectiveness or of relying so heavily on it for policy recommendations. We believe this question is still valid, perhaps more than ever.

Our recommendation for an independent bipartisan Social Security Commission, which was given legislative form through Senator Fong's introduction of S.J. Res. 48, included clear intent that the commission be responsive to and of assistance to the Senate and House of Representatives and that a part of its membership be named by congressional leadership.

The first question regarding OASDI, as distinct from Medicare and SSI, is suggested by recent observations of some professionals in the economics of aging. They raise the question because of major benefit increases, including automatic living cost adjustments, during the past 4 years simultaneous with development of the new SSI program.

Has OASDI reached or approached its zenith as an instrument in providing retirement income to older Americans? If so, to what alternative mechanisms should the nation turn to assure adequate incomes in old age? If not, what reasonable ceiling should apply in its expansion and what emphasis should be given in further growth?

All other questions impinge on how the Nation answers this fundamental question about OASDI's ultimate magnitude. The answer will reflect public opinion regarding retirement income responsibilities of government, private financing systems and individual savings. It will have serious impact on America's entire economic system.

If there is to be further OASDI expansion, to what purposes should the necessary additional taxes be directed? Should they be used for across-the-board increases? For correction of inequities in the tax-benefits relationship—such as those experienced by working couples, persons who continue work after 65, and unmarried individuals? For increases in the number of retirees through lowering the eligibility ages for benefits? For higher benefits to those whose earned incomes have risen steadily throughout life by calculating benefits on the highest 3 or 5 years of covered earnings? For increased minimum benefits to persons with long attachment to the work force at lowest wages?

How far can the Federal Government go in raising taxes necessary to an expanded OASDI? In a very real sense this might be described as the "\$64 billion" question. Are complaints received by Members of Congress about Social Security tax increases simply a concern by a small percentage of taxpayers, or do they reflect widespread discontent? How does this relate to evaluations of future changes in OASDI?

For the most part young and middle-aged citizens apparently have gladly accepted tax burdens necessary to provision of current OASDI retirement benefits. For this they deserve commendation. But economists agree

that, no matter how well motivated toward their elders the young are, their willingness to accept responsibility for retirement income to others largely depends on confidence that they in turn will receive comparable benefits when they themselves become old. This emphasizes the importance to today's older Americans of assurance to their juniors that current and future financing of OASDI or any other pension system, be economically sound. The many persons who have inquired about OASDI's financial status should, therefore, not be ignored.

How sound is the Social Security system? While we have confidence in it, the American people deserve—and Congress needs—valid answers to all questions related to financial integrity of OASDI.

Much has been made of the trust fund generated by Social Security taxes. Some have felt the OASDI trust fund constantly should hold an accumulation of assets adequate to pay all future claims in the same way as private plans must do. This view is not shared by the experts. The political economist regards OASDI as a "transfer" arrangement which requires only that there be assurance that (1) current tax receipts are sufficient to pay current benefits and meet limited unexpected contingencies, and (2) future tax receipts will be able to pay for future benefits. The integrity of OASDI therefore depends on the validity of actuarial assumptions regarding income and outgo.

Are current OASDI actuarial assumptions and financing appropriate to its long-term requirements? This question is appropriate because of changes in actuarial assumptions and financing which were accepted by Congress in 1972 when it enacted a 20 percent benefit increase without comparable tax increases. Sharp criticisms of this change by some economists and actuaries have generated debate which we believe has received too little attention. We acknowledge our own need for further information about conflicting expert opinion on this question before we can feel free to support major changes in a system which now serves the people so well.

A distinguished expert on Social Security, former Secretary of Health, Education, and Welfare Wilbur J. Cohen, in testimony before the Special Committee on Aging, minimized importance of these changes in actuarial assumptions and financing with these words:<sup>1</sup>

"That is not to say that there are not bona fide criticisms of the present program, but on the whole these do not go to the fundamental aspects of the program by any substantial sector of the Nation. Although some economists have made a number of criticisms of the financing of the program, these views are not so widely shared by the beneficiaries or taxpayers."

With all due respect to this opinion, we question such easy dismissal of questions which could have serious implications for a program as essential to future retirees as it is to current beneficiaries.

Absence of concern by beneficiaries or taxpayers may only reflect understandable ignorance of the questions—ignorance resulting from lack of publicity about them. Nor should it be overlooked that employer taxes become an added cost to them for doing business and are reflected in their prices.

We believe it is legitimate to ask how well Congress itself understands this issue. We believe at a minimum there should be full examination of the basis for the differing expert opinions. Such exploration by this committee and others in Congress sharing our belief in the importance of a sound OASDI appears an appropriate ingredient in

<sup>1</sup> Testimony by the Honorable Wilbur J. Cohen on "Future Directions in Social Security", hearing before the Special Committee on Aging, U.S. Senate, Washington, D.C., July 25, 1973.

legislation of the future. Even if such review should show the debate to be a tempest in a teapot we believe an informed judgment by the public and Congress is desirable.

Are major changes in OASDI financing desirable? Most particularly, should the Social Security tax on wages be replaced totally or in part by financing through general revenues? Proposals for such a change have been advanced on numerous occasions during recent years usually on the grounds that the wage-tax is more regressive than income and other Federal taxes and thus penalizes workers with lower incomes. Social Security Administration officials, on the other hand, have pointed to the advantages given low wage earners in the OASDI benefit structure as an alternative method for giving preference to them. Is this existing advantage for the low-paid participant when he becomes a beneficiary more important than reduction of his taxes while he is working? Or is the latter more important? Is there some way that both purposes can be achieved? Is there risk in use of general revenue financing that benefits will lose status as an earned right? Would this be acceptable to either young or old?

The American Association of Retired Persons, the National Council of Senior Citizens, the National Retired Teachers Association, have expressed the view that it is important to retain the relationship of benefits to earnings and the contributory principle which use of the Social Security tax on wages emphasizes. On the other hand they share our concern for workers whose Social Security taxes often exceed their Federal income tax liability. Some believe that only through the wage tax can the taxpayer understand how much of his income is going to support of OASDI beneficiaries. How much weight should be given to each of these and other views about financing methods?

#### OTHER FEDERAL INCOME PROGRAMS

Important as OASDI is, it does not stand alone as the source of retirement income. In our quest for adequate living standards for older Americans, attention must also be directed to income potentials in other government programs, private pension plans, individual savings and other resources.

Currently OASDI has over 19 million beneficiaries aged 65 and over and almost 3 million aged 62 through 64. Other Federal programs providing income are numerically distributed as follows:

Railroad retirement: 448,000 retirees; 210,000 wives; 290,000 widows.

Civil Service retirement: 921,600 retirees; 359,600 survivors.

Veterans pensions, 1,028,000 veterans, 690,000 widows.

Military retirees, 1,000,000.

Supplemental Security Income (SSI): 3,200,000 aged, blind and disabled.

A precise determination of how much income these programs provide to older Americans is extremely difficult because age-related data is unavailable for many of their recipients.

In understanding the multiple effect of the Federal programs it is necessary to answer several questions about their interrelationships. What are benefit levels resulting from payments to individuals by more than one of these programs? How do changes in benefits under one program affect payments under another (i.e., reductions in veterans pensions because of OASDI increases)? Is restructuring of any of these programs desirable in the interest of integration or equity? In view of differing purposes for the several programs, is such restructuring feasible (i.e., military retirement may be regarded as an alternative to higher pay during active service; the service also retains a right to recall "retirees" to active duty)?

The largest governmental retirement system outside of Social Security is the Civil Service program. Questions about its possi-

ble coordination with OASDI indicate problems in integration of the various Federal programs, or even understanding of how they relate to each other in providing individual incomes.

How many persons now in retirement receive payments from both Civil Service and OASDI? Is the percentage of such duplication likely to increase or decrease in the future? How many persons currently working have coverage under both systems? How much movement is there between Government and non-Government jobs by current employees? Between State or local government and Federal employment? To what extent do persons making changes gain or lose benefits? How important are such questions in a mobile employment society in terms of both geographic and nongeographic moves?

Should Federal employees be required to participate in OASDI? Should Federal employees, instead, have opportunity to interchange credits under OASDI and Civil Service? In this connection is the Civil Service retirement system, which antedated Social Security by many years, more comparable in purpose to private pension plans or State government retirement plans than it is to OASDI?

How do questions of this kind apply to the railroad retirement program in future efforts to make it better serve its beneficiaries? To the retirement benefits offered by the Armed Services?

#### PRIVATE PENSIONS AND INDIVIDUAL SAVINGS

To what extent do private pension plans help the aging in their quest for economic and social independence? How important will and should such plans be as sources of income in the future? Are they sufficiently flexible?

Private pension plans for large employee groups as of January 1973, covered 33,235,000 active workers according to the Life Insurance Institute, and were making benefit payments to 5,660,000 retirees. Payments made during 1972 amounted to \$43.8 billion. Plan growth during the most recent 10 years is shown by comparison of this figure with payments in 1962 of only \$14.7 billion. In this connection it is noteworthy that major growth in private plans came largely after conclusion of World War II.

Prior to 1963, private retirement programs were limited largely to employees of good-sized business firms. Adoption that year of the Keogh Act, and subsequent improvements in it, has extended the private pension system to farmers, professionals, small business operators, and other self-employed persons. Requirements for coverage of employees of such principals has been important.

Because of the multitude of financial institutions offering plans which qualify under the Keogh Act—insurance companies, banks, mutual funds, and others—there apparently are no clear data as to the number of persons now participating in such plans, either as current contributors or beneficiaries. The number of persons and dollars involved is presumably substantial. Until more facts are known, however, estimates of private sector responses to retirement income needs will be incomplete.

The overall performance of private pension plans offers an outstanding example of America's imaginative free enterprise system in action despite occasional instances of non-payment due to failures of sponsoring business firms (reportedly affecting less than 1/10 of 1 percent) and inadequate safeguards of benefits for workers who leave a job prior to retirement.

Imminent final approval of vesting provisions and financial safeguards in H.R. 2, the Employee Benefit Security Act, should reinforce growth of the private pension system as a mechanism for individual economic security. Even as the bill is being enacted, however, it is being challenged on grounds that

it offers inadequate protection to the individual whose union membership or work period with a particular employer is of relatively short duration. If these charges are valid, do not plan sponsors have a self-interest in voluntary moves toward correction?

Pioneered in this country on a base of vigorous leadership by labor unions, business enterprises, the life insurance industry and other financial institutions, the private pension approach has been given increasing recognition elsewhere in the world as an important ingredient in efficient provision of retirement income. France, Japan and other countries have followed America's lead in developing private systems to supplement government programs.

Will America's private sector continue its leadership? Will future developments in private pensions emphasize broad long-range social responsibilities; or will they be geared to narrow short-range interests of plan sponsors? Will private pension plan design reinforce social and economic pressures that restrict personal freedom of action solely because of chronological age? Or will it give recognition to the individuality of Americans and their right to choices? Is there any element in the private sector, including financial institutions which sell plans, whose self-interest permits it to ignore such questions?

If the past has taught any lesson, it may be that attainment of any fully satisfactory response to individual retirement income needs is unlikely if reliance is placed on any single system. Even with 100 percent coverage, it is almost inevitable that many persons will face inequities against which they must protect themselves. This raises a serious question of importance to millions of our Nation's citizens.

How can personal initiative opportunities for retirement income be increased, so that persons missed by private pension plans—or inadequately served by the government-private complex—can achieve decent living incomes for their senior years? This question deserves most serious consideration by Congress in its efforts to strengthen legislative responses to needs of older Americans.

The major Federal contribution to the development of private pension plans, both large and small, has been the preferential tax treatment it has given to them. Desirable and essential as these tax concessions are, is it not legitimate now to ask why comparable consideration should not be given under tax laws to individuals in their strictly personal efforts to prepare for retirement?

Without changes in tax treatment of individual savings for retirement vis-a-vis savings through "qualified" programs, the Nation discriminates against the individual who is either omitted from the latter or inadequately served by them.

Tax incentives for such individual efforts by persons not covered by group plans is offered under H.R. 2, with annual contribution limits of \$1,500. Is it unreasonable to make similar incentives available to persons who are covered inadequately?

Earlier in this statement we referred to losses in real wealth by older Americans—through capital gains taxes on sales of homes or small business—and consequent reduction of earned capacities for meeting their own financial needs. Cannot this Government afford to remove this kind of tax impediment to economic independence in later life?

As we raise this question, we are fully aware of the special, but limited, capital gains tax treatment which has been given since 1964 to persons over 65 who sell their homes. When the late Senator Everett McKinley Dirksen first introduced that proposal, his original version called for complete exemption of such gains after 60. Would it not be appropriate now to consider full acceptance of the original Dirksen proposal?

Would not similar tax treatment of other

capital accumulations, at least to the extent that they simply reflect inflation-created paper profits, also be worthy of consideration? We raise the question with full consciousness of the complex elements involved in the tax law. Possible impact of changes could be substantial. It would be imprudent therefore for us now to urge comprehensive specific changes. We believe, however, that there should be a careful review of all tax provisions with special concern for possible ways in which they prevent or impair personal initiatives at any age to achieve independence in retirement.

#### COMPULSORY RETIREMENT AND EMPLOYMENT

In the section of this statement devoted to satisfying life-roles for the aging, we have raised questions about the importance to many older persons of employment, part time or full time. We now raise additional equally serious questions about broad national retirement policies and trends which deserve comprehensive review, with full use of current studies, by government and by the private sector.

Expert analyses of the "aging problem" have repeatedly advanced the argument that the best interests of older persons and the Nation call for greater flexibility in retirement practices. Apart from possible health, social, and economic advantages for older Americans which it might bring, would flexibility have a favorable or unfavorable impact for the Nation through its effect on production of wealth or on tax burdens? How much would it help or hurt younger workers and business enterprises?

The evidence received by this committee strongly reinforces the view that flexible retirement policies will benefit all Americans. If this view is not correct, is it not time for effective presentation of contrary evidence?

If it is socially and economically desirable that older Americans have more choices in their right to be productive, the largest responsibility for developing such freedom rests with the private sector because it dominates the employment market.

Corporate interest in advantages to be derived from flexibility in retirement rules should not be ignored. There is no evidence that employer self-interest conflicts with socioeconomic values and morality associated with first class citizenship for older Americans.

Unless and until society collectively is willing to assume the cost of providing the elderly with all the income they feel they need as individuals, is it right to deny the aging the opportunity to meet those needs through self effort?

Since the alternative to earned income may be public largesse, can private employers afford to deny jobs to older persons? Does not self-interest as well as social conscience require instead that the private sector offer leadership in expanding job opportunities?

If it is accepted that job opportunities can be important to many persons past 65, how can the Nation best eliminate present barriers to such choice? How far should it go in such efforts? How fully do potential employers, large and small, understand the positive benefits they may gain from giving jobs to able, willing older persons?

What are the impediments to employment of older workers, even as early as age 40, that employers confront because of law or general customs? How free are employers to modify current practices in the face of competition with other employers in the labor market?

One of the most frequently cited obstacles to unilateral job opportunity expansion by employers is related to their pension plans and "excessive costs to them" when they hire older workers. How valid is this claim? To the extent that it is valid, how can changes be made which will resolve the prob-

lem as it affects both employer and would-be employee? In resolution of the problem what is the responsibility of vendors of pension plans, such as life insurance companies?

Another problem faced by employers in hiring older workers, at least in some lines of business, is alleged to be insurance costs, including liability. To what extent does this problem exist? To the extent that it does, how valid are insurance cost differentials in the light of work and safety experience among older employees?

Employers most legitimately have to consider costs when an employee is hired. Is there now adequate information on such costs in different occupations? Are there ways such costs can be met or minimized? If knowledge is inadequate, how can it be developed? If sufficient facts exist, how can they be brought to the attention of decisionmakers within the labor market?

Dominant as attitudes within the private sector of society may be in determining national retirement policies, it is obvious that Federal programs are important. How enlightened are they? To what extent do Federal programs work at cross purposes?

Federal law prohibits job discrimination against persons between the ages of 40 and 65. Does the exclusion of persons over 65 from this protection give sanction of law to the view that discrimination after 65 solely by reason of age is acceptable? Does this violate basic rights of citizenship among the aging?

Substantial authorizations of Federal funds have been made by Congress to create job opportunities for older Americans. How consistent with this purpose are impediments and disincentives to work which are found in other programs such as OASDI under Social Security?

Many older Americans, as noted previously, eagerly accept retirement from the work force as an opportunity for life-style changes which they fully expect to enjoy. Many others, on the other hand retire only because they are forced to do so and are unable to find suitable new jobs, either part time or full time. Some persons forced into retirement are understandably reluctant to seek out jobs, especially full time, when the "special tax" imposed through work penalties under Social Security is added to regular income taxes and other job costs so as to leave them little of what they might earn. There are still other persons past 65 who have elected to continue full time work, despite the penalties they suffer.

How many more would there be if the penalties were removed? How many more would work beyond age 65 if retirement rules were modified by employers? There are also many who work part time after 65. How many of these limit their hours solely because of Social Security benefit deductions?

In consideration of future amendments to the Social Security Act, how much attention should Congress give to the effect of OASDI provisions on employment of older persons able and willing to work? To what extent should needs of the latter be balanced against increased benefits for the fully retired?

If current employment disincentives in the Social Security system are wrong, how can their modification best be achieved? Should earnings limitations be completely removed in the face of admitted high cost to the Social Security system? Should amendments to the work test be approached on a gradualistic basis such as through provision of increments in benefits to those who defer retirement past 65, or through gradual raising of the earnings limit, or a combination?

A bill, S. 3386, to provide a 6½ per cent annual increase in OASDI benefits for persons who defer retirement to ages beyond 65 has been introduced by Senator Fong on

behalf of all Republican Members of the Special Committee on Aging (Senators Fong, Hansen, Gurney, Brooker, Percy, Stafford, Beall, Domenici, Brock), Committee Chairman Frank Church, Subcommittee on Employment and Retirement Incomes Chairman Jennings Randolph and others including: Senators Wallace F. Bennett, Marlow W. Cook, Alan Cranston, Robert Dole, James O. Eastland, Paul J. Fannin, Philip A. Hart, Floyd K. Haskell, Daniel K. Inouye, James A. McClure, Gale W. McGee, Frank Moss, Abraham Ribicoff, William V. Roth, Jr., Strom Thurmond, and John Tower. This bill is a slight modification of a similar proposal introduced last year as S. 2815 by Senator Fong with cosponsorship by Senator John Tower.

At the time of the bill's introduction, it was pointed out that the annual increment it provides is identical with percentage reduction in benefits which applies under the present law when persons take early retirement. As such it would implement at least partially the recommendation for greater flexibility in OASDI advocated repeatedly by minority members of the committee in previous reports.

If earnings test liberalization is a proper route to follow, as we also believe, should such process be left to individual actions by succeeding Congresses, or should a planned phaseout extending over a period of years be considered at one time? A precedent for the latter approach is provided by congressional action on Social Security taxes which defer their impact on workers until years ahead. If appropriate in one case, is it less appropriate in the other?

The whole question of the earnings test under OASDI raises other questions. There is conflicting evidence, which needs to be resolved, on such matters as (a) ultimate actual cost of such a proposal to the Federal Government and taxpayer, (b) the extent to which it would encourage continuation within the work force of persons past 65, (c) the extent to which it would help older workers between 40 and 65, (d) the effect it would have on jobs for younger workers, (e) its ultimate cost or gain for employers, (f) its comparative impact on older persons who are economically deprived and those who are affluent, and (g) its relationship to benefit increases for nonworking older persons.

It is apparent that any cost to the Federal Government of elimination of the earnings test, for example, depends on factors other than the immediate direct cost to the Social Security system alone. If the test elimination increases employment among older Americans, how much additional Federal revenue would come from income taxes and Social Security taxes such workers would pay? How much would tax burdens on Federal, State, and local programs for indigent and medically indigent older persons, including SSI and State supplements to it, be reduced? How much would the Nation benefit economically through additional wealth produced by older workers? What would be the effect of increased production of goods and services on inflation?

#### WHAT STRATEGY?—SERVICES OR INCOME?

There has been a prolonged debate related to the Government "strategy" in meeting needs of older Americans. Which strategy should Government pursue: "income" or "services"?

Those who argue for a services strategy have acknowledged, of course, that income is essential. They have maintained, however, that there has been inadequate attention by Government to development of services for the elderly.

Those who advocate an income strategy have acknowledged the importance of services to the elderly, but maintain that, given the necessary dollars to pay for services, such

services can be bought in the way selected by the individual.

Even as they defend their special positions, advocates of either strategy would probably acknowledge that this division oversimplifies the problem. Older Americans do need income; they do need services.

The debate is concerned with emphasis in the face of competition for limited funds. How much of the tax dollar should be devoted to services? Since varied needs among the elderly call for a host of differing kinds of services, what kinds should be given highest priorities?

Who are the aged in need of services? They include members of minorities whose senior years often involve extensions of discrimination and deprivation they faced throughout backgrounds who are not only poor, but live in communities where life qualities are limited regardless of income. They include the isolated in rural areas for whom transportation necessary to social intercourse and acquisition of services is sharply limited. They include the lonely, whose families and neighbors have departed from them. They include the poorly housed, the sick, the feeble, the fragile and the fearful. Important as income would be to these programs, is it enough?

They also include vigorous, active persons who are denied opportunity for self-expression and social communion with their peers because facilities and services related to them are unavailable in the community. What is Government's responsibility to them apart from income?

How much of the Federal services dollar should go for instance to social support vis-a-vis medical care and housing? How far can different types of services be separated from each other? How necessary is their coordination? Are there risks in either segregation or coordination? How does fragmentation bring inefficiencies?

How extensively, for example, should tax dollars be used for senior citizen centers whose primary purpose is to offer opportunity to the elderly for social communion and recreation regardless of income? What kinds of special services can be made a part of such centers so as to strengthen their ability to meet their original purpose? Does a center gain or lose through addition of the federally supported hot meal program? A medical clinic? An employment service? Is this a matter which can be properly determined by persons outside the community in which the center is located?

Among social support services and outreach programs which have been developed on a limited scale across the country are the following: Information and referral services, offering assistance in obtaining special help from a variety of agencies and acting in an ombudsman capacity to bridge the gap between the elderly and agency bureaucracy; Meals-on-Wheels services, for the homebound; home aide services, to help the aged remain in their homes through performance for them of light household tasks; protection and legal services; escort services, to transport isolated or handicapped elderly to centers, clinics and other service centers; friendly visitor and telephone reassurance services, to strengthen and reinforce contacts with others in the community; continuing education services, and counseling services, to help with adjustments to changes in status, employment, deprivation, or with emotional problems which might reduce ability to cope with daily exigencies.

Is it financially possible for the Federal Government to broaden application of these services so as to include all who need them wherever they live? If so, how much Federal control should be imposed? If not, how can Federal dollars be coordinated with local money to increase their availability?

Assuming further growth in Government sponsorship of supportive services to the elderly, should first attention be given to those with lowest incomes, special ethnic needs, or community problems?

If tax dollars are addressed first to supportive services for the low-income elderly, what responsibilities if any does the private sector, including its profit-oriented agencies, have toward making needed services available to those able to pay? How, if at all, can the efficiencies which private forces claim for themselves be applied to meeting such social needs?

Is it not necessary for Congress and the administration to have at hand a clearer statement of the problems' dimensions as they develop answers to the income-services strategy question? If such pertinent data has been gathered, how can it be fed into the decisionmaking process? If it is not available, how can it be developed?

Better understanding of the "income strategy versus services strategy" in aging is important within the Congress, the executive branch and the public at large. It is not enough that it receive attention from gerontologists, social scientists and other professionals in aging. Limitations as well as values in the question are emphasized through review of its implications in medical care.

#### MEDICAL SERVICES

Good health for older Americans, in its broad sense, is our ultimate objective in aging. Achievement of a state of well-being, physically, mentally and socially, for the largest possible number of individuals is the goal for which society should strive. Freedom of choice, sense of purpose, fullness of opportunity, adequacy of income, decent living standards and all of the other concerns to which we direct attention are but ingredients in good health.

High quality medical care—the art and science of preventing, limiting and removal of impediments within the body and mind to good health of individuals—is of universal concern, therefore, to older Americans. They are less concerned, and rightly so, about remote philosophic debate than they are about actual delivery of service by the physician, dentist, nurse, pharmacist, physiotherapist and other health care professionals and the corollary availability of good hospitals, nursing homes, home health agencies and other facilities or organizations in their own communities.

Few, if any, would deny that substantial progress has been made in delivery of medical care to the aging. Noteworthy have been the Medicare and Medicaid programs which began in 1966. How can the successes and failures, the shortfalls and the advances, made under these programs offer better understanding of merits and deficiencies, respectively, within a service strategy or an income strategy?

More importantly, how can America, including its Government, best assure quality medical care for older Americans through most effective use of its public and private resources in being, or capable of development?

This broad question has long been of vital concern to the elderly. It becomes more timely as Congress turns attention to a variety of proposals for new Federal systems to finance medical care for all citizens. Both involve decisions about priorities and careful assessment of national potentials in health care.

How do Federal responsibilities for medical care to the elderly balance out against its responsibilities for others in determinations of priorities? Will the aging be better served as part of whole new approaches, or through prior expansion and improvements in Medicare and/or Medicaid? Apart from financing arrangements, should first priority be given

to development of special new capacities in medical care for older persons? Or can the Nation meet these clear needs concurrent with efforts in this direction for all people!

Illustrative of implications in the latter, is a subsidiary question: Is it more important to strengthen home health care services for the elderly and improve institutional care services for those suffering from most serious chronic illnesses and disabilities, or to devote new energies to broader elements in medical care? Should Federal dollars to pay for care of the chronically ill or disabled aged, in or out of institutions, now largely ignored by Medicare and provided on a hit or miss basis by Medicaid, be first? Or will these unmet needs among older Americans be met more promptly and effectively through a new total health care package which also includes the young?

Regardless of how answers to such questions are developed, it is clear that there are many unmet health care needs among the aging. Within this more narrow context, what are the priorities for congressional action? What are the priorities for action by the private sector of society?

Among the medical needs of older Americans which are excluded from or inadequately covered by Medicare and which compete with each other for Federal dollars, and with other demands of both young and old, are the following: prescription drugs outside of institutions, non-emergency dental care and dentures, hearing aids, eyeglasses, and refractions, institutional care for nonacute illness or disability requiring no prior hospitalization and nonprofessional medically indicated support services in the home for nonacute illness or disability. What priorities should Congress give to each?

Covered under Medicare, but used only sparingly are home health care services designed in part to avoid high costs of institutional care, but more importantly to reinforce satisfying life situations and emotional health needs of older persons. What priority should be given to improvements and extensions of this crucial service vis-a-vis other forward steps? Are current inadequacies due to Federal reluctance to paying for such services, or due to other factors? Does the medical community understand the importance and availability of such services? Do serious personnel shortages—nurses, medical social workers, physiotherapists, and others—contribute to deficiencies in use of home health care services? Does geographic distribution of essential personnel, including physicians, deny these services to older persons legally qualified for them under Medicare? If so, how extensive is this problem? What can be done about it?

In the face of unmet needs such as described in the foregoing paragraphs, what consideration should be given to elimination or reductions in premium charges, deductibles and coinsurance payments which currently are required of Medicare participants?

The limited extent of Federal response to medical needs of older Americans is shown by the fact that this program currently pays slightly more than 40 percent of the health care expenses of its beneficiaries. How clear a picture of the problem does the data give? What are the dimensions of unmet medical needs of older Americans through society's total response to them as reflected in such financial data? How much of the roughly 60 percent of health care costs not met by Medicare is picked up through Medicaid? How much is met through supplemental coverage offered by voluntary health insurance plans? How much of it is capable of budgeting by the individual who makes out-of-pocket payments?

Are there differences in medical need response based on geographic factors and the kinds of communities in which older persons live? How does effective response differ,

particularly in terms of service delivery, in rural areas, inner cities and other types of communities? How does it differ for different racial or ethnic groups?

In short, what are the actual dimensions of the problem? How can Government or private forces meet the needs most effectively without comprehensive evaluation of all the facts, even while we take proper immediate steps to meet the most obvious problems?

#### HOUSING

Apart from medical care, one of the most easily identified factors in well-being is that related to housing. Consequently the elderly housing question has often been a focal point in the debate on a Federal income strategy as opposed to a strategy giving priority to services and facilities.

Problems in Federal housing programs are discussed in some detail in chapter V of this report, with special reference to S. 3066, the Housing and Community Development Act of 1974, which has passed the Senate and hopefully will be approved by the House of Representatives and the President.

While S. 3066 reflects the Senate's view on one major aspect of Federal priorities in housing, need for action on behalf of the elderly with lowest incomes or with least adequate home and community situations, none would dispute that it leaves many unanswered questions.

"Income strategists" suggest that if older persons are provided adequate incomes or housing allowances the housing market will respond to their demand based on individual choices more suited to their happiness than decisions made by governmental bureaucracy. They also raise questions as to how fairly older persons with comparable needs will be treated. To what extent are people with great need denied federally supported housing because of the accident of where they live? Are the poor elderly in rural areas, for example, discriminated against in favor of those in cities?

"Services and facilities strategists," on the other hand, make a strong case that elderly housing will not be built, especially for members of minority groups, the poor, the infirm, without categorical grants for construction and operating subsidies. They raise questions about use of allowances in the light of housing shortages which exist. Is there a sufficiently large present stock of housing to make use of allowances effective? Will rents be increased in anticipation of rent subsidies?

Our own attitude is demonstrated by our unanimous support of S. 3066. Even with full implementation of its provisions, however, we urge national recognition that more is needed, including wider use of the ingenuity of private financial institutions and commitments by them to better housing for the elderly.

Best solutions to housing problems among older Americans, as with responses to their other needs, should include recognition of their individuality. Housing efforts should be designed to offer alternatives which strengthen rather than restrict personal liberties. The views of older persons themselves therefore become more important.

To what extent are older Americans now satisfied or dissatisfied with housing they have? What kinds of priorities do they place on their own housing needs? What fears do they have related to their housing in their futures? How well are they meeting their needs through their own efforts?

Does the fact that roughly 70 percent of the couples and substantial numbers of single and widowed persons past 65 own their own homes, for example, indicate that their housing needs have been met? Are some of these older homeowners frozen into undesirable housing situations because alternatives are not available? Even as they remain in their homes, or try to, are they faced with special housing problems to which tax supported

programs should be addressed? If so, what should be the character of such efforts?

Going to the other end of the housing spectrum, what Federal emphasis should be given to support of institutional or congregate types or housing? How well is America responding to the fear common among older persons about what happens to them when they become too infirm or disabled to live alone? Has the emphasis in what is loosely described as institutional housing been directed too much at medically oriented facilities such as nursing homes and intermediate care facilities as defined under Medicaid programs? Has there been resistance by older persons to use of institutional facilities because too many are patient-oriented instead of person-oriented?

For many years religious groups and others have offered leadership in development of homes for the aged designed to offer all types of life satisfactions to their residents. How much use would older persons make of such facilities if they were more widely available? To what extent and in what form can Federal subsidies be of help in promoting these homes? Should subsidy be limited to construction costs or should it also include operating funds? If there are no operating subsidies, outside of medically based programs such as Medicaid, how can acceptable congregate housing services be made available to older persons who are not affluent?

Widely differing opinions have been found among housing administrators as to whether individual housing units for the elderly should be placed within the larger community or segregated from the young. How do answers to this question relate to the ways in which future programs will develop? Do answers to it differ by reason of age within the older population, or family status, or state of health?

The question of personal safety in public housing has been a factor in arguments about segregated housing for the elderly. Can the admittedly aggravated security problem among the old be met successfully without an equally successful effort on behalf of all persons living in neighborhoods where the problem is most serious? If the total safety problem is met, what effect may that have on the attitudes of older persons toward segregated projects?

Many older persons, particularly single or widowed individuals, live with their adult children or other younger relatives. How does this bear on housing policies? Do we even know the extent to which such arrangements may be made through choice?

Is it not important, in development of answers to these housing questions and a myriad of others, to determine more accurately what older Americans in varying situations want? Should not efforts to determine such attitudes be made on the basis of probable choices they would make if offered a full range of alternatives?

#### RESEARCH

As we have raised questions, up to this point we have not used one word which is paramount in development of realistic national policies in aging. THE WORD IS RESEARCH:

Can either individuals or society respond effectively to great and changing challenges in America's new era of aging without research? We think not.

Can the Nation continue to use a hit or miss approach on behalf of older Americans? Are not the issues so important to all citizens that comprehensive research is essential?

Research is the key to satisfactory solutions for both society and individuals. Application of research in this context should recognize all of the word's accepted definitions as found in the dictionary: <sup>2</sup>

Research: 1; careful or diligent search; a close searching (*researches after hidden treasure*) 2a; studious inquiry or examination; esp; critical and exhaustive investigation or experimentation having for its aim the discovery of new facts and their correct interpretation, the revision of accepted conclusions, theories, or laws in the light of newly discovered facts, or the practical applications of such new or revised conclusions, theories, or laws (*gave his time to research*) b(1); a particular investigation of such a character; a piece of research (2); a presentation (*as an article or book*) incorporating the findings of a particular research 3; capacity for or inclination to research (*a scholar of great research*).

As members of the Special Committee on Aging we have followed some of the distinguished work done in aging by research scholars in many disciplines. Their findings which have come to our attention have emphasized that issues in aging are neither simple nor static; they are complex and constantly undergoing dynamic change.

While we are aware of major contributions through research to better understanding of aging, we are most sensitive to inadequacies in information which have come to our attention. We are even more concerned that persons less favorably situated for acquisition of knowledge about progress and problems in aging are being denied the data and insights of research.

Is it not important that we strengthen current research efforts related to age? Is it not even more vital to America that there be a national effort to make use of research?

Even as we, in our responsibilities as members of the Senate, make decisions which must be made in response to immediate needs of older Americans, we believe that ultimate answers to the challenges in aging must be based on practical application of research findings and that there be a vigorous effort to continue and expand research now under way.

#### LONG RANGE POLICIES AND PUBLIC ATTITUDES

III. How can the people as a whole, young and old, come to awareness of new 20th century implications of aging and their relationship to social policies and their own individual needs throughout life?

It is estimated that within the next 75 years approximately 220 million Americans now living or yet to be born will have celebrated their 60th birthday. Within that 75 year period, it is foreseeable that the percentage of the total U.S. population aged 65 or over may rise to 15 percent or more.

It is estimated that 72 percent of the babies born during 1974 and 76 percent of persons now aged 30 will reach the age of 65. More than 69 percent of those now 65, 52 percent of those now 30, and 50 percent of the babies born this year are expected to attain ages beyond 75.

As one looks at these estimates, it should be noted that they are based on life expectancy calculations which cannot take into account future progress in disease control or other factors which may extend life. They are therefore, more apt to understate than to overstate the probabilities.

It is clear from the foregoing estimates, that the problems of aging, or more properly the challenges of aging, are of personal significance to every man, woman and child in America. Decisions which will be made by them as individuals and as members of society will determine how they and this Nation use opportunities in aging today and tomorrow.

The question, "How can all Americans be made aware of how aging policies affect them?" therefore becomes most important.

Older Americans have recognized full well that the questions relating to aging are not their sole province. Policy statements by such important organizations representing

<sup>2</sup> Webster's Third New International Dictionary of the English Language Unabridged, third edition, 1961.

older persons as the American Association of Retired Persons, the National Association of Retired Federal Employers, the National Council of Senior Citizens, and the National Retired Teachers Association have consistently maintained a posture reflecting their concern for those now young.

How can the middle-aged and the young come to an understanding of aging's implications for them so that they may avoid some of the problems experienced by those now old? Do not the lessons learned by today's older Americans demonstrate that 19th century concepts of age are no longer valid?

The late Dr. Ethel Percy Andrus, founder and first president of the American Association of Retired Persons and the National Retired Teachers Association, was one of the first to voice the thesis that society faces a new era in aging. This distinguished educator put the issue in these words:

"Our generation of older folks is a pilot one. How it will be reported is a matter both of conjecture and interest. Shall we, pioneers in retirement living as a group, be portrayed as needing special assistance because we are needy, dependent or otherwise at a disadvantage? Or, can we live such rewarding and interesting lives that the report on our generation will stress the importance—to ourselves and to society—of our value to society in personal growth and community participation? . . .

"It is not enough to see man as an individual in the same way, as is an individual man in an army or a crowd. The difference is so great that there is a special word for an individual man, a word of power and importance; the word is 'person.' . . .

"It carries the thought that every man has individual duties to himself and to others. Also there is added, too, the idea that every man has individual rights that exceed those of the group of which he is a part. A man, because he is a person, may not be disregarded or cast out, like any other kind of individual, vegetable or mineral, in order to improve the group of which it is a part. In other words, here again we face the precept that the state exists for the man, not man for the state."

#### ORIENTATION TO YOUTH OR ALL OF LIFE?

Much has been made of the view that this nation is geared to youth. No group has given higher priority to the young than those who are now described as older Americans. The best interests of their children, grandchildren, and great grandchildren have been their preeminent concern. Habits of a long lifetime have not nor will not change. Older Americans will continue to urge that first attention of society should go to the young because of the long vistas of life before them. The question rises, however: What are those vistas?

Is the prior right of youth in the social scheme only aimed at life up to age 30? Age 40? Age 50? Or is it to help them attain the best that is available *throughout* life? Is society preparing the young for a life that loses meaning at 65 or 70? Are not these the kinds of questions that all of America should answer?

Is it not important for the young and middle-aged to face the prospect of age with confidence in its positive potentials instead of with fear?

Is it not apparent that positive responses by society to needs of older Americans today depend on new recognition by the young and middle-aged as to what senior years should be? Do not the decisions made now with full support by the young determine the character of their own lives? How can this message be brought home?

#### NEED FOR A WELL-INFORMED POPULACE

Leadership in this direction has been offered by major organizations now representing older Americans. Positive efforts have been forthcoming also from groups repre-

sented persons with special interests in aging, such as the American Geriatric Society, the Gerontological Society, and the National Council on Aging, each of which has made important contributions to the knowledge in aging.

Extensive research has been carried out, in addition, by the Aging Studies program, College of Social and Behavioral Sciences, University of South Florida; All-University Gerontology Center, Syracuse University; Center for the Study of Aging and Human Development, Duke University; Committee on Human Development, University of Chicago; Ethel Percy Andrus Gerontology Center, University of Southern California; Florence Heller Graduate School for Advanced Studies in Social Welfare, Brandeis University; Gerontology Center, Boston School of Medicine; Gerontology Research Center, National Institute of Child Health and Development; Institute on Applied Gerontology, St. Louis University; Institute of Gerontology, University of Michigan; Langle-Porter Neuropsychiatric Institute, University of California; Mid-West Social Research Council on Aging (a consortium of 14 universities in seven States); Rocky Mountain Gerontology Center, University of Utah; W. E. Upjohn Institute for Employment Research and other nonprofit institutes throughout the country.

Disciplines participating in such research embrace the whole range of human endeavor. How can we make fuller use of their work?

Within the governmental sphere, what responsibilities for helping all Americans to better understand the needs and challenges of aging should be assumed by the Administration on Aging, the newly formed Federal Council on Aging, the Administration's Interdepartmental Task Force on Research on Aging, the White House Domestic Council on Aging, or indeed this Senate committee?

It is reasonable to expect that all of the foregoing and similar private and public groups or agencies which have assumed advocacy roles on behalf of older Americans will continue to do so. But is this enough? Is there not need for new attention to these questions on aging which should be faced by more broadly based elements in society?

Can we expect the ultimate desirable goals for older Americans to be achieved without positive action by educators, clergymen, labor leaders, business leaders, journalists, and all others who participate in the opinion making process?

At the beginning of this statement we emphasized the view that life, to be fully enjoyed, must be regarded as a continuum. Our own decisions in support of legislation and other actions on behalf of older Americans will reflect the importance of this conviction.

IMPORTANT AS PROMPT GOVERNMENTAL ACTIONS TO MEET NEEDS OF OLDER AMERICANS ARE NOW, DEVELOPMENT OF A NATIONAL POLICY ON AGING CAPABLE OF MEETING CHALLENGES OF THE NEXT 50 OR 100 YEARS DEPENDS ON AN INFORMED PUBLIC.

We all, young and old, need to understand better the positive elements in aging. Therein lies the promise of the future as well as the present. We all need to make a firm commitment to promote the rights of older people as individuals, to give national recognition to them as persons.

HIRAM L. FONG,  
CLIFFORD P. HANSEN,  
EDWARD J. GURNEY,  
EDWARD W. BROOKE,  
CHARLES H. PERCY,  
ROBERT T. STAFFORD,  
J. GLENN BEALL, JR.,  
PETE V. DOMENICI,  
BILL BROCK.

Mr. PELL. Mr. President, I yield to the Senator from Alaska.

#### SENATE RESOLUTION 324—CONDEMNATION OF TERRORIST ACTS

Mr. HUMPHREY. Mr. President, I ask unanimous consent that, out of order, we may take up for immediate consideration a resolution which I shall send to the desk on behalf of the majority leader, the minority leader, the majority whip, the minority whip, myself, and the following Senators: Mr. PASTORE, Mr. ALLEN, Mr. RIBICOFF, Mr. ROTH, Mr. EAGLETON, Mr. BAYH, Mr. JAVITS, Mr. CHURCH, Mr. DOMENICI, Mr. MCGEE, Mr. WILLIAMS, Mr. METZENBAUM, Mr. MONDALE, Mr. BENTSEN, Mr. CRANSTON, Mr. KENNEDY, Mr. BROCK, Mr. NELSON, Mr. SCHWEIKER, Mr. TUNNEY, Mr. MCGOVERN, Mr. BUCKLEY, Mr. BAKER, Mr. PACKWOOD, Mr. AIKEN, Mr. PELL, Mr. HARTKE, Mr. BIBLE, Mr. JACKSON, Mr. STEVENSON, Mr. HART, Mr. GURNEY, Mr. DOMINICK, Mr. CASE, Mr. MCINTYRE, Mr. BIDEN, Mr. HUDDLESTON, Mr. MUSKIE, Mr. YOUNG, Mr. MONTROYA, Mr. MOSS, Mr. WEICKER, Mr. PEARSON, Mr. TAFT, Mr. STAFFORD, Mr. CHILES, and Mr. BROOKE.

The PRESIDING OFFICER. The resolution will be stated.

The legislative clerk read the resolution with its preamble, as follows:

Whereas terrorists have threatened the lives of 90 Israeli school children; and

Whereas these cruel and heartless acts only exacerbate tensions in the Middle East at a time when very serious efforts are being made to negotiate a lasting peace; and

Whereas such acts of violence are an affront to human decency and standards of civilized conduct between nations; Now, therefore, be it Resolved, That it is hereby declared to be the sense of the Senate that—

(1) it most strongly condemns this and all acts of terrorism;

(2) the President and the Secretary of State should and are hereby urged and requested to (a) call upon all governments to condemn this inhuman act of violence against innocent victims; and (b) strongly urge the countries where these groups and individuals are found to take appropriate action to rid their countries of those who subvert the peace through terrorism and senseless violence.

The PRESIDING OFFICER (Mr. CLARK). Is there objection to the present consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.

Mr. HUMPHREY. Mr. President, this resolution speaks for itself. Its language states the message clear and unequivocally. It should be the moral purpose of our country and should be acted on favorably by the Senate.

Mr. JAVITS. Mr. President, the real point of this resolution is that the United Nations should speak out for peace for all the world. This should be done in spite of the very misguided point of view by some small nations or developing nations which are adopting almost a bias in favor of Arab terrorism and constantly condemning actions by Israel which is seeking to contend with that terrorism.

However, there may be one small grain of comfort in this terrible tragedy. At least the U.S. Senate lays siege to the situation in a realistic light by adopting a resolution like this which endeavors to restore a sense of justice to the feelings of outrage which the world must

feel against acts of terrorism, whether Arab or any other source.

In addition, it is witness to a signal bankruptcy on the part of some countries in the United Nations and outside the United Nations in not dealing with the issue of terrorism which is a threat to all the world. A number of nations who are United Nations members, act on the theory that to fail to condemn terrorism will help in the anticolonial struggle. That is standing morality on its head.

I, therefore, congratulate the distinguished Senator from Minnesota (Mr. HUMPHREY) for the foresight and the world vision for which he is so famous, which has induced him to enable us to vote on this resolution today.

Mr. HUMPHREY. Mr. President, I thank the Senator from New York very much for his comments. I was inspired to submit this resolution as I listened to the Secretary of State, who spoke out sharply against this inhumane act of attempting to hold children hostage. I felt it was appropriate that this body, which has a particular responsibility in the field of foreign policy and national security, undertake this action.

Mr. BROCK. Mr. President, I join the Senator from New York in thanking the Senator from Minnesota for this resolution, which I am privileged to cosponsor. I think he has shown, again, remarkably good initiative.

It has been distressing to me, quite honestly, that this Nation has not assumed sufficient leadership in the United Nations on this particular matter. On occasion, where we have abstained rather than participated in a resolution or a veto, it has demonstrated a lack of leadership on our part which I find unfortunate. I very much hope that the pending resolution will not only demonstrate the will of the Senate but also the will of the American people in condemning an act of terrorism wherever it exists in the world, and that the United States will not tolerate that sort of thing. It is a debasement of all that is right and decent.

I am sure the Senator from Minnesota would be interested to know that there is a story on the UPI ticker saying that Israeli forces this morning—really today—did storm the school building and have killed the three Arab commandos. I do not have any information on the children but I believe that they are all right.

I thank the Senator from Minnesota very much for his inspiring leadership.

Mr. HUMPHREY. I thank the Senator from Tennessee very much. My hope is that the resolution will be looked on by the appropriate authorities in the U.S. Government as being in support of whatever action the Government may see fit to take in any body—the United Nations, or in any other international group, or in bilateral relations with other countries.

I did not try to spell it out because that would make it a much more complex resolution. But I thank the Senator from Tennessee once more, as he was one of the early sponsors, and I appreciate his support.

Mr. ALLEN. Mr. President, I support this resolution very strongly, but I feel that the need for the passage of this resolution in the Senate, and I assume in the House, illustrates the moral bankruptcy of the United Nations and its inability or its unwillingness to cope with some of the international problems we face, its lack of effectiveness in maintaining peace throughout the world and to put an end to terrorism.

I feel that the United States should give serious consideration to taking steps that will limit, if not end, our participation in the United Nations.

Mr. BAYH. Mr. President, I join my distinguished colleague (Mr. HUMPHREY) in condemning in the strongest words possible the dastardly attack by Arab terrorists who took Israeli children as hostages in the latest outbreak of violence in the Middle East. This act brings to a new low the nature of terrorism in the Middle East and deserves the most severe possible statement of outrage by persons of decency in every part of the world.

I trust that our Government will lead the expressions of moral outrage which I know will come from every government which has even a minimum measure of respect for human life. I hope the resolution offered by the Senator from Minnesota will pass speedily and that our Government will stand tall among the nations of the world in bringing the sentiment of the world against this unspeakable act.

Mr. GURNEY. Mr. President, in cosponsoring the resolution by the Senator from Minnesota (Mr. HUMPHREY), with respect to the unjustifiable actions by Arab terrorists against innocent Israeli schoolchildren, I wish to inform this body that the Senate Internal Security Subcommittee is actively pursuing the question of terrorism. This committee, of which I am a member, intends shortly to consider hearings on this subject.

As we in this Chamber today are considering the primary welfare of our own schoolchildren, I think it is only fitting and proper at this time that we express our outrage as a body at the animalistic actions that these terrorists have taken against these helpless Israelis.

Mr. PELL. Mr. President, once again terrorism has struck in the Middle East. This time lower than ever before, against innocent schoolchildren.

In the face of the growing record of horrors perpetrated by Arab terrorists, there is a danger that the world will become numbed and fail to react.

That must never happen. Never should our silence or seeming indifference be allowed to encourage the practitioners of violence in their ruthless ways.

That is why the Senate should speak out swiftly and vigorously in condemning this latest outrage of the Arab terrorists. For that reason I strongly support the resolution (S. Res. 324) introduced by the Senator from Minnesota (Mr. HUMPHREY). Approval of that resolution affirms our faith in human decency prevailing over human cruelty.

Mr. ROTH. Mr. President, I am

shocked and outraged by the inhumane, brutal and senseless actions of Arab terrorists who have threatened the lives of about 85 Israeli schoolchildren.

The governments which give sanction and support to terrorists groups should denounce and curb their activities and join in bringing them to justice. No country or people should give them sanctuary or protection.

If the Arab governments are sincere in seeking peace, there would be no better way to demonstrate that sincerity than by taking effective action to stop such terrorist activities.

Our Secretary of State has spent many days away from his Washington office seeking to bring about a settlement on the Syrian-Israeli frontier and achieve a lasting and genuine peace. The world should not let a handful of terrorists thwart these efforts.

I join Senator HUMPHREY in cosponsoring a resolution condemning this and like terrorist activities and urging that the nations of the world join us in this condemnation. I do so with a heavy heart because I regret that in the year 1974 there are still people and groups with no understanding of civilized behavior, no regard for the lives of the innocent, and no compassion for children.

The PRESIDING OFFICER (Mr. CLARK). The question is on agreeing to the resolution.

The resolution, with its preamble, was unanimously agreed to.

Mr. HUMPHREY. Mr. President, I want the RECORD to note that this resolution was agreed to without dissent in the U.S. Senate. The executive branch and all others should be appropriately notified.

#### MESSAGE FROM THE HOUSE

A message from the House of Representatives by Mr. Hackney, one of its reading clerks, announced that the House insisted upon its amendments to the bill (S. 1769) to reduce the burden on interstate commerce caused by avoidable fires and fire losses, and for other purposes, disagreed to by the Senate; agreed to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and that Mr. TEAGUE, Mr. DAVIS of Georgia, Mr. SYMINGTON, Mr. MOSHER, and Mr. BELL were appointed managers on the part of the House at the conference.

The message also announced that the House had agreed to the amendments of the Senate to the bill (H.R. 5621) to amend title 10, United States Code, to provide for the presentation of a flag of the United States for deceased members of the Ready Reserve.

The message further announced that the House had disagreed to the amendment of the Senate to the bill (H.R. 12920) to authorize additional appropriations to carry out the Peace Corps Act, and for other purposes.

The message also announced that the House had disagreed to the amendment of the Senate to the bill (H.R. 13998) to authorize appropriations to the National Aeronautics and Space Administration

for research and development, construction of facilities, and research and program management, and for other purposes; asked a conference with the Senate on the disagreeing votes of the two Houses thereon, and that Mr. TEAGUE, Mr. HECHLER of West Virginia, Mr. FUQUA, Mr. SYMINGTON, Mr. MOSHER, Mr. BELL, and Mr. WYDLER were appointed managers on the part of the House at the conference.

#### EDUCATION AMENDMENTS OF 1974

The Senate continued with the consideration of the bill (S. 1539) to amend and extend certain acts, relating to elementary and secondary education programs, and for other purposes.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent—and this has been discussed with the distinguished assistant Republican leader—and I would like to have the attention of the Senator from Florida (Mr. GURNEY)—that at 3 p.m. today, the Senator from Indiana (Mr. BAYH) be recognized to call up his amendment to the Gurney amendment, and that a vote occur thereon at 3:45 p.m. today. The order has already been entered to allow Senator BAYH to call up his amendment, but no particular time was set.

Mr. JAVITS. Mr. President, reserving the right to object, we have quite a lineup here. I do not know whether this will fit in or not. I was not one of those consulted about this unanimous-consent request, so I am not popping this out of the blue, so to speak, but we have 6 hours of debate on the Gurney amendment and, as I understand it, that 6 hours will not have expired at 3 o'clock. Is that correct?

The PRESIDING OFFICER. That is correct.

Mr. JAVITS. Now we bring in this amendment. I was also informed of a unanimous-consent request to be proposed by the Senator from North Carolina (Mr. ERVIN) at 4 o'clock for consideration of an amendment to be voted on after the Gurney amendment. We have a fixed time for a vote at 5 o'clock. It simply aborts the time that everyone is depending on. Under those circumstances, I would greatly appreciate it if the distinguished Senator from West Virginia would explain to us how it will all be fitted in together, before we bring this new item in.

Mr. ROBERT C. BYRD. Under the agreement, Senator BAYH was to be recognized to call up an amendment. If he gets recognition, he is entitled to 30 minutes on his amendment. All I am asking for is 45 minutes on his amendment and a set time to call it up. If the Senator wishes to object to his having 45 minutes, all right—

Mr. JAVITS. No, no.

Mr. ROBERT C. BYRD. I would be glad to change the request and make it 3:15 that Senator BAYH would be recognized to call up his amendment.

Mr. JAVITS. I do not think the Senator from West Virginia gets my point. As I understand it, we begin to vote at 5 o'clock and now we are asked to vote on the Bayh amendment sooner than

5 o'clock. I do not know that Senators are informed of that. That is point No. 1. Point No. 2 is the issue of time which is involved. I would like also to propound a parliamentary inquiry: Is the Bayh amendment amendable?

The PRESIDING OFFICER. It is not amendable because that would be an amendment in the second degree.

Mr. JAVITS. So that the Bayh amendment is final as it is now. I have no desire to interfere with any operations of my colleagues, but how do we figure this out? The vote was supposed to begin at 5 o'clock and now we have a vote on the Bayh amendment at 3:45.

Mr. ROBERT C. BYRD. The Senator from New York is not correct, and I say that most respectfully—when he says that votes were to start at 5 o'clock.

Mr. JAVITS. I am willing to be corrected.

Mr. ROBERT C. BYRD. I say it most respectfully.

The agreement was that Mr. Bayh would be permitted to call up an amendment to the Gurney amendment during the day. Mr. ERVIN was to call up an amendment not later than 3 o'clock. It was stated very clearly in the Record yesterday that if Mr. BAYH were to get recognition today, before 11:30, or Mr. ERVIN were to get recognition before 11:30 today, they could call up their amendments and have them voted on.

Mr. JAVITS. As a matter of fact, how do we cope with the fact that, with a fixed time to vote, we are cutting the 6 hours, and whose time is it going to come from? Is it catch as catch can?

Mr. ROBERT C. BYRD. The more the Senator and I talk, it is going to come from Senator GURNEY's time. Under the order we agreed to last week, Mr. BAYH has a right today to call up an amendment, and he has a right to 30 minutes on his amendment. I am trying to set a specific time.

Mr. JAVITS. May we deal with the other problem? Whose time is going to be shortened by the fact that we are going through all this time?

Mr. ROBERT C. BYRD. Obviously, if there is not 6 hours in the overall for Senator GURNEY and the opponents of his amendment, it is going to come out of their time. That was understood to start with.

Mr. JAVITS. I am agreeable to that, if it is evenly divided. Let us have an understanding that it is not the alacrity with which someone will jump up and use his time.

Mr. ROBERT C. BYRD. Frankly, I do not see any problem in the matter, Mr. President.

The PRESIDING OFFICER. Is there objection?

Mr. GURNEY. Mr. President, reserving the right to object, what are we talking about now, if I may ask the distinguished assistant majority leader?

Mr. ROBERT C. BYRD. I will restate my request.

Mr. JAVITS. Make it 3:15.

Mr. ROBERT C. BYRD. I think the Senator from Florida has a right to object, if he wishes. It is his amendment. The Senator from New York, of course, has a right to object, too.

Mr. GURNEY. May we now have the presentation of the request?

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that at 3 p.m. today, the distinguished Senator from Indiana (Mr. BAYH) be recognized to call up his amendment.

Mr. JAVITS. Mr. President, I reserve the right to object, and I suggest that it be 3:15, as we have a speaker who will speak from 1:15 to 3, whom we have committed. We should have a few minutes thereafter to make some comment on what he says. This is all on perfectly proper time. I have a reason for suggesting it. I have stated my reason. Senator BROOKE is committed to speak at 1:15, and we have agreed to give him until 3.

Mr. PELL. I must add that we also have 10 minutes for the Senator from Minnesota.

Mr. ROBERT C. BYRD. It is much ado about nothing, really. I knew about Mr. BROOKE's desire to speak.

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

Mr. ROBERT C. BYRD. I yield.

Mr. BAYH. I have no objection to amending the unanimous-consent request to make it 3:15.

Mr. JAVITS. Make it 3 o'clock.

Mr. BAYH. The Senator from Indiana has been on the Record since we started discussing this matter, and I do not see why it should come as a surprise to anybody.

Mr. GRIFFIN. Mr. President, reserving the right to object, do I correctly understand that the Bayh amendment will be called up at 3:15 and voted on at 3:45? Is that correct?

Mr. BAYH. That is what has been said in the unanimous-consent request.

Mr. GRIFFIN. I am sorry to keep asking all over again.

I have just learned that a number of Senators on both sides of the aisle who are members of the IPU group, with the Mexican Parliamentarians, will be at the White House at 3 p.m.

Mr. AIKEN. I understand that it will be at 3 p.m.

Mr. GRIFFIN. And they probably will not be back until 4. I do not know how many are involved and what it would mean in terms of the outcome of the vote on the Senator's amendment, but I thought I should mention that.

Mr. BAYH. I want to be amenable. I just want to have 30 minutes to present this amendment and whatever time it takes to vote on it.

Mr. GRIFFIN. I assume that the group includes the majority leader.

Mr. ROBERT C. BYRD. It does; but I was asked by the leader not to delay the vote on that account.

Mr. GURNEY. Mr. President, reserving the right to object, if that is the case, why do we not put off all voting until about 5 o'clock, when we will have three votes—on Senator BAYH's amendment, on my amendment, and on Senator ERVIN's amendment—and everybody will be here?

Mr. ROBERT C. BYRD. Just catch as catch can.

Mr. BAYH. May I make a unanimous-consent request?

The PRESIDING OFFICER. Does the

Senator from West Virginia withdraw his request?

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that at 3 p.m. today, the distinguished Senator from Indiana (Mr. BAYH) be recognized to call up his amendment and that the vote occur on that amendment at 5 p.m. today, just prior to the vote on the Gurney amendment.

The PRESIDING OFFICER. Is there objection. The Chair hears none, and it is so ordered.

Mr. ROBERT C. BYRD. Now, Mr. President, there is the matter of the Ervin amendment.

I understand that Mr. ERVIN, about 4 p.m. today, would like to discuss his amendment, which is not an amendment to the amendment by Mr. GURNEY. Mr. ERVIN was hoping that an hour could be utilized for the discussion of that amendment. I do not know what the amendment provides. He is also hoping that immediately following the vote on the amendment by Mr. GURNEY, a vote would occur on the amendment by Mr. ERVIN.

Mr. JAVITS. As I understand it, Senator ERVIN wants a vote on his amendment as if it were an original thing and not an amendment.

Mr. ROBERT C. BYRD. The Senator is correct.

Mr. GRIFFIN. Mr. President, reserving the right to object, it does seem a little odd, I must observe, that we would be spending the last hour of the debate on the Gurney amendment discussing a different amendment which was not an amendment to the Gurney amendment. Obviously, when there was the understanding or the expectation that Senator ERVIN was going to amend the Gurney amendment, the discussion on the Ervin amendment would make sense. But I do not understand it now.

I wonder whether there could be a half hour on the Ervin amendment—it may be that he wants to make some points in the discussion prior to the vote on the Gurney amendment—and then there could be another half hour after the vote—if he wants an hour—after the vote on the Gurney amendment, if he wants another half-hour on his amendment.

Mr. ROBERT C. BYRD. The Senator from Florida may be aware of what Senator ERVIN's amendment contains, and he may be perfectly agreeable to this arrangement. I do not know.

Mr. GURNEY. We did discuss it. I must say to the distinguished acting majority leader that when we discussed it very early in the day, we did not know we were going to run out of time on my amendment, and obviously we now are.

As a matter of fact, as I see these time arrangements, I do not think there is going to be any way for either the managers of the bill or me to sum up the arguments, and I think it is rather important. If we could reserve, say, 20 minutes prior to the vote on the amendment, I think that would be a better way to arrange it.

Mr. ROBERT C. BYRD. Mr. ERVIN is not in the Chamber, Mr. President, but I feel that that would be perfectly agreeable with the Senator.

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

Mr. ROBERT C. BYRD. I yield.

Mr. BROCK. The unanimous-consent request was based upon the premise that the Ervin amendment was to the Gurney amendment.

Mr. ROBERT C. BYRD. The agreement was; yes; but the pending request is not.

Mr. BROCK. Let me understand the pending request. Is the Senator asking for debate on the Ervin amendment to transpire immediately after the vote on the Gurney amendment?

Mr. ROBERT C. BYRD. No.

Mr. BROCK. I think that is what should be done.

Mr. ROBERT C. BYRD. It probably should be done. I am merely stating what the Senator from North Carolina wanted or hoped would be done.

Mr. BROCK. I suggest to the Senator that I cannot support a unanimous-consent request that would lead to that result. I would support a request to have the Senator from North Carolina recognized, immediately following the vote on the Gurney amendment, for such time that the Senator thinks is necessary for the amendment, and then to vote immediately at the conclusion of that time.

Mr. ROBERT C. BYRD. Mr. President, I withdraw the request.

Under the agreement previously entered, the Senator from North Carolina presently is to be recognized at some point before 3 o'clock.

The PRESIDING OFFICER. That is correct.

Mr. ROBERT C. BYRD. I withdraw the request. Hopefully, something may be worked out which will be agreeable to all sides in that connection.

#### UNANIMOUS-CONSENT AGREEMENT

Mr. ROBERT C. BYRD subsequently said: Mr. President, I have cleared the following request with Mr. ERVIN, and I have discussed it—may I say to Senators—with the distinguished Senator from Florida (Mr. GURNEY) and the distinguished Senator from Tennessee (Mr. BROCK).

I ask unanimous consent that the amendment by Mr. ERVIN be called up today at 4 o'clock p.m., that it be under a 30-minute time limitation, and that it then be set aside, but that immediately following the vote on the amendment by Mr. GURNEY, a vote occur on the amendment by Mr. ERVIN.

The PRESIDING OFFICER (Mr. CLARK). Is there objection to the request of the Senator from West Virginia? The Chair hears none, and it is so ordered.

Mr. HASKELL. Mr. President, sometime today we will vote on the Gurney amendment, No. 1144, to the Education Amendments of 1974, S. 1539. The controversy surrounding this amendment—and its counterpart, the Esch amendment—has been churning for weeks. As to the constitutionality or lack thereof, see 40 University of Cincinnati Law Review 199 at page 259 by Archibald Cox.

I suppose anyone who knows the 93d Congress is still in session also knows the Esch-Gurney amendments would forbid the court-ordered busing of schoolchildren beyond the school next closest to their homes.

I think it is vital to remember that this is the real issue of the amendment before us.

Actually, when busing was first proposed several years ago, it sounded like an excellent idea. But it does not work and has not worked. Busing arouses the passions of both parents and students. It generates hostility and resentment in the community and defiance among school officials. Thus, it stands in the way of education—it does not improve it. I oppose busing because I am convinced, based on our experiences to date, that it actually impedes progress toward equal educational opportunity for everyone. In practice, busing has never fulfilled its promise—it is a remedy which has not worked, and to perpetuate the remedy I am afraid will tear apart the public school system in this country.

For those reasons, and those reasons alone, I will vote for the Gurney amendment.

The most deplorable aspect of the debate on this matter is that it is and will be used as a political issue.

Unfortunately there are those who will use the busing issue to suit themselves. And we can be pretty sure that throughout they will point to their concern for the children in justification of such opportunism.

We must remember that the objective is quality education for all. Furthermore, it is no longer even arguable that the poor and the blacks and the Chicanos suffer most from substandard education—and that very lack serves to perpetuate their status in our Nation.

I believe we must now put every means at our disposal to the task we should have been at all along: Providing enough school plants, enough good and dedicated teachers, and responsive curriculums to serve all our children.

For that reason, Mr. President, I am drafting separate legislation which will embody those three elements.

I will propose, first, that we make available funds enough to replace or upgrade every inferior school in this Nation's poverty areas to a level equal to or superior to the very best we now have in our affluent suburbs. This is an extension of the excellent amendment added to the bill by the distinguished Senator from Minnesota (Mr. HUMPHREY). How much will it cost? I frankly do not know yet and I will urgently welcome the support and assistance of my colleagues—especially those on the Education Committee—in finding out.

Second, I will propose special programs to attract and keep superior teachers in our inner city schools. This is an absolute necessity. As we know, qualified, experienced teachers with seniority—generally speaking, can select their assignments within our school systems. Too often they opt for the new schools away from the core city. That leaves the young or inexperienced teacher to confront the real educational challenge of teaching disadvantaged students in substandard schools.

I think special salary incentives will serve to attract our best teachers to the schools in which they are most badly needed.

The third element of my proposal will

be to provide funding and technical assistance for local schools in developing programs and curriculums which reflect the needs and goals of the students they serve. This is an urgent need. There is no refuting the evidence we have seen that in too many of our schools the subjects and teaching methods are so foreign to the students that they are meaningless.

How do we force heretofore unresponsive school districts to take advantage of such affirmative action programs for their substandard schools? I will propose, Mr. President, that any school district which has a substantial disparity in educational quality between its schools but fails to apply for Federal aid to upgrade the inferior ones will be denied all Federal education funds until such application is made.

I submit, Mr. President, that such a program is a remedy, far superior to busing, to accomplish the purpose of quality education for all.

The PRESIDING OFFICER. Who yields time?

Mr. BAYH. Mr. President, I ask unanimous consent that Mr. William Heckman, of my staff, be permitted the privilege of the floor during the discussion of this bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. PELL. Mr. President, I yield 10 minutes to the Senator from Minnesota.

The PRESIDING OFFICER. The Senator from Minnesota is recognized.

Mr. MONDALE. I thank the Senator from Rhode Island.

Mr. DOLE. Mr. President, will the Senator yield for a unanimous-consent request?

Mr. MONDALE. I yield.

Mr. DOLE. Mr. President, I ask unanimous consent that Ken Benjamin, of my staff, be accorded the privilege of the floor during the debate on my amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CRANSTON. Mr. President, will the Senator yield for a unanimous-consent request?

Mr. MONDALE. I yield.

Mr. CRANSTON. Mr. President, I make this request on behalf of the Senator from Florida (Mr. GURNEY) and myself. We have an amendment to offer, Amendment No. 1328. This request has been cleared with the majority, through the staff of the Senator from Rhode Island (Mr. PELL), through the minority via Roy Millenson, who is with the Senator from New York (Mr. JAVITS); and John O'Dair, who is with the Senator from Colorado (Mr. DOMINICK), and I believe it is going to be accepted without having any extended time on it.

Mr. President, I ask unanimous consent that Amendment No. 1328 be called up following the vote that occurs at 1 o'clock tomorrow.

The PRESIDING OFFICER. Is there objection?

Mr. ROBERT C. BYRD. I object. That was not cleared with the leadership, as far as I know.

The PRESIDING OFFICER. Objection is heard.

Mr. MONDALE. Mr. President, I

thank the distinguished floor manager for yielding to me this time to talk about this critical issue. I commend him again for his excellent leadership on this crucial education measure.

Mr. President, may we have order?

The PRESIDING OFFICER. The Senate will be in order. Senators will please be seated.

The Senator may proceed.

Mr. MONDALE. Mr. President, the debate today is not a new one. Almost every year since adoption of the Civil Rights Act in 1964, we have faced amendments designed to interfere with independent judicial and administrative enforcement of the equal protection clause of our Constitution as it affects public education.

Time and again the Senate has been asked to join in vain efforts to overturn judicial decisions, through legislation which we know to be unconstitutional. And time and again the Senate has refused to do so.

No fact of American life is more unpleasant than the fact of discrimination against schoolchildren based on race and ethnic origin. And no process has been more difficult and painful than our national effort to end this discrimination, over the past 20 years. We have found the road harder than we perhaps expected, the national leadership weaker, the practical barriers greater.

These problems are real. But the solutions proposed by the pending amendments are not. They are both ill-considered and beyond the legislative power of the Congress.

The power of the Congress to enforce the equal protection clause of the 14th amendment through appropriate legislation plainly does not, as some have argued, include the power to erode its guarantees. As the Supreme Court said in *Katzenbach against Morgan*:

Section 5 does not grant Congress power to exercise discretion in the other direction and to enact statutes so as in effect to dilute equal protection and due process decisions of this Court. We emphasize that Congress' power under Section 5 is limited to adopting measures to enforce the guarantees of the amendment; Section 5 grants Congress no power to restrict, abrogate, or dilute these guarantees.

The principle of judicial custody over interpretation of constitutional requirements is a cornerstone of the doctrine of separation of powers, which lies at the heart of our system of government. This principle, crystal clear since Chief Justice Marshall's historic opinion in *Marbury against Madison* 150 years ago, continues to deserve the respect of the Senate.

And so the key provisions of the pending amendment, which attempt to substitute a rigid congressional rule for the case-by-case inquiries of the courts, are null and void. The only purpose they can serve is to create confusion in over 1,500 school districts now desegregating under constitutional requirements.

#### THE PENDING AMENDMENTS

The amendment proposed by the Senator from Florida (Mr. GURNEY) is a complex one. But its major impact is summed up in two key provisions.

First, the amendment would prohibit

requiring the assignment of students beyond either the school nearest their homes, or the next nearest school. This provision is clearly void, since it flies in the face of Supreme Court decisions that are based upon the Constitution, and it seeks, in effect, to amend the Constitution by statute, something that cannot be done and something we know cannot be done. One wonders why it is being attempted.

In addition, the amendment could work great hardship if enforced. In some instances it would permit the transportation of children over long distances. In others, it would bar even a short walk to an integrated school. It would confine desegregation to those families living on the fringe of segregated housing areas, fostering "white flight" and encouraging the spread of residential segregation.

And in many cases this rigid rule would actually increase the hardship to children and their families. As Chief Justice Burger remarked for the Court in *Swann*:

Maps do not tell the whole story since non-contiguous school zones may be closer to each other in terms of the critical travel time, because of traffic patterns and good highways, than schools geographically closer together. Conditions in different localities will vary so widely that no rigid rules can be laid down to govern all situations.

Second, the amendment would permit the opening of every court order and administrative plan entered into since 1954—over 1,500 in all. Even where no transportation is involved under a long-settled desegregation plan, cases could be reopened by a single parent where courts in the past did not follow, in order, a hierarchy of remedies imposed in the pending bill. And the Attorney General is instructed to assist school system in making full use of the "re-opener" provision.

This is an invitation to massive re-litigation, an unpardonable effort to reopen old wounds which have begun to heal.

While the amendment proposed by the Senator from Florida is complex, the amendment of the Senator from North Carolina is simple.

It attempts to impose on Federal courts and on the administrative process under title VI of the Civil Rights Act of 1964 the "free choice" system of student assignment—a system rejected by the Supreme Court as long ago as 1968, in *Green against New Kent County*. And it was rejected because it proved a device to continue, rather than remedy, discrimination.

#### THE STATE OF CURRENT LAW

The Federal courts have not acted to require racial balance in public education. They act only on case-by-case proof of active discrimination against schoolchildren, based on race, color or national origin, by public authorities.

In a number of States, discrimination has taken the form of State laws requiring the segregation of schoolchildren by race. But the courts have increasingly found forms of active discrimination throughout the Nation. In South Holland, Ill., for example, Federal Judge Julius Hoffman found:

Schools were located in the center rather than at the boundaries of segregated residential areas in order to achieve school segregation.

School assignment policies were adopted under which black children living nearer to white schools attended black schools, and white children living nearer to black schools attended white schools.

School buses were used to transport students out of their "neighborhoods" in order to achieve segregation.

Teachers were assigned on a racial basis.

In Pasadena, Calif., a Federal district court found:

School zone boundaries were "gerrymandered" to concentrate black students in particular schools and whites in others—and transportation was provided to permit white students to avoid integration.

The size of schools was regulated to assure that integration would not take place—and portable classrooms were located at black elementary schools to prevent assignment of students to adjoining white schools.

Transfers out of "neighborhood schools" were permitted where the purpose was clearly to foster segregation.

The great majority of black teachers and administrators were assigned to black schools—and even substitute teachers were assigned on a racial basis.

Less well-educated, less experienced and lower-paid teachers were concentrated in black schools.

Qualified black teachers were denied advancement to administrative positions on the basis of race.

And even on proof of active discrimination, the law has not required any mathematical balance in the schools. Instead, the Supreme Court has sought to replace officially sponsored segregation with the greatest degree of actual desegregation which can practicably be achieved in each case.

Any doubts about the Supreme Court's intention to apply a rule of practical, case-by-case judgment should be laid to rest by the Court's recent decision in *Northcross* against Memphis, upholding a desegregation plan under which 30 percent of minority group students will continue to attend wholly segregated schools.

The fact is, then, that the courts are engaged in a case-by-case process, first requiring proof of official discrimination, then searching for individual remedies based on a rule of reasonableness.

Undoubtedly mistakes have been made along the way. Yet I cannot bring myself to believe that the Supreme Court—Chief Justice Burger and Justices Blackmun, Brennan, Powell, Rehnquist, White, Stewart, Marshall, and Douglas—are incapable of developing this area of the law in a fair and impartial way.

The Supreme Court is only now beginning to deal with the most complex issues of school desegregation. Last year in *Bradley* against Richmond the Court in a 4-to-4 tie vote refused to require metropolitan areawide desegregation. A more definitive ruling on this question is expected any day in *Bradley* against Milliken, involving schools in the Detroit, Mich., area. And in *Northcross* against Memphis, decided only 2 weeks ago, the Court gave notice that, depending on local circumstances, acceptable desegregation may be considerably less than total.

Even if Congress had the power to do so, we should think long and hard before replacing this careful, case-by-case

approach with the kind of rigid rules put forth in the pending amendment.

#### CONGRESSIONAL ACTION

For over 2 years, the Senate Select Committee on Equal Educational Opportunity, on which I served as chairman, struggled to come to grips with a broad range of questions revolving around discrimination in public education. And I have become thoroughly convinced that no single domestic issue which confronts this country is more painful and complex than the question of school desegregation.

Minority group parents and teachers often fear that desegregation may lead to further discrimination as damaging as that involved in segregation itself. And frequently parents from all backgrounds are concerned that desegregation may result in transfer of their children to schools where teacher motivation and academic opportunities may be decidedly inferior.

These concerns are legitimate ones. They are based on hard experience. They deserve our serious attention. And over past years we have tried to respond. Two years ago, Congress adopted and the President signed into law the so-called Scott-Mansfield amendment, which also appears as part of the pending bill.

Mr. President, I ask unanimous consent that the text of the Scott-Mansfield amendment may appear at this point in the RECORD.

There being no objection, the amendment was ordered to be printed in the RECORD, as follows:

#### PROHIBITION AGAINST USE OF APPROPRIATED FUNDS FOR Busing

SEC. 802. (a) No funds appropriated for the purpose of carrying out any applicable program may be used for the transportation of students or teachers (or for the purchase of equipment for such transportation) in order to overcome racial imbalance in any school or school system, or for the transportation of students or teachers (or for the purchase of equipment for such transportation) in order to carry out a plan for racial desegregation of any school or school system, except on the express written voluntary request of appropriate local school officials. No such funds shall be made available for transportation when the time or distance is so great as to risk the health of the children or significantly impinge on the educational process of such children, or where the educational opportunities available at the school to which it is proposed that any such student be transported will be substantially inferior to those opportunities offered at the school to which such student would otherwise be assigned under a nondiscriminatory system of school assignments based on geographic zones established without discrimination on account of race, religion, color, or national origin.

(b) No officer, agent, or employee of the Department of Health, Education, and Welfare (including the Office of Education), the Department of Justice, or any other Federal agency shall, by rule, regulation, order, guideline, or otherwise, (1) urge, persuade, induce, or require any local education agency, or any private nonprofit agency, institution, or organization to use any funds derived from any State or local sources for any purpose, unless constitutionally required, for which Federal funds appropriated to carry out any applicable program may not be used, as provided in this section, or (2) condition the receipt of Federal funds under any Federal program upon any action by any State or local public officer or employee which would be prohibited by clause (1) or the part of a Federal officer or employee. No officer, agent, or employee of

the Department of Health, Education, and Welfare (including the Office of Education) or any other Federal agency shall urge, persuade, induce, or require any local education agency to undertake transportation of any student where the time or distance of travel is so great as to risk the health of the child or significantly impinge on his or her educational process; or where the educational opportunities available at the school to which it is proposed that such student be transported will be substantially inferior to those offered at the school to which such student would otherwise be assigned under a nondiscriminatory system of school assignments based on geographic zone established without discrimination on account of race, religion, color, or national origin.

(c) An applicable program means a program to which the General Education Provisions Act applies.

The PRESIDING OFFICER. The Senator's 10 minutes have expired.

Mr. MONDALE. May I have 4 more minutes?

Mr. PELL. Mr. President, I yield 4 more minutes to the Senator from Minnesota.

Mr. MONDALE. Mr. President, unlike the amendment which we are debating today, this provision is constitutional. It states Federal policy that school desegregation is required only upon proof of discrimination, and that racial balance is not required. It relies on the courts to conduct a case-by-case inquiry into each case of alleged discrimination, to determine in each instance whether discrimination exists and what the appropriate remedy may be. It stresses that the remedies applied must be reasonable, and that the welfare of children must be placed first.

This amendment mandates on the Department of Justice and the Department of Health, Education, and Welfare the Supreme Court's own mandate to the Federal court system—that transportation must not be allowed to risk the health or safety of children, or to harm the educational process itself.

And in addition we have enacted the Emergency School Aid Act, signed into law in June of 1972. The act was designed to provide \$2 billion over 2 years to help school districts with the problems of desegregation. It was designed to provide extra teachers and counselors, to help school districts adopt team teaching, individualized instruction and other innovative education techniques, to provide desperately needed bilingual education and other special help.

The Emergency School Aid Act—which received bipartisan support and the President's commitment of funding at the level of \$1.5 billion over 2 years—promised real help to hard-pressed school systems. Sadly, the administration changed its position, delaying implementation, impounding funds provided for the first year, and sharply reducing funding thereafter. Less than \$300 million of the promised \$1.5 billion has been made available to school systems to date. And, largely as a result of this reduced commitment, the act has proved far less useful than we had hoped.

Once again, the pending bill attempts to provide constructive leadership within the scope of constitutional requirements. It repeats and extends the Scott-Mansfield amendment, and it extends the Emergency School Aid Act for an

additional 3 years, with the hope that more adequate funding can be achieved.

Mr. President, I wish to make my own position clear. I have consistently voted against the use of Federal authority to coerce racial balance. I have strongly supported legislation—like the Scott-Mansfield amendment—which stresses our concern for the health and safety of children, and for placing their educational interest first. I have supported financial assistance to reduce student-teacher ratios and in other ways to ease the transition.

But I am convinced that we will do irreparable damage if we retreat from the twin principles of nondiscrimination in public education, and judicial independence to interpret the mandates of our Constitution. The Congress cannot by statute reverse a constitutional ruling laid down by the Supreme Court. I believe the Congress should not attempt to do so. And so I have opposed amendments which fly in the face of constitutional decisions.

The pending amendments amount to an official endorsement of continued discrimination in our public schools. They amount to an undeserved vote of "no confidence" in the Supreme Court. Almost certainly unenforceable and without effect, they amount to negative leadership of the least defensible kind.

Anybody who has visited a community which is undergoing a desegregation order is aware of the pain, difficulty, and often the unpopularity of such orders. I think we all wish it were not necessary, and sometimes we might even object to an order on the grounds of practicality and the rest. But what is at stake in these amendments, what is at stake in this debate today, and what has always been at stake in these debates over the years, is not differences over how it should be done, but a difference over whether it should be done, whether we are going to endorse a principle of discrimination in this land.

I do not think that this great Senate, which time and time again has provided leadership to move forward in the field of human rights, should stand here this afternoon and accept an amendment which, stripped to its essentials, says one thing—"We endorse discrimination in this land." I will have no part of it.

Mr. PELL. Mr. President, I yield 60 minutes on the amendment and 30 minutes on the bill to the Senator from Massachusetts (Mr. BROOKE).

Mr. BROOKE. I thank the distinguished floor leader.

Mr. President, prior to my remarks, I want to commend the distinguished senior Senator from Minnesota for standing up and speaking out on this important moral issue, as well as constitutional issue, which the U.S. Senate faces on this 15th day of May 1974.

The distinguished Senator has always been a champion of civil rights and civil liberties, and I think he has focused upon the real essence of the question that faces the Senate today: Does the U.S. Senate, in 1974, want to go on record as voting for discrimination in this Nation?

I certainly commend my distinguished friend from Minnesota for raising his voice once again, and I hope that our col-

leagues in the U.S. Senate will hear that voice and heed his wise counsel.

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

Mr. BROOKE. I yield.

Mr. MONDALE. I thank the Senator for his kind remarks. May I say that I have had an opportunity to review the remarks he is about to make, and I commend him for a most scholarly statement.

Mr. BROOKE. Mr. President, I hope that we can have a calm, careful, and constitutional debate on S. 1539, the Education Amendments of 1974.

I would prefer that time and the times permitted me to discuss at length the meritorious provisions of S. 1539. But, unfortunately, both time and the times preclude such a discussion and compel me to once again defend the law of the land from unconstitutional and unconscionable assaults. Why this should be necessary, I do not know. I cannot understand the hearts and minds of legislators, who seek to: invite chaos and confusion across our troubled Nation; further racial divisions and strife; and precipitate a constitutional confrontation at a time when other abiding concerns trouble Americans and at a time when the country is moving slowly, sometimes painfully, but I believe inexorably toward "one nation indivisible."

When the Equal Educational Opportunities Act of 1972, was pending before the Senate the question was raised as to whether many Members of the House may have supported the Equal Educational Opportunities Act of 1972 without full knowledge of the bill's content and portent. Certainly that question cannot be raised today relative to the authors and supporters of the so-called Esch amendment who must know well the consequences of their action in the House on March 26.

They cannot claim ignorance either of law or their attempts to subvert it. Amid the platitudes of desire for equal educational opportunity for all young Americans, I discern a cynical contempt for the law of the land that now strives to achieve such a goal. The legislation which they drafted underscores this contempt for the Constitution and our Federal judiciary—the Esch amendment and amendment No. 1144 pending before the Senate are identical in their provisions to the deceptively named Equal Educational Opportunities Act of 1972, which I discussed at length on October 10, 1972.

Mr. President, I would like to review my remarks of that day. I began:

Early on the morning of August 18, the House of Representatives sounded the first call for a retreat from the promise of the 14th amendment. And now the Senate is asked to hastily echo this call without proper consideration of its portent.

In the harried closing days of this Congress, proponents of H.R. 13915 urge the Senate to rush to undo the slow but inexorable progress of two decades and to invite the most serious constitutional confrontation in over a century.

They would have us say to millions of Americans that segregation is preferable to possible inconvenience, that fears are more persuasive than facts and that political opportunity is more compelling than our constitutional responsibility.

Mr. President, how can we teach our children respect for the law, if we in the U.S. Senate treat the law with contempt?

The law of the land for two decades has been clear: Segregation of public schools by official act is a violation of the equal protection clause of the 14th amendment. Time and time again, the Supreme Court has unanimously affirmed Brown against Topeka Board of Education and the process of desegregation has continued. Though at times it was slowed by resistance, reason has prevailed and responsible citizens have accepted necessary remedies to constitutional violations. And this has brought hope to millions of Americans that we can, and shall, be one nation. The separate but equal doctrine of Plessy against Ferguson that divided America for 60 years must never return. Yet the measures before us contain the prescription for abandoning equal educational opportunities and for returning to separate but equal facilities.

Mr. President, I have lived in this country for many years and served in many offices. I have never seen anything both separate and equal in this Nation.

I have no doubt that these invidious prescriptions are unconstitutional, and I shall discuss the constitutional aspects of these measures later. But I ask now, How can the Congress even consider a policy that would encourage the development of two nations within our country—one white and the other black?

The fact that we are, angers and, even more, saddens me. For I see by our very consideration of such measures the encouragement of a small minority of Americans—black and white—who champion the cause of separatism.

Mr. President, I have denounced separatism and separatists, both black and white. I believe in one Nation. I believe in integration. And I am confident that most Americans, black and white, share these beliefs.

The hope for an end to racial division lies in our educational system. The opportunities we afford our young people determine the shape of our Nation's future. If we deny children the right to an equal chance in life, we deny our Nation a chance for greatness. If we perpetuate separate societies, divided by ignorance and suspicion, we risk an unsteady and uncertain future. For each generation of segregation in our schools, we risk another generation of division in our Nation.

We must not deny our young people the chance to bridge mutual misunderstandings with shared experiences and opportunities.

These cleverly crafted measures strike at the fundamental source of hope for our Nation—our children.

Though I am confident their most pernicious provisions would be struck down by the Supreme Court of the United States, their enactment would seriously divide and confuse our Nation. For two decades, the course has been sure but slow. And now we are asked to hastily and drastically alter it. Why? Because many Americans have become confused by the rhetoric on busing. In some cases this confusion is deliberately contrived by those who speak of "busing

to achieve racial balance" when such busing is not at issue. The issue is simple: Shall we or shall we not permit necessary remedies to a constitutional violation? Segregation of public schools by official act is unlawful.

This is a fact. Busing is an integral and pervasive component of our educational system. And that, too, is a fact. The fact is that in many cases, busing is necessary to uphold the law.

These measures are not as some call them antibusing amendments. Their provisions, limiting options in school assignments, permitting resegregation without remedy, and stimulating relitigation of all desegregation cases, compel a more accurate description. H.R. 13915 was an antidesegregation bill. The Esch amendment and amendment No. 1140 are antidesegregation amendments.

On October 10, 1972, I discussed, I believe thoroughly, H.R. 13915 then pending. I said then that among the provisions of this House-passed bill that demand scrutiny is one which would permit the reopening of long since closed and completed southern school cases, cases which preceded and had nothing to do with the current furor over court-ordered comprehensive busing in big cities North and South. I said it could put in train an endless flow of disruptive and harmful relitigation and possibly result in a rollback of court decisions whose fairness and necessity have by now been granted by practically everyone—including many of those who once opposed them.

Another provision which had not been thoroughly studied by either the Senate or the House was that which would permit court-ordered busing, but limit it to the "next nearest" school from that which was being desegregated. What this strange feature could do—and in innumerable cases would—is guarantee that the effects of busing orders be felt only in those poor white "ethnic" areas whose schools have least to offer ghetto children and where racial tensions run the highest. By voting for such a provision, the members of Congress are saying, in effect, that busing is fine so long as it tends to leave the affluent middle-class alone.

Finally, there was a provision authorizing the Federal judiciary and the executive branch to compel, as a remedy preferable to busing, the closing down of old schools and the construction of new. Interestingly, when this provision came before the House in 1972, an amendment was voted down which would have at least provided some Federal funds for districts compelled by the Federal Government to engage in what could be extremely costly construction. That vote, in my view, offered a fair measure of the degree of sensitivity that prevailed then and prevails now in Congress concerning the potential long-term effects of such legislation on the districts in question—as distinct from sensitivity toward the political value of an antibusing vote, which Members feel only too keenly.

Today, 19 months after I spoke these words, Members of both Houses of Con-

gress know full well the content and portent of the Esch amendment and amendment No. 1144. Nineteen months ago, I observed that the Senate was being rushed to judgment. I said:

And here in the Senate we are asked to follow in kind. Senate supporters of this bill refused to allow the measure to be referred to the committee with proper jurisdiction over it, the Committee on Labor and Public Welfare.

By refusing to allow proper consideration of this bill in 1972, its supporters denied Americans the right to closely examine this legislation and to be heard for or against it. No one could argue that the Labor and Public Welfare Committee was a graveyard for legislation. The committee has faced up to the issue of busing time and time again. The Senate had expressed its will on busing on two occasions in 1972 alone. Knowing that the committee would act responsibly, I could only assume in 1972 that the supporters of H.R. 13915 feared the revelations that would ensue from its careful scrutiny.

The title of that measure and the pending amendment belie their content as any objective analysis will prove.

#### POLICY AND PURPOSE

H.R. 13915's basic policy and purpose as set forth in section 2 flawed the measure from the beginning. Section 2(a) (2) would have established a national policy requiring assignment of students to schools in their neighborhoods. Other provisions in the bill contradicted this policy. But let us examine the basic premise of the policy again contained in the pending amendment. It assumes that our Nation's educational system is based on neighborhood lines. The history of American education does not uphold this assumption. For a number of reasons—space, staff, and other resources—school assignments are not generally based on the closest school criterion. The fact that 40 percent of our public schoolchildren ride schoolbuses and 25 percent of our public schoolchildren use public transportation to get to school supports this conclusion. Neighborhoods are not considered stable entities with a constant ratio of schoolage children to their population.

Mr. President, neighborhoods change. School assignments change. Nowhere did H.R. 13915, nor does the pending amendment, define the term "neighborhood." Without definition, this policy could be effectively used as an excuse for segregation, as in the past, through gerrymandered assignment areas.

What meaning does the term "neighborhood" have to large high school and junior high school attendance districts, which cover many neighborhoods? The answer is: None.

This expression of policy in support of an educational system that does not now or could not exist is irresponsible. How can the Congress of the United States enact a mythical policy? We should be more responsible than to write undefined catchwords into law.

#### FINDINGS

Mr. President, these measures move from the declaration of policy which

cannot be realized to the findings of facts that cannot be supported.

The pending amendment would have Congress find that "many school systems have been required to engage in extensive transportation of students" in order to eliminate dual school systems.

Since only 3 percent of the children now riding school buses are doing so for desegregation purposes, the term "extensive" has no nationwide application. The experience statewide would also contradict this finding.

The facts are that there is less busing, not more busing, as the dual educational system is eliminated. This is because children are no longer bused past one segregated school to get to another. In Alabama, desegregation orders resulted in a decrease of 1 million passenger-miles. In Mississippi, 318,095 children were bused to maintain segregated schools; only 292,472 were bused when segregation was ended.

The same experience—a decline in the number of students bused and the number of miles transported—resulted after desegregation orders were entered in Charlotte, in Richmond, in Leon County, Fla., and elsewhere.

The finding that school systems have been required "to expend large amounts of funds" is likewise not supported by fact. In 1933, the expenditure for pupil transportation was 3.5 percent of the cost of operating public schools. In 1969-70, it was 3.6 percent. And it should be noted that in the intervening years, there was a nationwide move toward consolidation of schools away from the outmoded one-room schoolhouse.

Are not those who now argue that busing is expensive the same people who sought to bar the use of Federal funds for busing? Perhaps in some cases desegregation plans do require increased expenditures. If local education agencies are required by a Federal court or agency to increase transportation, I think it is only proper that Federal funds be made available to meet part or all of these increased expenses. I cannot understand the logic of proponents of this amendment who charge that busing is expensive, yet who have consistently argued that Federal funds should not pay for student transportation.

But more importantly, viewed as a percentage of public school expenditures, transportation is but a small budget item. There is no basis for Congress to find that school systems have spent large sums for busing.

Nor can Congress conceivably find that transportation of students "creates serious risks to their health and safety and disrupts the educational process."

Such a finding ignores the evidence that the schoolbus is the safest way for children to get to school—safer even than walking. A 6-year study by the Pennsylvania Department of Education found riding 3 times safer than walking. The National Safety Council statistics show that while there are 2.4 fatalities per 100 million miles of travel in private automobiles and 0.29 in airplanes, the figure for schoolbuses is 0.06.

Mr. President, each day 20 million

young Americans ride schoolbuses. This amendment suggests they are all in danger. Yet it does nothing to remove the alleged risks for 97 percent of these children. Rather, it responds only to the 3 percent who ride the bus for desegregation purpose. The question is: Are those who ride schoolbuses in danger? The answer is no. Therefore we should not make a finding that they are.

Furthermore, section 802 (a) of Public Law 92-318 makes clear the intent of Congress in respect to "excessive" busing by stating:

No such funds shall be made available for transportation when the time or distance of travel is so great as to risk the health of the children or significantly impinge on the educational process of such children.

This portion of current law parallels Chief Justice Warren Burger's opinion written for the Court in Swann against Charlotte-Mecklenburg Board of Education.

An objection to transportation of students may have validity when the time or distance of travel is so great as to risk either the health of the children or significantly impinge on the educational process.

The Supreme Court has set proper limits to busing. Congress has passed and the President has signed into law similar limits. There is, therefore, no reason for Congress now to raise the specter of undue danger on the schoolbus. I can only conclude that this finding about busing risks is included in the measure before us to stir up emotions. It serves no useful purpose and it has no basis in fact.

Neither does the finding which follows stating that the Supreme Court's guidelines for remedies to dismantle dual systems have been "incomplete and imperfect." This section, in effect, issues a challenge to the very nature of the judicial process. Particularly with respect to transportation, the Supreme Court has made it clear in Swann that—

No rigid guidelines as to student transportation can be given for application to the infinite variety of problems in thousands of situations.

But as previously mentioned, the Court and Congress, in Swann and Public Law 92-318, respectively, have provided a "clear, rational and uniform" standard generally for student transportation contrary to the finding of section 903(a) (6). But the Court in Swann rejected rigid guidelines as being impossible to devise.

In 1955, in Brown II, the Court determined it was proper for the district courts to exercise their equity jurisdiction with its traditional flexibility to fashion specific remedies for each unique factual situation in school desegregation cases. In 1971 the Court affirmed this position in Swann. It stated that—

Conditions in different localities will vary so widely that no rigid rules can be laid down to govern all situations.

Yet that is what the pending amendment seeks to do in defiance of the Court.

Local educational agencies do not act in a vacuum when it comes to remedying a dual school system. Over a period of 20 years, the Supreme Court has estab-

lished clear guidelines for remedying a dual school system.

Swann makes clear the limits on transportation and the absence of a requirement of racial balance or racial quotas to desegregate school systems.

In Green against County School Board of New Kent County, Va., the Court ruled out freedom of choice or "open enrollment" plans. And Swann spelled out clear alternatives: redrawing attendance zones and "pairing", "clustering" or "grouping" of schools. There has been no doubt as to the district court's responsibilities in the desegregation process. In Brown II, the Court said that school officials and the courts are responsible for achieving the constitutional requirements for desegregated schools. The schools were given the responsibility for developing plans, but the Court stated that:

The courts will have to consider whether the action of school authorities constitutes a good faith implementation of the governing constitutional principles.

In Green and Swann, the Court reiterated this opinion. The Court has also been clear as to the speed with which desegregation responsibilities should be discharged. In Brown I, the Court said that district courts should implement desegregation rulings "with all deliberate speed." The Court also said that limited delays in achieving complete desegregation would be acceptable if a school board could "establish that such time is necessary in the public interest." Ten years later, in Griffin against County School Board of Prince Edward County, Va., the Court served notice that such delays were no longer accepted.

In 1968, in Green, the Court ordered desegregation to take place immediately:

The burden on a school board today is to come forward with a plan that promises realistically to work and promises realistically to work now.

The following year, in Alexander against Holmes County, Miss., Board of Education, it held:

The obligation of every school district is to terminate dual school systems at once and to operate now and hereafter only unitary schools.

Contrary to the finding of section 903 (a) (6), guidelines do exist as to remedies, responsibilities and speed in eliminating dual school systems. Due to the varied nature of our school systems, the Supreme Court has ruled out rigid formulas for compliance, but has provided general guidelines which are adequate for the task.

The suggestion that the courts have failed is an unnecessary one, except for the purpose of the authors of this legislation, which is to limit the jurisdiction of the courts in school desegregation cases.

We see in amendment No. 1144 an effort to use incorrect findings of fact to prove that the courts have failed. In subsequent sections, the bill provides that the Congress shall remedy these alleged failings.

#### UNLAWFUL PRACTICES

Amendment No. 1144 seeks to weaken the 14th amendment, raises again the straw man of racial balance, and reiter-

ates a national educational policy premised on the neighborhood school.

By narrowly defining the scope of what constitutes a denial of equal protection of the laws, section 904 of amendment No. 1144 is contrary to the holdings of the Supreme Court. Subsections (a), (b) and (c) require that the action which results in discrimination be deliberate or for the specific purpose of segregation. The Court, however, has held in a variety of cases that it is not necessary to prove discriminatory motive, purpose, or intent as a prerequisite to establishing an equal protection violation when discriminatory effect is evident. On June 22, 1972, in Wright against Council of the City of Emporia, Justice Stewart, writing for a majority of the Court, explicitly stated that no showing of a discriminatory purpose was required:

The mandate of Brown II was to desegregate schools and we have said that the "measure of any desegregation plan is its effectiveness." Thus, we have focused on the effect—not the purpose or motivation—of a school board's action in determining whether a permissible purpose cannot sustain an action that has an impermissible effect.

In 1972, the Fifth Circuit Court of Appeals in the cases of Austin and Corpus Christi have reiterated that there is no requirement of proof of discriminatory purpose.

In the Corpus Christi case, Cisneros against Corpus Christi Independent School District, the Fifth Circuit said:

We affirm the finding of the district court that action by the school district here has, in terms of cause and effect, resulted in a severely segregated school system. In Corpus Christi, we need find nothing more. Discriminatory motive and purpose, while they may reinforce a finding of effective segregation, are not necessary ingredients of constitutional violations in the field of public education.

The courts have consistently made it clear that plaintiffs need not demonstrate an improper motive or discriminatory purposes behind the actions of school authorities in order to vindicate their rights under the 14th amendment.

And Congress cannot impose such a requirement of proof of discriminatory purpose and thereby restrict and impede the rights of children to equal educational opportunity. This attempt, through section 904, to legislate a new burden of proof on those seeking equal protection of the law is among the most disturbing features of this bill. And the further one delves into this measure, the more obvious becomes the authors' intent to create as many obstacles as possible to school desegregation.

Yet section 904 has an allied purpose. It seeks to create public opposition to busing by continuing to confuse the busing issue through its assertion that the failure to achieve racial balance is not a denial of rights under the 14th amendment. In Swann, the Supreme Court was clear on racial balance:

The Constitutional command to desegregate schools does not mean that every school in every community must always reflect the racial composition of the school system as a whole . . . awareness of the racial composition of the whole school system is likely to

be a useful starting point in shaping a remedy to correct constitutional violations.

The issue is not now, nor has it ever been "busing to achieve racial balance." This phrase has consistently and deliberately been used to instill unfounded fears in millions of Americans who envision massive busing across school district, municipal, county and even State lines. No such busing is now required by Federal courts and agencies. It is unlikely any such busing shall ever be federally mandated.

Those who raise once again the specter of "busing to achieve racial balance" have had full opportunity to deal with this nonproblem. Congress passed and the President signed into law a moratorium on any such busing ordered by a U.S. district court.

The provisions of section 803, Public Law 92-318, are clear:

Notwithstanding any other law or provision of law, in the case of any order on the part of any United States district court which requires the transfer or transportation of any student or students from any school attendance area prescribed by competent state or local authority for the purpose of achieving a balance among students with respect to race, sex, religion, or socio-economic status, the effectiveness of such order shall be postponed until all appeals in connection with such order have been exhausted or, in the event no appeals are taken, until the time for such appeals has expired. This section shall expire at midnight on January 1, 1974.

But busing to achieve racial balance is but a bogus issue raised to divert attention from the real intent of proponents of this legislation. Justice Powell's ruling in the *Augusta* case in 1972 underscored the distinction between the goal of racial balance and the imperative of desegregation. As to section 803 of Public Law 92-318, Justice Powell ruled:

It does not purport to block all desegregation orders which require the transportation of students.

Powell also wrote:

If Congress had desired to stay all such orders, it could have used clear and explicit language appropriate to that result.

It is obvious that the so-called anti-busing forces are caught in a semantic trap they themselves have set. To excite the public, they spoke of "forced busing to achieve racial balance." And so Congress postponed such orders for 18 months. However, since busing for racial balance was not the problem, those who oppose busing for its present constitutional purposes were obviously displeased with the solution. Caught in their own trap, they fought more relentlessly than I, or most people, expected; and H.R. 13915 was the product of their zeal. So, too, are the Esch and pending amendments.

Section 906 of amendment No. 1144, which provides that the assignment of students to "neighborhood" schools fulfills a school system's constitutional obligation, seeks to establish the previously stated but mythical national policy of the neighborhood school as the basis of our educational system. Again the proof of intent or purpose is required if such neighborhood school assignments result in segregation. In effect, this section would say to segregated youngsters that

they are now attending de facto rather than de jure segregated schools. Such a change in labels is of little comfort to those denied an equal education.

This section ignores the fact that the racial character of neighborhoods has not been accidental. All levels of government have been involved, partly by design, mostly by default, in residential segregation. School assignments based solely on a student's residence is often discriminatory and is not a neutral device for complying with the 14th amendment. Neighborhoods may be a convenient basis for pupil assignment, but they are not of such supremacy as to override constitutional rights. As Chief Justice Burger noted in *Swann*:

Desegregation plans cannot be limited to the walk-in school.

Section 906 would mandate such inadequate remedies and prevent the courts from developing alternate desegregation plans sufficient to remedy a constitutional violation. Section 806 is but one of many provisions of the pending amendment which seeks to block adequate remedies to violations of the Constitution.

#### ENFORCEMENT

Part C of this amendment would allow the gradual restoration of segregation in our Nation's schools and provide impunity to the resegregation process. How frightening to contemplate the undoing of all that we have strived for in the past 2 decades. But the authors of this legislation seem indifferent to the consequences and constitutionality of part C. Under part C, once a court has approved an implemented desegregation plan, an individual is prohibited from seeking his constitutional rights to equal protection, should the schools within the system become segregated again because of shifts in population. Such resegregation could well stem from official act or neglect and clearly violate the equal protection clause of the 14th amendment which, since *Brown I*, has prohibited the maintenance of racially segregated schools.

Such segregation is as much a constitutional violation if it results from a process of resegregation after a court-approved desegregation plan is implemented, as it is prior to the implementation of the plan.

This provision is a patent infringement on the rights of citizens for equal protection. Congress does not have the power to pass a law limiting or narrowing the guarantees held to be embodied in the equal protection clause. In 1966, the Supreme Court addressed itself specifically to this point in *Katzenbach* against *Morgan*, when it stated:

Section 5 (of the 14th Amendment) does not grant Congress power to exercise discretion in the other direction and to enact statutes so as in effect to dilute equal protection and due process decisions of this court. We emphasize that Congress' power under Section 5 is limited to adopting measures to enforce the guarantees of the Amendment: Section 5 grants Congress no power to restrict, abrogate, or dilute these guarantees.

Section 5, moreover, cannot be used as a basis for regulating the jurisdiction of the Federal courts. It concerns only ques-

tions of checks and balances between Congress and the Judiciary.

Part C of amendment No. 1144 is clearly unconstitutional, but constitutionality was obviously not a criterion for those who drafted this measure.

Section 911 would delay civil action against an educational agency until such time as the Attorney General served notice to the agency of the conditions which constitute a violation of the act and he is satisfied that the agency has not taken adequate remedies within a reasonable time. The effect of this section is to slow the desegregation process. It is but another obstacle to integration this bill seeks to erect.

The next section, 912, follows this defiant pattern. It would provide that the prevailing party in any action under the act may, at the court's discretion, recover a reasonable attorneys' fee as part of the cost.

There is no doubt of the consequences of such a provision. It strikes at the very foundation of American justice by intimidating and deterring the poor from asserting the constitutional rights of their children.

In 1972, in its critique of H.R. 13915, the Association of the Bar of the City of New York's Committees on Federal Legislation and Civil Rights stated the case against such a provision as follows:

To permit the recovery of attorneys' fees against civil rights plaintiffs is to reject the rationale of Title II of the 1964 Civil Rights Act as interpreted by *Newman v. Piggie Park Enterprises, Inc.* where the court stated that a plaintiff under Title II of that act obtains an injunction not for himself alone but also as a "private attorney general." In fact the 1964 Civil Rights Act and the 1968 Fair Housing Act provides that attorneys' fees are recoverable by plaintiffs under certain circumstances in accord with the public interest nature of such litigation.

The prospect that a plaintiff may lose a civil rights action and therefore be required to pay substantial attorneys' fees would have an "in terrorem" effect on attempts to vindicate civil rights. The problem is highlighted by other provisions of EEOA which make it likely that decrees heretofore obtained by civil rights plaintiffs will be reopened.

Moreover, to allow a court to charge attorneys' fees to an unsuccessful plaintiff is quite contrary to the spirit of American justice which has not allowed the taxation of costs so high as to discourage plaintiffs from commencing litigation to obtain what they deem to be their rights.

Section 912 is clearly "contrary to the spirits of American justice." This amendment is, too, as we have seen in the policy findings, definitions of unlawful practices and enforcement provisions,

#### REMEDIES

However, it is in the amendment's proscription on remedies that this measure is most threatening to the rights of Americans.

Section 913 mandates that in formulating a remedy:

A court, department, or agency of the United States shall seek or impose only such remedies as are essential to correct particular denials of equal educational opportunity or equal protection of the laws.

It is unclear what is intended by section 913. The House Education and La-

bor Committee's report on a similar section in H.R. 13915 stated only that—

This provision means that courts are not to use law suits against school districts as occasions for imposing free-wheeling requirements on these school districts. Rather, they must restrict themselves to the particular facts and circumstances of the cases.

So we are confronted with a section of vast implication with only the slightest hint of legislative intent. We can only speculate as to its full intent.

The limitation of remedies to particular denials of rights could be intended to restrict the courts from ordering school district-wide desegregation plans. The Justice Department has contended that district courts must limit their orders to remedies applying only to "pockets" or "incidentals" of discrimination within a school system. Judge Wisdom of the Fifth Circuit Court of Appeals in United States against Texas Education Agency responded to this argument:

What the Department now refers to as proof only of piecemeal or pocket discrimination has always been its tried and true method of proving school segregation. The discriminatory acts of the school authorities infect the entire school system; they are particularly obvious in the so-called "pockets" . . . The concept of "incidents" of discrimination is an inscrutable new concept totally at odds with the teaching of Brown and its progeny—and with all previous cases in which the Department of Justice has appeared.

The effect of section 913 would be to allow the judicial treatment of symptoms without responding to the disease itself.

It could also be that this section is intended to preclude the use of class action suits in school desegregation cases. But the intent is not now clear.

In the 1972 House debate on H.R. 13915, Representative WIGGINS asked Representative QUIE whether or not the use of the word "particular" was intended to foreclose class actions.

Representative QUIE answered:

I could not tell the gentleman, but I doubt that would be the case. The question never came up, so I have not checked it with counsel at all, but I doubt that it would.

If Representative QUIE's doubts are not affirmed, section 913 of the pending amendment could limit courts to providing remedies only to individual plaintiffs, thus making it impossible to desegregate entire school systems without costly multiple suits.

This section could also be intended to eliminate the use of statistics to prove a pattern of discrimination in a school desegregation case. Such evidence is in many instances the most objective and compelling way to prove discrimination.

However this limitation is interpreted now, it is obvious that its lack of clarity would lead to extensive litigation in the future.

In light of the other provisions of this measure, I must interpret section 913 as intending to narrow the application of remedy, the use of class actions and the submission of statistical evidence.

Section 914 of the pending amendment sets forth a priority of remedies whereby the Federal courts would be required first to attempt to assign students to the nearest school, taking into consid-

eration building capacities and natural physical barriers. Yet, if this does not work, the bill would allow the courts to ignore physical barriers such as railroad tracks, a river or busy highway. The great concern for safety in respect to busing earlier expressed in part A is obviously not paralleled in section 914's consideration of alternate remedies. The third priority remedy set forth in subsection (c) is contrary to a series of Supreme Court decisions since 1968 that have ruled that "freedom of choice" or "open enrollment" plans are rarely an effective remedy. Section 914(c) would undermine any impact a desegregation plan might have by permitting white students to transfer from integrated schools. Any white student who could show that students of his "national origin" were not in a majority in the school he wished to attend could presumably effect a transfer.

I cannot imagine a more potentially divisive scheme than to suggest that all schools keep track of the national origin of all its students. It would only call attention to differences and create group tensions where none had previously existed. While white students would find transfers easy, a black student would be required to assume the full burden of change as an outsider coming into a school that must have a minority of his race.

Each year since 1966 the Senate has rejected proposals that would seek to make freedom of choice fulfill constitutional desegregation requirements. We are now confronted with a measure which places such plans third in line of priority, and seeks to limit true freedom of choice to white students only. We were so threatened on October 10, 1972. We are again so threatened today, May 15, 1974.

Section 914 sets forth remedies that are inequitable and inadequate to fulfill constitutional responsibilities.

Section 915 denies a remedy that is in many instances the only one available—transportation. Simply stated, section 915 insures that should all the other provisions of this measure fail to impede desegregation attempts, this provision will succeed.

By forbidding Federal courts and agencies from ordering any school system to implement a desegregation plan requiring transportation of students beyond the school next closest to their place of residence, this provision would preclude desegregation even in the inner city; impose the entire burden of desegregation on those white families who live adjacent to the inner cities; and lead to chaos. It would free the more affluent from the desegregation process while lower-middle income families, black and white, found their children bused to inner-city schools. This is the most blatant example of class legislation I have seen. Consider the consequences of the knowledge that a family must live only a certain distance in relation to two schools to insure its children were not part of the desegregation process. This provision would lead to neighborhood instability, real estate panics, and the flight of the middle class from the fringes of the in-

ner city. Our cities would become more and more bastions of the very rich and the very poor. This is an expression of the worst social policy imaginable. It also seeks to deny the judiciary the flexibility which the Supreme Court has continually recognized they must have to devise remedies likely to succeed in local situations.

Clearly an inflexible national standard with such far-reaching implications deserves the most careful scrutiny. I doubt anyone in Congress or the executive branch really knows how this would affect our various cities, and its different effects on large, medium, and small cities. I doubt if anyone really knows the effect that this would have upon the people who live in these areas. And I wonder if many of them even care.

How can we conceivably consider acting in such a vacuum of information?

Subsection (b) of section 915 is merely an unnecessary affirmation of Swann and current law—section 802(a), Public Law 92-318. Again the authors of this amendment have sought to suggest problems that do not exist in order to advance their measure.

Section 915(c), in permitting resegregation without remedy once a court determines a school system has eliminated its previous dual system, is similar to a provision added on the floor of the House to H.R. 13915 in 1972.

In conjunction with section 915(a), limiting transportation to the next closest school, section 915(c) would assure and promote further segregation of neighborhoods and the resulting resegregation of neighborhood schools. Since students could be bused only to the next closest school and since subsequent court orders requiring transportation to adjust for shifts in residential populations would be prohibited, families living in school attendance zones next closest to black neighborhoods would need move only one attendance zone further to avoid desegregation completely.

Thus, section 915(c) would fortify the next closest school concept by foreclosing future options to the courts to remedy the residential shifts caused by application of the next closest school concept.

In proposing this provision, which became section 403(c) of H.R. 13915, Representative FASCELL contended that—

This makes the language of the Mecklenburg case apply to an act of a department or agency as well as that of a court.

I disagree with Mr. FASCELL's interpretation of Swann against Charlotte-Mecklenburg, as already imposing limitations contained in section 915(c) on the courts.

In the closing paragraphs of the Swann decision, Chief Justice Burger stated:

At some point, these school authorities and others like them should have achieved full compliance with this Court's decision in Brown I. The systems will then be unitary in the sense required by our decisions in Green and Alexander.

It does not follow that the communities served by such systems will remain demographically stable, for in a growing, mobile society, few will do so. Neither

school authorities nor district courts are constitutionally required to make year-by-year adjustments of the racial composition of student bodies once the affirmative duty to desegregate has been accomplished and racial discrimination through official action is eliminated from the system. This does not mean that Federal courts are without power to deal with future problems; but in the absence of a showing that either the school authorities or some other agency of the State has deliberately attempted to fix or alter demographic patterns to affect the racial composition of the schools, further intervention by a district court should not be necessary.

This dictum assumes that neither the Federal Government nor the State have contributed in any way to the shifts in demographic patterns that may resegregate schools. It must also be read in the context of the Swann decision as a caution to courts to exercise commonsense in the administration of desegregation plans. Section 915(c) is more than a caution; it is an invitation for covert actions to subvert desegregation orders by official acts, which would result in resegregation. A statutory prohibition of subsequent action against the effect of such an act could well encourage the act. In my remarks of October 10, 1972, I was pleased to yield on a similar point to the distinguished Senator from Michigan (Mr. HART), who stated:

Mr. President, I am grateful that the Senator has developed the points he has. The Senator was commenting a moment ago on section 403. I am not sure we understand fully the affront, really, that appears to be contained in the kinds of orders that this bill would issue to the federal courts.

Am I correct in understanding the Senator from Massachusetts to make the point that no matter how gross a denial of equal protection of the laws a court may find a school district to have engaged in violation of the 14th Amendment, we are saying in section 403 (of H.R. 13915) that the court cannot exercise either its commonsense nor give any relief to a constitutional violation?

I replied:

Precisely. That is exactly the point I am stressing.

Mr. President, without losing my rights to the floor, I yield to the Senator from Florida (Mr. GURNEY) for the purpose of a unanimous-consent request.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GURNEY. I thank the Senator.

Mr. President, I ask unanimous consent that a staff member on the Judiciary Committee, at the request of the Senator from Nebraska (Mr. HRUSKA), Mr. J. C. Argetsinger, be permitted floor privileges during the debate on this amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BROOKE. Mr. President, that is exactly what section 915 of amendment No. 1144 would do. And it is inconceivable to me that the proponents of this measure really want to do this.

Another prohibition contained in section 916, would not allow for the ignoring or alteration of school district lines unless there is proof of discriminatory purpose. This section represents an unnecessary intrusion into the judicial

process. It is inappropriate for Congress to attempt to legislatively dictate a result in pending litigation or attempt to impose its view of constitutional requirements on the courts.

Yet, this is the basic intent of this measure—to intrude into the judicial processes and dictate constitutional requirements that would thwart constitutional rights, and thus deter the constitutionally mandated desegregation of our Nation's public schools.

If this effort to impede school desegregation was not sufficiently sinister itself, consider section 918 of the amendment before us. This section would seek to undo every existing court-ordered or title VI desegregation effort now underway. It would allow thousands of desegregated or desegregating school systems, with the assistance of the Attorney General, to return to the courts and Federal agencies to have their plans modified in accordance with this amendment. And the provisions of this deviously drafted measure would allow the return to segregation, and that is what the authors of this amendment want.

This would be in cases where district courts have already approved plans—sometimes modified them, to be sure—by which the process of desegregating school systems is proceeding in accordance with law. What section 918 would say to the courts and schools is, "Let us open this all up now. You can stop desegregating, go back to the courts, modify your plans, and, in fact, return to the segregated point you were at before you either voluntarily proceeded to desegregate or you were ordered to do so under law."

This would put us back decades; and this would totally disrupt areas where many, many times the people have found that the desegregation of the public schools is not the traumatic experience many have attempted to make it in proposing this amendment.

Millions of Americans have found that their fears have been allayed; and they are working very well together—blacks and whites—to bring about the desegregation of their public school systems.

But this measure, particularly this section, would encourage them to return to the segregation which they had before. To me this is an unconscionable proposition for anyone to have set before Congress.

This "reopener" clause is frightening in its potential. The wording is so broad that it would allow the reopening of all past desegregation cases going all the way back—over 20 years of progress to the Brown case.

In 1972 in testifying before the House Committee of the Judiciary, Attorney General Richard Kleindienst was asked whether the right to reopen cases under section 406 of H.R. 13915 would apply only to cases involving busing or to all desegregation cases. He answered:

All desegregation cases, even where busing might not even be an issue involved in it. You are going to have an opportunity for a school agency to come into a federal district judge and say, this order was entered into 12 years ago, Congress has laid down a new national standard and we want to re-examine this and apply the remedies and priorities set forth in the national standards, and obtain a new order in this particular case.

Such measures invite chaos across the country. Because the remedies and priorities of these measures thwart desegregation plans and violate the constitutional rights of our citizens, separatists, black, and white, will return to the forefront as the chance is offered to undo the hard work and good will of reasonable men and women. Those who have worked hard to make integrated schools a workable reality would be shunted aside by separatists, with the aid of Congress.

In arguing that a reopener provision is unconstitutional, the Association of the Bar of the city of New York in 1972 stated:

It is cynical in the extreme, therefore, to permit new rounds of litigation where successful adjustment to constitutional order exists.

That is not an understatement, nor is the association's assertion that a reopener provision is unconstitutional.

If this section intends to create a right to reopen proceedings which is greater than the traditional equity doctrine to review in the light of changed circumstances, and I assume it is or the section would be unnecessary, then it singles out on the basis of race a class of Federal court decrees for special treatment since it applies only to desegregation cases.

Therefore, I contend that placing such a burden on minority group litigants violates the doctrine of Hunter against Erickson. In that 1969 decision, the Supreme Court held unconstitutional a provision added to the charter of the city of Akron, Ohio, which required any ordinance regulating the sale or lease of property on the basis of race to win the approval of a majority of voters in a general election before it could take effect. The Court held that the charter could not place "special burdens on racial minorities within the governmental process."

Section 918 could place special burdens on racial minorities. This section makes it more difficult for minority children to enjoy their right to equal educational opportunity since it forces them to relitigate cases they had presumably already won. Thus, I contend this section is most probably unconstitutional under the principle of Hunter against Erickson.

Yet, I take little comfort in the presumed unconstitutionality of this reopener. That the House of Representatives could pass and the Senate could even consider such a provision frightens me. How can Congress proceed so callously with respect to the rights of millions of Americans? I would like to believe that it has done so unknowingly.

On October 10, 1972, I could give the benefit of the doubt to the authors and supporters of such a provision. Today, I cannot. Section 918 only stands out amid the cynical provisions of this measure because, as the Association of the Bar of New York said, such a reopener provision is "cynical in the extreme." Under ordinary circumstances almost every provision of this measure would similarly be labeled.

Section 919 of amendment No. 1144 would allow the transportation portions of court orders to be terminated upon a finding that the school system is not excluding any person from any school on

account of race. In other words, busing would remedy the illegal situation, but the moment this had occurred it would be possible for the school system to return to the situation prior to the busing order. Then only if it could be shown that the system is "effectively excluding any person from any school because of race, color, or national origin could the court reissue a busing order. Here again, the burden is on the plaintiffs, who could conceivably be going back and forth to court. Section 919 would be a revolving door which would result in periodic utilization and determination of busing orders. And the educational process would suffer in the confusion.

Section 920 would terminate entirely court desegregation orders once a school system has been found to have a unitary system. It contains no time limits and would permit the lifting of an order the moment a school system can claim to be unitary. This provision is contrary to the practice in other areas where illegal conduct sought to be remedied has ceased. In such areas as antitrust, trade regulation, and voting rights, courts exercise jurisdiction after the illegal conduct that prompted the litigation has been remedied.

Section 920 also would apply whether the schools involved were in the past segregated de jure or de facto. Together, sections 919 and 920 would nullify section 904, which defines as a denial of equal educational opportunity the failure of an educational agency which formerly practiced deliberate segregation—de jure—to take affirmative steps to remove the vestiges of a dual school system. Sections 919 and 920 would require nothing more of a de jure school system than a de facto system. This is inconsistent with section 904.

#### CONSTITUTIONALITY

Consistency and constitutionality were obviously not criteria in drafting the Esch amendment and amendment No. 1144. Reviewing these measures carefully, I find, as many legal scholars have done, that these amendments are clearly unconstitutional and invite a severe constitutional confrontation. I have discussed, provision by provision, the constitutional questions involved. They are varied and many. In 1972 in the House debate on H.R. 13915, there was a brief but interesting comment that reinforces my contention that these identical measures seek to subvert the Constitution.

Representative Mikva offered an amendment to the bill, which stated:

The limitations on student transportation contained in this section shall not include any court, department, or agency of the United States from ordering an adequate remedy for denial of equal protection of the laws.

Representative Pucinski argued:

This amendment totally negates everything we have been doing here all evening.

Mr. President, is that what the House of Representatives really intended to do? Is that what they want for this country? This amendment, to be sure, was voted upon. And what do you think happened? It was defeated 223 to 154, yet the admission it prompted from Representative

Pucinski will endure: The intent of that measure and the pending amendment is clear; to deny remedies to violations of the 14th amendment. And this is unconstitutional.

Twenty years ago, *Brown I* established that State-imposed segregation by race in public schools denies equal protection of the laws under the 14th amendment. To correct such violations, the 14th amendment commands that the discriminating authority take whatever steps are necessary to convert to a racially nondiscriminatory school system. And in *Swann*, the Supreme Court held that if school authorities fail in fulfilling their affirmative constitutional obligations, "judicial authority may be invoked" and that the Court's power in fashioning effective remedies is broad, for "breadth and flexibility are inherent in equitable remedies."

Busing is but one of many remedies available to school authorities and the courts. But in some instances busing is the only effective remedy for the speedy desegregation plans mandated by the Supreme Court in the *Green* case.

With 20 million American children riding yellow schoolbuses each day, it is impossible to contradict the Supreme Court's recognition in *Swann* of busing as an "integral part of the public education system for years" and as a "normal and accepted tool of educational policy." In *Swann*, the Supreme Court found "no basis for holding that the local school authorities may not be required to employ bus transportation as one tool of desegregation." It added:

Desegregation plans cannot be limited to the walk-in school.

The Esch amendment and amendment No. 1144 would overrule the principles of *Swann*, North Carolina State Board of Education against *Swann* and *Brown II*, by prohibiting the use of busing in any meaningful manner as a remedial tool for overcoming a constitutional violation.

In North Carolina State Board of Education against *Swann*, the Supreme Court declared that no State may frustrate the constitutional mandate of the 14th amendment. In declaring North Carolina's antibusing law to be unconstitutional, the Court held:

If a state-imposed limitation on a school authority's discretion operates to inhibit or obstruct the operation of a unitary school system and impede the disestablishing of a dual school system, it must fail; state policy must give when it operates to hinder vindication of Federal constitutional guarantees.

I contend that Congress has a no less stringent constitutional duty in this regard than any State agency. Yet the Esch amendment and amendment No. 1144 contain the same segregatory mechanism prohibited for school authorities, State legislatures and Governors. These amendments are clearly designed to "impede disestablishment of a dual school system."

For the Senate to adopt such an amendment would be to deny equal protection where a constitutional violation has been found and where busing has been decreed a necessary part of the effective remedy. By stating the implementation of an effective remedy, Con-

gress would be aiding racial discrimination and therefore in violation of the due process clause of the 5th amendment.

Viewed in terms of article III of the Constitution, it is clear that Congress lacks the authority to prevent Federal courts from effectuating a constitutional mandate. While article III authorizes the Congress to regulate the jurisdiction of Federal courts, the Supreme Court has held in *Marbury* against Madison, away back in 1803, and *Martin* against Hunter's Lessee, in 1816, that the principle of separation of powers precludes Congress from limiting the authority of the courts in interpreting the Constitution and effecting constitutional rights. In the guise of a jurisdictional statute, Congress cannot deprive a party either of a right created by the Constitution or of any remedy the courts deem essential to enforce that right.

Nor can Congress enact legislation which prescribes a particular result in a case. In *United States* against *Klein*, in 1872, the Supreme Court held that the statutory limitation on the Federal courts' jurisdiction, enacted by a Congress anxious to correct what it considered an erroneous line of cases, was unconstitutional:

"We are directed," said the Court, "to dismiss the appeal, if we find that the judgment must be affirmed. . . . Can we do so without allowing one party to the controversy (the Congress) to decide it in its own favor? Can we do so without allowing that the legislature may prescribe rules of decision to the Judicial Department of government in cases pending before it? We think not. . . . we must think that Congress has inadvertently passed the limit which separates the legislative from the judicial power."

The *Klein* case was decided 4 years after *Ex parte McCardle*, which upheld an act of Congress depriving the Supreme Court of appellate jurisdiction over lower Federal court decision in habeas corpus cases. But the Court in this case was not sanctioning unrestricted congressional power to deprive it of jurisdiction. Despite the act, which it sustained, the Court still has original habeas corpus jurisdiction as well as power to review lower court habeas corpus decisions by writ of certiorari.

Prof. Alexander Bickel has described the *McCardle* case as "aberrational" and reads it "as a fairly narrow holding." I agree with his interpretation.

Section 5 of the 14th amendment authorizes Congress to enforce that amendment by "appropriate legislation," yet it provides no basis for sustaining this measure.

Section 5 does not authorize Congress to limit the scope of protection guaranteed by the 14th amendment. Congress may not thwart the purpose of this amendment, which was designed to expand and extend constitutional protection to those who had previously been denied such rights.

In *Katzenbach* against *Morgan*, the Supreme Court addressed this point clearly:

Section five does not grant Congress power to exercise discretion in the other direction and to enact "statutes so as in effect to dilute equal protection and due process decisions of this Court." We emphasize that

Congress' power under Section five is limited to adopting measures to enforce the guarantees of the amendment; Section five guarantees Congress no power to restrict, abrogate, or dilute these guarantees.

And that is the purpose of this amendment, Mr. President. It would restrict, abrogate, and dilute rights under the 14th amendment—the guarantees of the Constitution.

I referred to this citation earlier in my specific analysis of part C of amendment No. 1144.

But it should be continually cited in our consideration of this amendment. Section 5 cannot be used, as the authors of this measure would seek to use it, either as a means of limiting the scope of equal protection or as a basis for regulating the jurisdiction of the Federal courts. Section 5 concerns only questions of federalism, as I have stated before. The history of section 5 demonstrates this. Senator Howard, who reported the 14th amendment to the Senate from the Joint Committee on Reconstruction, said section 5's purpose was simply—

To enable Congress, in case the states shall enact laws in conflict with the principles of the amendment, to correct the legislation by formal congressional enactment.

Section 5 was not intended to give Congress greater power than the Federal courts to define constitutional rights.

In its severe restrictions on remedies to a denial of equal protection of the law, this amendment would diminish the scope of the 14th amendment. Therefore, it fails the test of section 5.

Another unsuccessful amendment to H.R. 13915 during the 1972 House consideration of the measure underscored the severe constitutional questions that bill would have raised. Representative STOKES offered a proposed title VII to the measure, which stated:

Nothing in this Act is intended to be inconsistent with or violative of any provision of the Constitution.

The amendment was defeated by a vote of 197 to 178. Like Representative Pucinski's admission, the rejection of this amendment makes it clear that the obvious unconstitutionality of the bill was of little concern to its proponents in the House, as well as a majority of the House of Representatives.

Since the provisions of the pending amendment are identical to the provisions of H.R. 13915, Mr. President, I must conclude that it is politically inspired. I do not like to use harsh language, but I must when I see men appealing to the wrong instincts in millions of Americans, without any regard for the constitutionality of what they were doing.

In 1972 they were playing for votes on November 7, and nothing more, and it was clearly politics in its worst form. If it were not, certainly the House of Representatives could not conceivably have denied an amendment which stated:

Nothing in this Act is intended to be inconsistent with or violative of any provision of the Constitution.

How, in good conscience, could they have voted against such a measure if they were not playing sheer politics, without regard to the Constitution and

without regard to the safety of this Nation?

Today, we in the Senate must uphold our obligation to the Constitution. And we cannot do so by passing any measure which would remove the only effective remedy for violation of an individual student's constitutional rights; and violate the principle of separation of powers; and of the 5th as well as the 14th amendment.

I call upon my colleagues, many of whom are up for reelection in this election year to stand firm behind our Constitution. In my own Commonwealth of Massachusetts, emotions run high on the question of busing, as they do across the country. But there are some things that are far more important in this land than being elected and reelected, such as upholding the Constitution of the United States and doing what is right under God.

If I am so certain the Supreme Court would eventually strike down this legislation as unconstitutional, why then do I not suggest we enact this measure and allow the courts to proceed? Representative James Scheuer, in his individual views contained in the House Education and Labor Committee's report on H.R. 13915, provided a most compelling and enduring answer to this question:

As a member of Congress, I took an oath to uphold the Constitution. This oath prevents me from taking any action that I know will jeopardize the delicate balance the Founding Fathers struck between the three branches of government. The Supreme Court is the last bastion against legislative tyranny—a tyranny we experienced during the days of Senator Joseph McCarthy. I cannot take any action which will unnecessarily weaken the Court by politicizing its deliberations and subject it to further emotional and demagogic charges and counter charges for merely exercising its clear responsibilities under the Constitution.

Each of us has taken the same oath and our obligations are clear to uphold, not tear down the Constitution when our citizens find its provisions temporarily uncomfortable.

It is our most compelling obligation to proceed orderly. Yet this amendment would inevitably lead to a devastating constitutional confrontation between the Supreme Court and Congress, which would weaken both branches and undermine the confidence of Americans in our ability to govern. This measure does not confront decisions of the Court which have been narrowly decided. Rather, it seeks to undo a long line of unanimous decisions. The outcome of the confrontation would be clear as to law. The Court and the Constitution would prevail over Congress. But it would be a hollow victory as the Nation proceeded chaotically and found, for however brief a moment, that it was directed once again on a course of separatism.

Who knows how devastating the brief existence of such an act would be on the American people? How can you contemplate the effect of a measure that would have Congress state that because it is not convenient for us to obey the law of the land, we shall change it, though we have no authority to do so?

Do we lack the courage to make clear our constitutional obligation? Are we

afraid to tell the people that what some may desire from us, we cannot lawfully deliver? I think they would understand.

I believe that the proponents of this amendment underestimate the reasonableness of those they represent. I have always believed that it is the right and responsibility of a legislator or any leader to educate his constituency, not just to look at the polls. Do we really want government by polls? We have always known that crowds could be whipped up into emotion by orators and that polls could be mere measures of momentary passion. Is it a responsible legislator who only reacts to that poll and finds that some particular subject is unpopular at a particular time in the history of our Nation or of the world?

Changes are constantly taking place in this country and across the world—great, sweeping changes. Right now we are doing things we never would have thought of doing just a year ago today. What was unpopular then may be popular today. What was popular then may be unpopular today. Yet, we have yielded to this emotionalism of busing. We have created a Frankenstein. We have misled the people as to what the real issue is. We have talked about busing for racial balance, when most of those who do the talking know that that is not the real issue before Congress. We have not lived up to our constitutional responsibility.

I would rather be defeated at the polls than to compromise my principles and to undermine the Constitution of the United States. I believe in our Constitution that strongly. I also believe the proponents of this amendment underestimate the reasonableness of those they represent. I think their constituents, fully aware of the provisions of this measure, would oppose it.

The American people, black and white, are weary of division. They long for a respite from turmoil and tension. And I believe they truly desire one Nation indivisible, not two nations apart.

It was my privilege to serve in the Kerner Commission after the riots of 1967. We went to many of the strife-torn cities across the Nation, and we listened to the people. We came back and wrote a report, and we pointed up what was happening in this country: that we were creating a nation divided, a nation with one side black and one side white, separate and unequal; that if we did not change it, we would be confronted sometime down the road with the same situations, if not worse, that tormented our Nation in 1967. It was not the intention of that Commission to throw fear into the American people. It was an objective committee that called the facts as it saw them, reported its findings, and made its recommendations.

Once again, Mr. President, Members of the Congress of the United States seek to drive a wedge between Americans, a wedge which could do more harm and is more dangerous than any wedge we have ever had before.

Mr. President, because I believe in the good will of our people, I shall do all that I can—and I ask my colleagues to do likewise—to educate our people as to the frightening provisions of these amend-

ments, which would turn us away from our earnest quest for one nation united toward an unconstitutional and unconscionable retreat toward two nations "separate but equal." The choice is clear. My faith in our people is strong and my faith in the Senate of the United States is strong. When I made a similar assertion in my remarks of October 10, 1972, I was privileged to yield to Senator HART, who said:

Mr. President, the Senator from Massachusetts reminded us of the caution voiced by the Kerner Commission, a Commission which the Senator from Massachusetts graced with great distinction.

Does not the Senator from Massachusetts agree that the caution voiced several years later by the Commission on the Causes and Prevention of Violence also has relevance here. The Commission on Violence described ours as a country which was developing into two nations, the armed and often affluent suburbs and the decaying savage cities.

That is a harsh description and enormously ominous. Is not the Senator from Massachusetts suggesting that it is precisely this division and separation which this bill, whatever the motives of those who seek its enactment, would dig still deeper into and more fatally broaden.

Is this not also a caution and a reminder that should be in the minds of each of us as we are asked in the closing moments, really, of this Senate to act upon a bill which has not even had hearings?

I replied then that I thought the distinguished Senator from Michigan, who has been such a great leader in protecting the Constitution of the United States stated the point well.

I went on to say that I would like to believe that many of those who had voted on this, particularly in the House, had done so, as I had stated earlier, without full knowledge of the assault upon the Constitution of the United States that is contained in this particular measure. I suggested that they had reacted to the high emotionalism in the country, much of which had been created by the proponents of this particular type of legislation—many, I thought out of fear, because of the potential political ramifications or results which could come from an adverse vote on that measure. But as Senator HART then pointed out, after the Kerner Commission report on the riots of 1967, and then the Commission on Violence report, all agreed we did not have any disagreement. In many of the commissions that have ever met and made reports, the findings have been relatively the same, the causes have been relatively the same. Many of the recommendations have been relatively the same. The fact is that we have not acted upon them, we have not implemented those recommendations, in the main.

Indeed, our sins of omission equal or exceed our sins of commission. And the greatest sin of commission is tempting too many Senators today.

Nineteen months ago I concluded my remarks by saying:

Therefore, I hope and pray that calm minds will prevail, courageous leadership will prevail, and that those who are concerned about the election results will put this country above their own personal political fortunes.

Mr. President, since my remarks of

October 10, 1972, nothing has changed. The Federal courts have consistently upheld the Swann decision. The language of the Esch amendment and its Senate counterpart are unchanged versions of the so-called "Equal Educational Opportunity Act of 1972." Like 1972, this is an even year and the entire House and one-third of the Senate face either retirement or a bid for reelection.

But there are differences. The "Equal Educational Opportunity Act of 1972" stood by itself and did not, like earlier and present antidiscrimination efforts, threaten a major legislative measure. Today almost every school pupil in the United States is being held hostage to the political anxieties of some of their leaders. The "Education Amendments of 1974" are vital to the well-being of all Americans as they represent an admirable review and revision of our Federal aid to education programs.

In the 19 months that have passed since October 10, 1972, millions of young Americans, black and white, have, under court-ordered, title VI, or voluntary desegregation plans, been learning about, from, and with each other. We must not now divert their education with anxieties, chaos and confusion. We can never return to Plessey against Ferguson. I have lived in this country all of my life and served in many public offices. And I have never seen anything both separate and equal in this Nation.

And if our Nation remains separated by fear, ignorance or malice, America shall never be equal to its great challenges, dreams, and goals.

Mr. President, I shall conclude my remarks today not with remorse, but with determination, hope, and prayer.

To be sure I am critical of those who each election year seek to divide a nation to conquer a few votes. I am critical of those who follow expediency rather than conscience.

I am sorry that they fail to realize people admire conscience and courage above all else.

I am saddened because I know that while the President and Members of Congress pander to the anxieties of some Americans, black and white, they play into the hands of those who seek separatism, thrive on strife, and flourish on divisive rhetoric.

But my determination, hope, and prayers are bolstered by my abiding faith in the American people, who know what is right, to do what is right though it may be painful for some to do so.

We in the Senate know the law. We know it is right. We know it should remain unaltered though it may be painful for some of us to say so.

But let us say and do what is right. I know we should.

I hope we can.

I pray we shall.

Mr. CASE. Mr. President, the issues we are facing in the Senate in the next few days in connection with various antibusing amendments are not new to the Senate.

Most of the amendments are variations of the so-called Esch amendment that has been approved by the House as part of legislation extending the Elementary and Secondary Education Act.

We faced essentially the same situation in 1972.

In the spring of 1972, the House approved antibusing amendments to the higher education bill. The Senate adopted a modification of these amendments that was offered by the distinguished majority leader, Senator MANSFIELD, and the distinguished minority leader, Senator SCOTT. The Scott-Mansfield amendment eventually was accepted by the House and has been the applicable law since that time.

In the fall of 1972, the House approved a separate antibusing bill that was identical to the Esch amendments adopted by the House this year. After three unsuccessful attempts to obtain cloture, the Senate set aside the 1972 House-approved bill and no further action was taken on it.

The heart of the Esch amendment is a provision that would restrict court ordered school busing to provide transportation to the school closest or next closest to the student's place of residence. This limitation would apply even if it prevented application of the only effective remedy for a clear constitutional violation. It would apply even if the distance involved would be less than that involved in other busing for gifted or handicapped children or to consolidate grades. It would apply even if the busing posed no danger to the health or safety of the students and did not interfere with their education.

This provision is being offered as a substitute for the section of S. 1539 that restates the Scott-Mansfield amendment. The Scott-Mansfield provision writes into statutory law the limitations on busing laid down by the Supreme Court in its decision in Swann against Charlotte-Mecklenburg Board of Education. These limitations prohibit busing that would endanger the health or safety of a child or that would impinge on the educational process.

I believe the Scott-Mansfield amendment places the emphasis where it should be—on the protection of the child. It permits the use of busing in situations where that is the best tool to accomplish desegregation—but only if it does not endanger the child or his education.

I believe that all desegregation plans and programs, whether or not busing is involved, must not place any children, white or black, in situations in which they would be in danger of personal harm or harassment, or in which they would get an inferior education.

I oppose busing in situations where it hurts children, or where it hurts their education. It is a high quality education for all children that we are all seeking. I believe the Scott-Mansfield amendment accomplishes that objective better than the Esch amendment or modifications of the Esch amendment.

The "next closest school" limitation of the Esch amendment alone provides adequate reason for opposing it. However, the Esch amendment also contains a so-called reopener provision. This would permit reopening of existing desegregation plans to determine whether they comply with the priorities and limits imposed by the other provisions of the Esch amendment.

Any desegregation plan developed under the orders of a Federal court or a Federal administrative agency since the Brown decision of 1954 could be reopened under the Esch amendment, even if the plan involved no busing.

From the beginning, I have been a strong supporter of the decision of the Supreme Court in the Brown case and of the school desegregation progress that has been made as a result of that decision. Clearly, the reopener provision of the Esch amendment would encourage reopening of long healed wounds and would plunge many communities into revived racial bitterness and confusion.

For each of the reasons I have mentioned I plan to vote against the Esch amendment and modifications to it and I hope that the Scott-Mansfield provisions will be retained.

The PRESIDING OFFICER (Mr. STAFFORD). Pursuant to the previous order, the Senator from Indiana (Mr. BAYH) is now recognized for the purpose of calling up an amendment.

The Senator from Indiana is recognized to call up his amendment.

Several Senators addressed the Chair. The PRESIDING OFFICER. The Chair would state that the Senator has no time until the amendment has been called up. Does he wish to call up his amendment at this time?

Mr. BAYH. Mr. President, I call up my amendment and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

In lieu of the language proposed to be inserted by the amendment of the Senator from Florida (Mr. GURNEY), insert the following:

Sec. 901. (a) Notwithstanding any other provision of law, no court of the United States shall order the implementation of any plan to remedy finding of de jure segregation which involves the transportation of students, unless the court first finds that all alternative remedies are inadequate.

(b) Before implementing any plan proposed by a local education agency to remedy a judicial determination of de jure segregation, the court shall find that such plan minimizes the transportation of students.

Sec. 902. In the formulation of remedies under this Title the lines drawn by a State subdividing its territory into separate school districts, shall not be ignored or altered except where it is established that the lines were drawn, or maintained or crossed for the purpose, and had the effect of segregating children among public schools on the basis of race, color, sex, or national origin, or where it is established that, as a result of discriminatory actions within the school districts, the lines have had the effect of segregating children among public schools on the basis of race, color, sex, or national origin.

Several Senators addressed the Chair.

Mr. JAVITS. Mr. President, I want to tell the Senator from Massachusetts that I consider it a tremendously powerful and historic address. The whole Nation should be deeply grateful to him for having delivered it on this day and in the prevailing atmosphere in our country.

Mr. BROOKE. I appreciate the comments of the Senator from New York.

Mr. HART. Mr. President, I would express to the distinguished Senator from Massachusetts my appreciation for a scholarly and yet very hard-hitting and honest analysis of this amendment. I

agree with Senator BROOKE on the matter of its unconstitutionality and the factors which are operating in support of it.

Mr. BROOKE. Mr. President, I deeply appreciate the remarks of the Senator from Michigan (Mr. HART).

Mr. GURNEY. Mr. President, a parliamentary inquiry. As I understand it, time on this amendment is one-half hour to be equally divided. Is the time for the opposition assigned to the Senator from Florida of 15 minutes?

The PRESIDING OFFICER. The time is one-half hour, 15 minutes to a side, but the time is assigned to the manager of the bill and the proponent of the amendment unless he is in favor of the amendment.

Mr. PELL. Mr. President, I yield 10 minutes to the Senator from Florida.

The PRESIDING OFFICER. The Senator from Indiana is recognized.

Mr. BAYH. Mr. President, I send to the desk another amendment and ask that it be printed, and would advise the Senate at this time that if the amendment now before the Senate does not succeed in its present form today, and if the Gurney amendment should fail, the Senator from Indiana intends to offer as an amendment to title VIII, section 807 and section 805, which will be identical to the amendment which is presently before the Senate in the form of a substitute.

The PRESIDING OFFICER. The amendment will be received and will be printed.

Mr. BAYH. Mr. President, today's debate is not new to this Chamber. The statements being made here today on the floor of the Senate could well be the echoes of similar debates several times during my more than 11 years as a Member of this body. We have been here before, we have held this debate before, and yet the question never seems to be resolved.

Throughout the busing debates of recent years, I have held to certain constant principles which have provided the basis for my votes on specific amendments and individual issues. Those principles go beyond a single vote, but they are the basis for considering virtually any vote in this area.

First and foremost, we must adhere vigorously to the rule of law. Our Constitution, including court decisions which interpret it, must not be compromised, lest we open the door to lasting and potentially disastrous erosion of our basic freedoms. The very strength of our democracy proceeds from the protections of individual rights, including the right of due process, as embodied in the Constitution and we must resist forcefully any attempt to thwart the Constitution or to destroy the fundamental role of our courts in guaranteeing adherence to the Constitution and the body of statutes which comprise our law.

Second, on the specific matter of providing the children of this country with the best possible education, I have long held a firm commitment to quality education for all Americans. The courts have held that quality education requires integrated education, and as one who has opposed racism and segregation as strongly and vehemently as possible, I respect the Courts' ruling in this regard.

Third, on the crucial issue of busing, I have felt and expressed time and again my feeling that busing of students should be held to an absolute minimum in a manner consistent with the two principles set out above. Busing of schoolchildren does pose a very real hardship on large numbers of students and their families. There are legitimate issues in opposition to busing: Issues regarding the length and safety of massive pupil transportation, issues regarding the increased cost of education, and issues regarding the disruption of local school districts and traditional education programs—including after-school activities.

So I have felt that when it is possible to protect the rule of law, to adhere to the Constitution, to provide quality education, and, at the same time, to hold busing of schoolchildren to an absolute minimum, this must be our objective.

Unfortunately, the amendment offered by the Senator from Florida (Mr. GURNEY) not only does violence to the rule of law, it also threatens to disrupt the education of millions of schoolchildren. I oppose this amendment which seeks to return this Nation to separate and unequal societies, divided by race, and permanently subjecting millions of Americans to second-class citizenship. Indeed, I am satisfied that many Americans who, like me, object to unnecessary busing of schoolchildren would oppose this amendment for its cynical and expedient dismissal of the vast progress achieved in the past two decades by providing millions of schoolchildren with quality education without regard to their race.

Specifically, by reopening every case of school desegregation that has been decided since the historic Brown against Board of Education case, which was decided exactly 20 years ago this week, this amendment would force the reconsideration of successful integration in scores of school districts throughout the country. The disruption this would create within our system of education would be enormous, creating great hardship for students, their parents, their teachers, and local school officials.

In addition, by setting an artificial and arbitrary determination that students may not be transported past the second nearest school, this amendment is a carefully calculated attempt to overturn the decisions of our Supreme Court regarding the need to integrate our schools in order that all students, white and black, have quality education. Mr. President, I hope fervently that the Senate will not make itself party to this blatant and unfortunate effort to do violence to the rule of law and adherence to the Constitution. I am convinced the American people will not give their support to such an obvious political retreat from decency and from the principles on which this country is founded.

It is because of my conclusion that the amendment offered by Senator GURNEY is clearly unconstitutional that I am offering this substitute. My amendment would retain, as does the modified Gurney amendment, the Scott-Mansfield language contained in the committee bill. When this language was drafted and made part of the Education Act in

1972, there was general agreement that it went about as far in limiting busing as was constitutionally permissible. Scott-Mansfield places the following restrictions on the transportation of students:

First. No provision of the act shall be interpreted to require the assignment or transportation of either students or teachers in order to overcome racial imbalance.

Second. No Federal funds shall be used to transport students or teachers unless local school officials voluntarily set aside money for such purposes.

Third. No Federal funds shall be made available for the purpose of transporting students if the distance involved is so great as to risk the health of students or when it would "significantly impinge" on the education process.

Fourth. No funds shall be used for the transportation of a student to a "substantially inferior" school when that student would otherwise be assigned to another school based on geographic zones established without discrimination, and finally.

Fifth. No Federal funds may be conditioned by any Federal officials on a requirement that any local school board transport students unless such transportation is constitutionally required.

I think it is important for us to recognize, Mr. President, that not only has the Congress placed strict limits on busing, but the courts have also recognized that busing should be as limited as possible. In the leading case of *Swann against Charlotte-Mecklenburg Board of Education*, the court held that while pupil transportation was one of the many remedies which a lower court could use to overcome the effects of de jure segregation, it should not be used where the time or distance of travel is so great as to risk the health of the children or to impinge on the education process. The court noted that there are other means of remedying the situation including the redrawing of attendance zones, use of cluster techniques, and educational parks which should be tried before moving to busing as a remedy.

The substitute amendment I am offering today would add to the existing Scott-Mansfield restrictions two additional provisions. First, it would require that any court which is considering a plan to remedy a finding of de jure segregation must first specifically find that all alternative techniques have been attempted which do not involve the busing of schoolchildren before any such transportation may be ordered. As a related matter, it would require any local school board which has been directed by a court to propose a plan to remedy a finding of de jure segregation to likewise give first priority to all methods of achieving desegregation which stop short of busing. We should make every effort to avoid busing unless it is absolutely necessary. This part of my amendment would require that both the district courts and the local boards involved in planning remedies to cure prior acts of government which imposed segregation make every effort to minimize or eliminate the transportation of students.

The second part of my amendment deals with what is perhaps the most sensitive aspect of the busing problem—the transportation of students across lines separating individual school districts. I have categorically opposed attempts to ban all busing, since there are situations in which it is the only remedy to injustice. I have also long felt that if you have a finding of de jure segregation on the part of a city school system, it is inequitable to impose on the school districts surrounding that school system the burden of remedying the problems that officials of the city school system have created for themselves, unless it is also found that the districts surrounding the city schools were either established in order to create or preserve segregation or that they have themselves participated in discriminatory activities. Hence, my amendment provides that school district lines may not be crossed for busing unless there is finding that those lines were "drawn, or maintained, or crossed" for the purpose of segregation or there is a finding that "as a result of discriminatory actions within the school districts, the lines have had the effect of segregating children."

Clearly, where students are bused across school district lines to preserve segregation, no claim as to the inviolability of district divisions should be allowed. Similarly if, in reorganizing, consolidating or changing the boundaries of school districts, a clear racial separation across one or more district lines was intentionally maintained when other logical reorganizations would have desegregated the overall area involved, then, under my amendment, school district lines could be crossed. Finally, if the courts should find that both the city and adjacent school systems have individually practiced segregation, then the ignoring of school district lines would be appropriate. But if none of these acts on the part of school districts lying outside a school district found guilty of segregation can be shown, then my amendment would not permit the school district which had been shown to have practiced segregation to attempt to solve its failings by busing to districts which are innocent of practicing segregation. As important as it is to stop segregation, it does not follow that school districts which have acted responsibly and avoided segregation should be thrust into the position of rectifying the failings of adjacent districts which have practiced segregation.

Mr. President, I am satisfied that my substitute amendment to provide quality education to all schoolchildren with a minimum of busing, as well as protecting the legitimate concerns of school districts which have not been found guilty of practicing segregation, is a positive and responsible response to the issues before us.

This amendment is consistent with the three goals I outlined at the outset of my statement:

Protection of the Constitution, adherence to the rule of law and respect for the proper role of our courts in our democracy.

Provision of quality education to all students, without regard to race.

Avoidance of busing of school children in every instance where it can be avoided without compromising the first two principles.

It seems evident, Mr. President, that this substitute amendment will not meet the blatantly racist goals of the forces that have been mustered in support of the amendment of the Senator from Florida (Mr. GURNEY). It is probably also true that this amendment will not satisfy those who do not share my general dislike of busing.

But I must say to my colleagues, it makes little sense to engage in massive school busing when we have valid and substantial means to achieve quality, integrated education. As I said those means are available; they include educational parks, school pairing, new construction, redrawing of internal boundary lines within school districts and other such remedies.

Mr. President, let me reiterate, the effect of the Gurney amendment goes far beyond limiting school busing. This amendment prevents the use of pupil transportation where it is the only possible alternative which can successfully provide quality education to the children of a community. But it goes further. It would permit reopening the emotional, demagogic, and racially volatile issue of school busing in those communities that have previously dealt successfully with the issue of school integration. This would subject every school board in America that has previously provided quality integrated education to its children to assault from those holding the most base racial attitudes. We must not be put in the position of giving license and support to the worst elements in our society. Those elements are not concerned with quality education for our boys and girls. They seek to play on the latent prejudices and fears of mothers and fathers to promote their own selfish interests. They seek to rekindle these emotions which almost destroyed our country in a long and bloody war between the States. Thousands of Americans have given their lives to wipe out second-class citizenship. Millions of Americans stand ready to reject retreat from our fundamental commitment to equality of opportunity. We in the Senate should be leading the way.

Finally, Mr. President, it is not necessary for this issue to become polarized, leaving the Senate with the choice of condoning unnecessary busing, on the one hand, or, on the other hand, giving its assent to the renewal of separate and unequal school systems, divided along racial lines.

To let ourselves confront such a choice is to ignore the very real alternatives offered by my substitute amendment. I urge its adoption. In accepting this substitute amendment the Senate can speak clearly for those fundamental principles embodied in our Constitution, for quality education and for an avoidance of unnecessary busing when possible. This is where the Senate should be. This is where the country should be.

Mr. GURNEY. Mr. President, I think the most that can be said about the amendment of the Senator from In-

diana—which, of course, is in the nature of a substitute for the amendment of the Senator from Florida—is that it is a pro-busing amendment. This is a fine busing amendment, and this will secure the fact that there will be no antibusing action this year.

Everybody in the Senate knows that the amendment proposed by the Senator from Florida is an exact duplication of the language offered in the House education bill, the so-called Esch amendment, a very carefully drawn antibusing amendment—or, to put it another way, an amendment designed to preserve the neighborhood school system in the United States and to prevent the massive busing which is now going on.

The pending amendment has been carefully drawn to encompass the basic legal decisions that have been made in the field of segregation and antisegregation since the Brown case. All the landmark cases of law on desegregation and antisegregation are carefully preserved in my amendment.

Also, the amendment is carefully drawn in order to permit the students to go to schools that are closest to their neighborhoods, or next closest, and it very carefully sets out remedies for the court to follow in determining whether or not the children shall go to the school closest to them or the school next closest to them.

The amendment offered by the Senator from Indiana, I suppose, could be best termed a very simple amendment, in all the sense of that word. It is a simple amendment. It does not do anything.

It speaks in section 901 (a), the first section, about alternative methods, whether the court finds all alternative remedies to be inadequate. Any careful lawyer who has studied the court decisions on segregation and desegregation and busing in the last 2 years will realize that that means absolutely nothing. The courts have nothing to follow there. The language is meaningless.

In the next section, subsection (b) of section 901, it provides that the court shall find that a plan minimizes the transportation of students. Of course, that does not mean anything, either. It does not mean anything because it does not provide any guidelines; it does not provide any kind of standards for a court to follow. A court can do exactly what it wants to do and follow the same practices, and of course it will follow the same practices it has followed through the years in the busing decrees that are now throughout our land—that is, throughout the Southern part of our country and a few of the Northern States as well.

So it is quite obvious what the plan of action of the opposition is. As a matter of fact, the Senator from Florida has been wondering all day what the opposition is going to do, and now he knows: that is, to offer a very simple pro-busing amendment, a pro-busing amendment by the Senator from Indiana which, of course, would insure that we are going to have all the busing we have had heretofore, which would knock out the very carefully drawn amendment that is in

the House bill and that was passed by an overwhelming margin.

Of course, this amendment would prevent the Senate—or may prevent the Senate, depending upon what it wishes to do—from voting on the merits, as to whether they ought to have a neighborhood school bill or continue busing.

Mr. GRIFFIN. Mr. President, will the Senator yield for an observation?

Mr. GURNEY. Yes, I yield to the Senator from Michigan.

Mr. GRIFFIN. It is very interesting that this proposal is offered in the nature of a substitute. May the junior Senator from Michigan direct a question to the Senator from Indiana. Is it the purpose of the Senator to completely knock out the Gurney amendment?

Mr. BAYH. That is the effort.

Mr. GRIFFIN. That is the purpose of the Bayh amendment?

Mr. BAYH. Yes, it is a substitute.

Mr. GRIFFIN. It would absolutely eliminate the Gurney amendment?

Mr. BAYH. I do not agree with the interpretation of the Senator.

Mr. GRIFFIN. I want to be sure we know what the Senator from Indiana is seeking to do with his amendment, which is a substitute for the Gurney amendment.

Mr. BAYH. That is accurate.

Mr. GRIFFIN. It is not additional language; it would completely knock out the Gurney amendment. Is that correct?

Mr. BAYH. The Senator from Indiana said that he is opposed to the Gurney amendment, and that he does not want any part of it, with all respect to the distinguished Senator from Florida.

Mr. GRIFFIN. I just want to establish what is at stake. I wonder if the Senator from Florida would permit me to make a further observation?

Mr. GURNEY. Indeed so.

Mr. GRIFFIN. Of course, if the Senate really wants to do something about the problem of busing, the only way we can really be sure that something will be done is to adopt the so-called Esch amendment, which has already passed the House, and which is now before the Senate—precisely the same language—in the form of an amendment by the Senator from Florida.

Regardless of whether the Bayh amendment sounds like an anti-busing amendment or not, and regardless of whether it would have any effect, the fact is, if we fail to put the Esch language into the Senate bill by adopting the Gurney amendment, the conferees will be free to eliminate in conference not only the Esch amendment but the Bayh amendment as well. Does the Senator from Florida agree?

Mr. GURNEY. Yes, the Senator from Florida certainly thanks the Senator from Michigan for his observation because that is precisely what will be done.

Mr. GRIFFIN. So, those Senators who really seek to do something about busing would be moving in the wrong direction by voting to put a substitute in place of the Gurney amendment. Would the Senator agree?

Mr. GURNEY. Yes, I agree.

Mr. GRIFFIN. If there is merit to the language proposed by the Senator from Indiana it seems to me that he should seek to add it to the Gurney amendment or seek to insert it at another point. But it should not be offered as a substitute.

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

Mr. GURNEY. I will yield on the time of the Senator from Indiana.

Mr. BAYH. In essence, that has about as much effect as my amendment has because I do not have any time left.

Mr. GURNEY. I see other Senators who wish to discuss the matter. I yield to the Senator from Tennessee.

The PRESIDING OFFICER. The Senator from Tennessee is recognized.

Mr. BROCK. Mr. President, I think it should be pointed out that we have been up and down this hill a number of times. Every time we have seen language of this sort submitted to the Senate and it has been passed, we see the fruits of our labors go to conference, and the Senate and the House refuse to do anything about a problem that exists.

The Senator from Indiana has not tried to hide his intention. He has supported an amendment to deal with the problem of busing. This amendment does absolutely nothing to change the situation as it exists, the abuse of our children. This amendment does violence to our efforts to achieve any remedy for the schoolchildren of America.

The courts have asked us time and time again: What is your answer or suggestion if you do not like busing? The Senator from Florida and I, and Members in the House who have voted for this bill, have presented a program. If Senators do not like it come up with something else, but not a device to keep practicing this kind of coercion on the children of this country. That is the effect of the Bayh amendment.

Mr. President, I hope the amendment is rejected.

Mr. GURNEY. I thank the Senator from Tennessee for his observations.

Also I would like to press a point made by the distinguished Senator from Tennessee, the Senator from Michigan, and this Senator that this is a ploy to prevent the Senate from voting up and down on the issue of busing, one of the most stirring issues in the United States today, and, of course, an issue that has been present with us for a number of years.

Those of us who have lived with busing all these years understand the situation.

The PRESIDING OFFICER. The time of the Senator has expired. All time for the proponents has expired. There are 5 minutes remaining to the manager of the bill.

Mr. PELL. I yield the Senator 3 minutes.

Mr. JAVITS. Mr. President, I do not want time myself, but I yield myself one half-minute on the bill to state the following.

The PRESIDING OFFICER. The Senator from New York is recognized.

Mr. JAVITS. If the arguments are not completed I hope we might yield an equal amount of time from the time on the bill to the Senator from Florida and the Sen-

ator from Indiana, and I would suggest 10 minutes each, if that is satisfactory.

The PRESIDING OFFICER. The Senator from Florida is recognized for 3 additional minutes on the time of the Senator from Rhode Island.

Mr. JAVITS. And we yield him 7 minutes on the bill.

The PRESIDING OFFICER. The Senator is recognized for 10 minutes.

Mr. GURNEY. I thank the Senator from New York.

Mr. President, I think the point we must understand here, as I was saying a moment ago, is that this amendment of the Senator from Indiana, in the nature of a substitute, is simply a ploy in order to prevent the Senate of the United States from voting on this all-burning, all-compelling, all-pervasive issue of school busing throughout the United States. I would think this is not a very happy state of affairs. We have been arguing this amendment since 9 o'clock this morning.

The amendment certainly is a worthy one; it is worthy of argument, and it has brought forth good argument by the opponents of the amendment as well as the proponents of the amendment.

But we should be able to vote up and down on a concrete measure that will do something about busing. We should be able to express ourselves on this point so that we can go back and face our constituents in Indiana and in Florida, where there is or is not busing, and say that we are for it or against it. Of course, we have no opportunity to do it at all in this ploy which has been offered by the Senator from Indiana to prevent the Senate from having an up-and-down vote on a very important amendment, carefully fashioned to go into all the facets of busing.

I think it is a shame and not worthy of the Senate that we are now in this sort of a position. We have a good amendment here by those of us who believe busing is not the way to further education or race relations. We think we have an amendment that complies with the leading cases of Brown against Board of Education, and the Swann cases that were the landmark cases that came out of North Carolina, and all the other cases that touched on the question of segregation and desegregation.

What this amendment does is to give the U.S. district courts some guidelines and rules and regulations by which they can make these decisions in cases that come before them on whether school districts will continue to have all kinds of busing. As it is now, they have no rules and regulations. All they have are broad decisions from the Supreme Court. The U.S. Congress has never acted upon the question of busing as a means of desegregation, the question of busing as a means of maintaining or not maintaining the racial balance or imbalance, because we have never set forth any rules and regulations.

But now we have an opportunity. A bill that was offered in the House was passed overwhelmingly and now we have before the Senate the very same measure and the Senate should be able to vote up or down. However, if the Senate votes on this substitute and votes in favor of

it, we will have ducked our responsibility once again.

I would hope that the Senate, when it votes upon this at the appropriate time, would realize that the better way to face up to this proposition would be to vote down the Bayh amendment and then vote for or against the Gurney amendment, and express themselves so their constituents back home would understand how they feel about the question of busing.

I yield now to the Senator from Tennessee.

Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 6 minutes remaining.

Mr. GURNEY. I reserve my time and will let the Senator from Indiana take the floor.

The PRESIDING OFFICER. The Senator from Indiana has 10 minutes. Does he seek recognition?

Mr. BAYH. Mr. President, I listened with great interest to the distinguished Senator from Florida discuss the amendment of the Senator from Indiana and refer to it as a ploy. One of the things I have enjoyed most in my 12 years in the Senate is that individual Members of this body, like individuals throughout our Nation, have the free opportunity to express themselves and have the free opportunity of assessing the relative merits of an issue as they see it. To suggest that this amendment is a ploy is an inaccurate assessment. It is, indeed, an expression of my very strong opposition to the amendment of the Senator from Florida. I have made no bones about that. I am against the proposal of the Senator from Florida for two basic reasons.

First, his amendment says that, even under the most tragic circumstances, even under the most flagrant inequities of de jure segregation, where local officials have contrived to provide second-class educational opportunities for the children of their school districts, they will only go so far in being required to remedy de jure segregation, even if the courts have said they must go further, to provide quality education. Where there is de jure segregation, the court has to make an assessment of how far to go in remedying it. We cannot, sitting here, make that determination.

The second shortcoming of the Gurney amendment is that the amendment would reopen all the cases that have been laid to rest—20 years of past experience, communities that have resolved the problem, provided quality education for poor and rich, black, white and Chicano. All that would be reopened, with all that means, and I think that would be tragic.

I would like to point out to the Senate that my amendment does deal very specifically with a change—

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

Mr. BAYH. Some Federal district courts have required cross-district busing.

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

Mr. BAYH. If the Senator will permit me, I will be glad to yield to him on

the same basis that he was willing to yield to me a moment ago. I shall be glad to discuss the amendment with him. I wish we had an hour instead of a few minutes each, because I know he feels very strongly about it. But as the law is now, if a court finds a school district that is guilty of de jure segregation, it has in some ordered a plan which would bus children back and forth into and among those school districts that may not be guilty of de jure segregation.

Mr. President, I do not have very much patience with a school board that sets about segregating and providing second-class educational opportunities for schoolchildren, but I do not see why those school districts that are not guilty of such acts should have to help pay the price of providing quality education in the offending school districts. My amendment would prohibit that very thing. It says, "If you are guilty, you have to adopt all necessary remedies." But if you are not guilty, then under my amendment you cannot be forced to bear the burden of those who are.

Contrary to what the Senator from Florida (Mr. GURNEY) has said, it seems to me equitable to conclude, "If you are guilty of providing second-class education, then the school district which has so offended has to get right, has to obey the law, has to obey the Constitution." It does not seem equitable to me to say to all the surrounding school districts, "Even if you have not segregated, even if you have not provided second-class education, we are going to make you help the other districts get right." I say to the Senator from Florida that is a significant difference.

I reserve the remainder of my time.

Mr. BROCK. Mr. President, will the Senator yield me 3 minutes?

Mr. GURNEY. I yield 3 minutes to the Senator from Tennessee.

The PRESIDING OFFICER. The Senator from Tennessee is recognized.

Mr. BROCK. Mr. President, perhaps the Senator from Indiana does not like the use of the word "ploy." I will use a different word. I think this amendment is a "copout," because, if it passes, it completely eliminates the opportunity for the Senate of the United States to face up to the question the American people have been asking for 3 years, since the Swann case. Time and again we have tried to bring this question before the Senate. The Senator is aware of it. He is chairman of the subcommittee of the Committee on the Judiciary which handles this matter. We cannot get the measure to the floor. We cannot debate the issue. The last time we had an opportunity, as the House voted 2 weeks ago, to do something about the problem of busing, in what the Senator and I may or may not agree was in a responsible fashion, those who opposed any action whatsoever on the question of busing engaged in what is charitably called extended debate, and they talked the bill to death, and we had no occasion or opportunity to vote it up or down.

The Senator from Indiana's amendment would do exactly the same thing, with a different parliamentary device. He would prevent the Senate from ad-

addressing the question of how we deal with a problem that does exist—and there is no question that it does exist.

The Senator's own State has suffered from Court-ordered plans. Certainly my State has. I cannot speak for his, but I surely can for mine. The record is replete with examples of absolute tragedy in the lives of the children of my State. I do not see how I can stand before this body or the people of Tennessee and say I am simply not going to take care of something that is so damaging to the lives of the people of my State.

Yet what the Senator from Indiana would ask us to do by voting for his amendment is to refuse to exercise our constitutional responsibility by voting on what we do mean by equality of opportunity.

If the Senator does not like the Gurney amendment, let him offer something that will address the problem, but not offer an amendment which would, if adopted, deny Senators the privilege of voting on the Gurney amendment up or down. That is where I find fault with the amendment. We have been on this route too many times. It is about time that the Senate faced up to its responsibility by voting on the merits of the case.

Mr. GURNEY. Mr. President, I yield 1 minute to the Senator from Rhode Island (Mr. PELL).

Mr. PELL. Mr. President, I have studied the amendment of the Senator from Indiana. What disturbs me is the emphasis on the words "de jure." I remember the discussion on the Stennis amendment and all the wounds that were opened up then, which I had hoped had been laid to rest, and which would be opened up again by the words "de jure." If it were "de jure" and "de facto," it would be different.

For that reason I feel compelled to vote against the amendment.

Mr. BAYH. Mr. President, I would be glad to change it to include all segregation, but the reason the words "de jure" were emphasized is that only de jure segregation has been dealt with by the courts, or by Congress, as far as that is concerned.

Mr. PELL. I think reference to it does open up many wounds that we had hoped were almost healed over.

Mr. GURNEY. Mr. President, I would like to point out that in Indianapolis, one of the principal cities of the State of the author of this amendment, the Court plan would take 20,000 students out of Indianapolis and send them into the suburbs, many miles outside the city, at a cost of many millions of dollars.

In addition, this Court plan proposes to close down a total of 29 elementary and high schools, all under the Supreme Court plan. This amendment, this substitute proposed by the Senator from Indiana, will not do anything to stop that business at all. My amendment will stop that business because what it is designed to do is to preserve neighborhood schools and stop massive busing all around Indianapolis.

I say that this is a probusing amendment. It refuses to allow the Senate to face up to its duty and vote up or down on the question of whether we will have neighborhood schools or will have busing.

I get the message extremely clearly that the Senator from Indiana does not agree with my amendment. However, he has a simple way of expressing himself on that, because he can vote nay on that amendment when it comes up, and allow other Senators to vote as they desire on the amendment yes or no, instead of resorting to this ploy.

I think the Senator from Tennessee used a little better expression when he used the term "copout."

However, this kind of amendment, which has no meaning at all, and is entirely meaningless, is designed to prevent the Senate from voting for a good, broad antibusing, neighborhood school amendment.

The PRESIDING OFFICER. The time of the Senator has expired.

The Senator from Indiana has 5 minutes remaining.

Mr. BAYH. Mr. President, I have great respect for the Senator from Florida. He has great wisdom. However, I suggest to him that he should confine himself to what has happened in the State of Florida, not to what has happened in the State of Indiana.

As a matter of fact, I have spent a good deal of time and studied the problems of Indiana a little more closely than did my friend the Senator from Florida.

I suppose that if I were going to "cop out," as the distinguished Senator from Tennessee calls it, I would vote for the Gurney amendment. That would make many people in Indianapolis happy. That would make the school board happy. They were not opposed to busing when they were busing black children past white schools and white children past black schools. I think that situation is bad whether it is in Florida, Tennessee, or Indiana.

My amendment would apply in the instance of Indianapolis, in the inner city of Indianapolis, the Indianapolis public school system.

All my amendment would do would be to instruct the Indianapolis school board to come up with a plan to provide for integrated schools, a plan that uses as small an amount of busing as possible, and to explore and study the situation with respect to providing a plan that would result in adequate, integrated education.

Mr. MATHIAS. Mr. President, I ask unanimous consent that Colby King, Terry Barnett, and Quincy Rogers, a member of the staff of the Judiciary Committee, be granted the privilege of the floor during the debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BAYH. Mr. President, I think it is rather obvious what the Senator from Tennessee is after, because I have studied that constitutional amendment that has been advertised around my State and all over the country as being an antibusing amendment.

It does not even contain the word "busing." It does not contain the word "transportation." It goes back to the old segregation system that we fought a civil war to prohibit. Maybe the Senator from Tennessee can support that as an antibusing constitutional amendment.

However, I cannot accept it. Under his plan, nobody would get equal opportunity. The amendment may gain votes for some Senators. Talk about a copout, I am not the one who is copping out.

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

The PRESIDING OFFICER. The Senator from Indiana has 2 minutes remaining. There is no other time available.

Does the Senator from Indiana yield back his time?

Mr. BAYH. No; if I have 2 minutes remaining, I will use it. I will use it to suggest that if my voice got a little loud when directed at the Senator from Tennessee or the Senator from Florida, I hope that they will not interpret that as an assault on their integrity or on their desire to do what they think they are accomplishing.

I happen to think that their amendment is designed not to stop busing, but to give the school boards the tools to take us back 100 years.

I do not want separate-but-equal anything.

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

Mr. BAYH. Mr. President, I yield to the Senator from Florida.

Mr. GURNEY. Mr. President, I certainly did not think that the Senator from Indiana was assaulting my integrity. I did think that he was assaulting my amendment.

Mr. BAYH. The Senator from Florida is exactly right.

The PRESIDING OFFICER. The question now recurs on the amendment.

Mr. BAYH. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? (Putting the question.) There is not a sufficient second.

The yeas and nays were not ordered.

The PRESIDING OFFICER. The question now recurs on the amendment of the Senator from Indiana (Mr. BAYH).

Mr. BAYH. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. BAYH. Mr. President, in the unanimous consent request, was this amendment not located, as far as a vote is concerned, just prior to the vote on the Gurney amendment, to take place at 5 o'clock?

The PRESIDING OFFICER. The Senator is correct.

Mr. GURNEY. Mr. President, as I recall, we attempted to work out a unanimous-consent request. However, I do not think that we ever did. Is that correct?

The PRESIDING OFFICER. The Chair is advised that there is a unanimous-consent agreement.

The question now recurs on the amendment of the Senator from Florida. Who yields time?

Mr. ERVIN. Mr. President, I was under the impression that I was going to be permitted to have some time on my amendment at this time.

The PRESIDING OFFICER. The Chair will advise the Senator from North Carolina that he understands that by previous order the amendment of the Senator from North Carolina will be called up at 4 o'clock.

Mr. GURNEY. Mr. President, I yield 2 minutes to the Senator from Tennessee. The PRESIDING OFFICER. The Senator from Tennessee is recognized for 2 minutes.

Mr. BROCK. Mr. President, I may ask the Senator from Florida for some additional time.

Mr. GURNEY. Mr. President, I will yield the Senator from Tennessee 5 minutes.

Mr. BROCK. Mr. President, I thank the Senator from Florida.

Mr. President, I am not going to spend any time debating the constitutional amendment. However, I find it interesting to note how the Senator from Indiana reads the English language when he says that we are trying to reverse the history of the country and go back 100 years.

I think it is an amendment that says very simply that no child shall be denied an opportunity to attend his neighborhood school, in effect, on the basis of race, creed, or color. I thought that was what the Supreme Court did in 1954. I thought that was what we were trying to do ever since.

Mr. President, the problem of busing as presently implemented has an explicit racial character. We cannot put a child on a bus without determining his color. And the direction of the bus is determined by whether or not a child is black or white. That is discrimination. That is racial discrimination. That is a violation of the law by any definition of what I think the Constitution clearly states, unless color blindness is involved.

I think the reason I am so distressed by the amendment of the Senator from Indiana is that we have been trying so long and so diligently, Republican and Democrat, to bring to the floor of the Senate a debate on the subject of equality of opportunity for all the children of this land. I know some have been reluctant to engage this issue because of the emotionalism involved in such words as "court-ordered busing". Yet, throughout my part of the country and in other sections as well, pupil attendance in major metropolitan areas continues to decline as does parental support of public education.

We have had a fall-off of membership in the PTA's of Nashville from 50,000 to 30,000 since 1970. When you have that kind of a situation, and when you have a rapid decline in pupil attendance, the issue cannot be avoided. It must be faced and faced now in a constructive way. I know there are those who feel that busing is the sole cause of declining attendance and parental support. Certainly this is a major factor, but it is not the only one. Others have felt that any effort to limit forced busing would be a step backward in the fight for civil rights. I wonder if either side is truly addressing the issue. To me, the basic question is whether or not we are prepared to commit ourselves to the quality and equality of education for all children, black and white, rich and poor, North and South.

Nearly 2 years ago, out of a sense of sheer frustration, I introduced Senate

Joint Resolution 14, a constitutional amendment to forbid the assignment of children to a particular school on the basis of race, color, or creed. It has become painfully obvious that my amendment faces obstacles, and the two-thirds vote necessary for passage probably is not yet there. During these 2 years parents have pleaded for relief, children have been abused, the courts have asked Congress to establish priorities for arriving at equality of opportunity, and yet nothing has been done.

Now, I say to my distinguished colleagues that I hope that we finally have the guts to face up to this issue.

For much too long the Congress has been sitting back and allowing the busing of children across town, out of their neighborhoods, in the name of achieving a racial balance. The House took a positive step. Now we must do the same.

One would have to live through it to understand the problems and difficulties that this type of busing that we have today has caused to entire families, and entire communities. I fear that many of my colleagues simply have not seen this first hand. It is disappointing that congressional hearings could not have been held in all of the cities affected by court ordered busing. The view is much different there than here in Washington.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. BROCK. Will the Senator from Florida yield me 3 additional minutes?

Mr. GURNEY. I yield the Senator 3 more minutes.

Mr. BROCK. Two years ago, the Senate refused to face up to this issue. Similar legislation to that which we are considering was killed by a filibuster, and the merits of court ordered busing were not even discussed even though the Supreme Court had almost begged the Congress for guidelines.

Since that time, the climate has changed, and the people in my State of Tennessee are sick to death with busing and they want, they demand action.

The greatest part of this legislation which we are considering is that it will provide alternatives. It states that racial segregation of school children must not be remedied by busing unless certain alternatives have proved ineffective. This is the key. This is the step we have been looking for. This is what thousands of parents and children have wanted—an alternative.

We have stood by for much too long while our citizens have cried out for help. They have not asked the impossible. They have not asked to go back to the old days, where busing was used for segregation, because what was wrong then is wrong now, for the same reasons. All they have wanted is something that can give them an alternative.

This measure will go a long way toward doing just that. This measure will help restore our neighborhood school concept which is one of the main areas of deterioration with forced busing.

There are many guidelines connected with this legislation, but I think for once we have something that stands a chance of passage, and added to that, something that can benefit the families

and children of Tennessee who have suffered the inconveniences and difficulties of forced busing.

It has been too long since we seriously considered what forced busing has done to our schools and our way of life. Now is the time to take action, and I hope the Senate will act favorably on this measure and let us find some reasonable alternatives now, once and for all, to the busing of our school children to achieve a racial balance. Let us for once remember our families, and our total educational standards.

Every American deserves a right to a good education. We must now formulate that good education with programs which will offer every person, every child, black or white, rich or poor, the quality and equality of education that he richly deserves.

I thank the Senator from Florida for yielding, and I am delighted to have the privilege of cosponsoring this amendment, because I think it is a responsible step toward restoring equity and equality to all of our children.

Mr. JOHNSTON. Mr. President, will the Senator from Florida yield?

Mr. GURNEY. I yield to the Senator from Louisiana.

Mr. JOHNSTON. I thank the Senator for yielding. I have a rather important point, I think, that I would like to clear up in my mind, relative to the conditions necessary to reopen proceedings under section 818 of the amendment. Section 818, of course, authorizes the reopening of cases in order to comply with the provisions of this title.

As I read the amendment, it is in four parts: part A, policy and purpose, part B, unlawful practices, part C, enforcement, and part D, remedies.

As I read not only the language of the amendment but the intent of the amendment, it is actually a measure to correct unlawful practices, that is to say, a denial of equal educational opportunity, and the necessary trigger for reopening of cases would be a denial of educational opportunity.

Does the Senator understand the question, and if so, is that correct?

Mr. GURNEY. Yes, I would think that that would be a good way to describe it.

Mr. JOHNSTON. So that, for example, if a segregated school system were sued 10 years ago, and a court ordered remedy was fixed, fashioned, and implemented so as to extirpate any unlawful discrimination, so as to do away with any denial of equal educational opportunities as those are defined in part B of the amendment, and if there was no denial of such equal educational opportunities, then it would not be possible, under section 818 of the bill, to modify that court order, even though it might involve busing, is that correct?

Mr. GURNEY. I am not sure I exactly understand the question posed by the Senator. Could he clarify it a little more for me?

Mr. JOHNSTON. Yes. To go into a little more detail, part B of the amendment defines unlawful practices.

Mr. GURNEY. Yes.  
Mr. JOHNSTON. Nowhere in that list of unlawful practices is cross-town bus-

ing included. Unlawful practices are, generally, the denial of equal educational opportunity. Are we together so far?

Mr. GURNEY. Yes.

Mr. JOHNSTON. All right. Part B deals with enforcement, and talks about civil actions and other kinds of actions, and the trigger for any kind of enforcement in sections 807 through 811, inclusive, is a denial of equal educational opportunity. Are we together so far?

Mr. GURNEY. Yes, I think I follow the Senator.

Mr. JOHNSTON. All right. Now, the important part here is part D, dealing with remedies, and the key provision there is section 814, which states that in formulating "a remedy for a denial of equal educational opportunity" the courts must do a certain list of things, seven in number, in a certain order, again dealing with the denial of equal educational opportunity.

Mr. GURNEY. Yes.

Mr. JOHNSTON. Are we still together?

Mr. GURNEY. Yes.

Mr. JOHNSTON. All right. Then we come to section 818, which states that on application of an educational agency, et cetera, the case shall be reopened and modified to comply with the provisions in this title.

Mr. GURNEY. Yes.

Mr. JOHNSTON. The point is that the provisions of this title dealing with denial of equal educational opportunity and the title does not prohibit busing but simply prohibits busing as a remedy for denial of equal educational opportunity, the point being that a denial of equal educational opportunity, as those terms are defined in part B of the bill, is a necessary trigger for any modification undertaken pursuant to section 818—

The PRESIDING OFFICER (Mr. HELMS). The hour of 4 o'clock having arrived, under the previous order, the distinguished Senator from North Carolina (Mr. ERVIN) is recognized to call up his amendment to the Gurney amendment.

Mr. JOHNSTON. Mr. President, will the Senator from North Carolina yield me just 1 minute?

Mr. ERVIN. I hate not to yield 1 minute, but—

Mr. JOHNSTON. I asked a question of the Senator and he is ready to say yes or no.

Mr. ERVIN. I yield long enough for the Senator to say yes or no.

Mr. GURNEY. As I understand it, yes. This is one of the things which is designed and will serve as a basis for reopening the proceeding.

#### AMENDMENT NO. 1239

Mr. ERVIN. Mr. President, with the cosponsorship of Senators ALLEN, TALMADGE, and McCLELLAN, and my colleague Mr. HELMS, I offer an amendment No. 1239 and ask unanimous consent that it be voted on immediately after the vote on the Gurney amendment.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. ERVIN. Mr. President, the constitutional provisions which relate to this

matter are found in the 14th amendment, section 1, which provides, among other things, that:

No State shall . . . deny to any person within its jurisdiction the equal protection of the laws.

Section 5 of the 14th amendment states that:

The Congress shall have power to enforce, by appropriate legislation, the provisions of this Article.

Mr. President, the amendment which my cosponsors and I now offer is in perfect harmony with the Constitution. The equal protection clause is the simplest clause in the Constitution. It merely says to a State,

You must treat all persons in like circumstances in a like manner.

This amendment is fundamentally an amendment which provides that where there is a school board that establishes a freedom of choice plan, the Federal Government will have no power to interfere in that school district. It recognizes that a freedom of choice plan is the most perfect example of a plan which treats all children, of all races, equally.

Mr. President, I ask unanimous consent that a copy of the amendment be printed in the RECORD.

There being no objection, the text of amendment No. 1239 was ordered to be printed in the RECORD, as follows:

#### TITLE IX—PUBLIC SCHOOL—FREEDOM OF CHOICE

##### SHORT TITLE

SEC. 901. That this title may be cited as the "Student Freedom of Choice Act".

#### FREEDOM OF CHOICE AMENDMENT TO THE CIVIL RIGHTS ACT OF 1964

SEC. 902. The Civil Rights Act of 1964 (42 U.S.C. 1971-1975a-1975d, 2000a-2000h-6) is amended by adding at the end thereof the following new title:

#### "TITLE XII—PUBLIC SCHOOL—FREEDOM OF CHOICE

"SEC. 1201. As used in this title—

"(a) 'State' means any State, district, Commonwealth, territory, or possession of the United States.

"(b) 'Public school' means any elementary or secondary educational institution, which is operated by a State, subdivision of a State, or governmental agency within a State, or any elementary or secondary educational institution which is operated, in whole or in part, from or through the use of governmental funds or property, or funds or property derived from a governmental source.

"(c) 'School board' means any agency which administers a system of one or more public schools and any other agency which is responsible for the assignment of students to or within such system.

"(d) 'Student' means any person required or permitted by State law to attend a public school for the purpose of receiving instruction.

"(e) 'Parent' means any parent, adoptive parent, guardian, or legal or actual custodian of a student.

"(f) 'Faculty' means the administrative and teaching force of a public school system or a public school.

"(g) 'Freedom of choice system' means a system for the assignment of students to public schools and within public schools maintained by a school board operating a system of public schools in which the public schools and the classes it operates are open to students of all races and in which the students are granted the freedom to attend public schools and classes chosen by their re-

spective parents from among the public schools and classes available for the instruction of students of their ages and educational standings.

"Sec. 1202. No department, agency, officer, or employee of the United States empowered to extend Federal financial assistance to any program or activity at any public school by way of grant, loan, or otherwise shall withhold, or threaten to withhold, such financial assistance from any such program or activity on account of the racial composition of the student body at any public school or in any class at any public school in any case whatever where the school board operating such public school or class maintains, with respect to such school and class, a freedom of choice system.

"Sec. 1203. No department, agency, officer, or employee of the United States empowered to extend Federal financial assistance to any program or activity at any public school by way of grant, loan, or otherwise shall withhold, or threaten to withhold, any such Federal financial assistance from any such program or activity at such public school to coerce or induce the school board operating such public school to transport students from such public school to any other public school for the purpose of altering in any way the racial composition of the student body at such public school or any other public school where the school board operating such public schools maintains with respect to such schools a freedom of choice system.

"Sec. 1204. No department, agency, officer, or employee of the United States empowered to extend Federal financial assistance to any program or activity at any public school in any public school system by way of grant, loan, or otherwise shall withhold or threaten to withhold any such Federal financial assistance from any such program or activity at such public school to coerce or induce any school board operating such public school system to close any public school, and transfer the students from it to another public school for the purpose of altering in any way the racial composition of the student body at any public school where the school board operating such public schools maintains with respect to such schools a freedom of choice system.

"Sec. 1205. No department, agency, officer, or employee of the United States empowered to extend Federal financial assistance to any program or activity at any public school in any public school system by way of grant, loan, or otherwise shall withhold or threaten to withhold any such Federal financial assistance from any such program or activity at such public school to coerce or induce the school board operating such public school system to transfer any member of any public school faculty from the public school in which the member of the faculty contracts to serve to some other public school for the purpose of altering the racial composition of the faculty at any public school where the school board operating such public schools maintains with respect to such schools a freedom of choice system.

"Sec. 1206. Whenever any department, agency, officer, or employee of the United States violates or threatens to violate section 1202, section 1203, section 1204, or section 1205 of this Act, the school board aggrieved by the violation or threatened violation, or the parent of any student affected or to be affected by the violation or threatened violation, or any student affected or to be affected by the violation or threatened violation, or any member of any faculty affected or to be affected by the violation or threatened violation may bring a civil action against the United States in a district court of the United States complaining of the violation or threatened violation. The district courts of the United States shall have jurisdiction to try and determine a civil action brought under this section irrespective of the amount in controversy and enter such judgment or

issue such order as may be necessary or appropriate to redress the violation or prevent the threatened violation. Any civil action against the United States under this section may be brought in the judicial district in which the school board aggrieved by the violation or threatened violation has its principal office, or the judicial district in which any school affected or to be affected by the violation or threatened violation is located, or in the judicial district in which a parent of a student affected or to be affected by the violation or threatened violation resides, or in the judicial district in which a student affected or to be affected by the violation or threatened violation resides, or in the judicial district in which a member of a faculty affected or to be affected by the violation or threatened violation resides, or in the judicial district encompassing the District of Columbia. The United States hereby expressly consents to be sued in any civil action authorized by this section, and expressly agrees that any judgment entered or order issued in any such civil action shall be binding on the United States and its offending department, agency, officer, or employee, subject to the right of the United States to secure an appellate review of the judgment or order by appeal or certiorari as is provided by law with respect to judgments or orders entered against the United States in other civil actions in which the United States is a defendant.

Sec. 1207. No court of the United States shall have jurisdiction to make any decision, enter any judgment, or issue any order requiring any school board to make any change in the racial composition of the student body at any public school or in any class at any public school to which students are assigned in conformity with a freedom of choice system, or requiring any school board to transport any students from one public school to another public school or from one place to another place or from one school district to another school district in order to effect a change in the racial composition of the student body at any school or place or in any school district, or denying to any student the right or privilege of attending any public school or class at any public school chosen by the parent of such student in conformity with a freedom of choice system, or requiring any school board to close any school and transfer the students from the closed school to any other school for the purpose of altering the racial composition of the student body at any public school, or precluding any school board from carrying into effect any provision of any contract between it and any member of the faculty of any public school it operates specifying the public school where the member of the faculty is to perform his or her duties under the contract."

Mr. ERVIN. Mr. President, I also ask unanimous consent that a statement prepared by me explaining the amendment be printed in the RECORD.

There being no objection, the explanation was ordered to be printed in the RECORD, as follows:

EXPLANATION OF SENATOR ERVIN'S "ANTI-BUSING" AMENDMENT

Senator Ervin's amendment is exactly the same as S. 1737, introduced in this Congress by Senator Ervin and others and on which Subcommittee hearings were held in February, 1974.

Section 1201(g) provides that "freedom of choice" means "a system for the assignment of students to public schools and within public schools maintained by a school board operating a system of public schools in which the public schools and the classes it operates are open to students of all races and in which the students are granted the freedom to attend public schools and classes chosen by their respective parents from among the

public schools and classes available for the instruction of students of their ages and educational standings."

Sections 1202, 1203, 1204, and 1205 of the bill forbid the Department of Health, Education, and Welfare to do any of these things:

1. To withhold, or threaten to withhold, federal financial assistance from any public school operating under a freedom of choice plan "on account of the racial composition of its student body."

2. To withhold, or threaten to withhold, federal financial assistance from any public school operating under a freedom of choice plan to coerce or induce the school board operating such public school to transport students from such public school to any other public school for the purpose of altering in any way the racial composition of the student body at such public school or any other public school.

3. To withhold, or threaten to withhold, federal financial assistance from any school board operating a freedom of choice system to coerce or induce the school board to close any public school and transfer the students from such public school to any other public school or schools for the purpose of altering the racial composition of the student body at any public school.

4. To withhold, or threaten to withhold, federal financial assistance from any school board operating a freedom of choice system to coerce or induce the school board to transfer any member of any faculty from the public school in which the member of the faculty contracts to serve to some other public school for the purpose of altering the racial composition of the faculty at any public school.

Section 1206 of the bill empowers any school board or any parent of any student affected or to be affected by any violation or threatened violation of any of the provisions of sections 1202, 1203, 1204, and 1205 to sue the United States in the District Court of the United States, and obtain such relief "as may be necessary or appropriate to redress the violation or prevent the threatened violation."

Section 1207 specifies that "No court of the United States shall have jurisdiction to make any decision, enter any judgment, or issue any order requiring any school board to make any change in the racial composition of the student body at any public school or in any class at any public school to which students are assigned in conformity with a freedom of choice system as defined in Section 1201(g) of this Act, or requiring any school board to transport any students from one public school to another public school or from one place to another place or from one school district to another school district in order to effect a change in the racial composition of the student body at any school or place or in any school district, or denying to any student the right or privilege of attending any public school or class at any public school chosen by the parent of such student in conformity with a freedom of choice system as defined in section 1201(g) of this Act, or requiring any school board to close any school and transfer any students from the closed school to any other school for the purpose of altering the racial composition of the student body at any public school, or precluding any school board from carrying into effect any provision of any contract between it and any member of the faculty of any public school it operates specifying the public school where the member of the faculty is to perform his or her duties under the contract."

Section 7 is sanctioned by Article III of the Constitution which empowers Congress to regulate the appellate jurisdiction of the Supreme Court and both the original and appellate jurisdiction of all federal courts inferior to the Supreme Court.

The bill is in perfect accord with the Constitution. Moreover, it makes a substantial contribution to the constitutional ideals that all Americans of all races shall be members of a free society and that none of them shall be the hapless and helpless subjects of judicial or bureaucratic oligarchies.

The bill is designed to accomplish these things by restoring freedom of choice to its rightful place in the law of the land, and by placing certain prohibitions upon federal judges and executive officials with respect to the busing of children, the closing of schools, and the assignment of members of the faculties of public schools to schools other than those in which they contract to teach.

Mr. ERVIN. Mr. President, when the case of Swann versus Charlotte-Mecklenburg Board of Education was before the Supreme Court, I prepared a brief at the instance of the Classroom Teachers' Association of Charlotte and Mecklenburg County. I filed this brief as a friend of the court in conjunction with the distinguished Senator from South Carolina (Mr. HOLLINGS) and with the distinguished former Representative from my State, Mr. Charles R. Jonas.

This brief sets forth all the relevant decisions relating to this question of the busing of schoolchildren. The Federal courts have taken charge of the public schools and are acting as school boards, and the HEW bureaucrats have done the same. For these reasons I ask unanimous consent that the brief be printed in the RECORD.

There being no objection, the brief was ordered to be printed in the RECORD, as follows:

[In the Supreme Court of the United States, October Term, 1970]

AMICUS CURIAE BRIEF FOR THE CLASSROOM TEACHERS' ASSOCIATION OF THE CHARLOTTE-MECKLENBURG SCHOOL SYSTEM, INCORPORATED

(No. 281, James E. Swann, et al., *Petitioners*, Charlotte-Mecklenburg Board of Education, et al.; No. 349, Charlotte-Mecklenburg Board of Education, et al., *Petitioners*, v. James E. Swann, et al., on writ of certiorari to the U.S. Court of Appeals for the Fourth Circuit.)

INTEREST OF THE AMICUS CURIAE

The Classroom Teachers' Association of the Charlotte Mecklenburg School System, Incorporated, is a non-profit membership organization in corporate form, which includes in its membership a substantial part of the 3,553 classroom teachers in the Charlotte-Mecklenburg School System and which devotes itself to the advancement of public education. The specific objectives of the organization and its members are to promote the interests of classroom teachers in the Charlotte-Mecklenburg School System, and to secure to the students attending the schools of the System opportunities to achieve by quality education their highest potentialities.

The Classroom Teachers' Association of the Charlotte-Mecklenburg School System and its members believe that the execution of the order of the United States District Court for the Western District of North Carolina and the judgment of the United States Circuit Court for the Fourth Circuit affirming such order in part seriously impair the educational opportunities offered by the Charlotte-Mecklenburg School System to the students in its schools, and for this reason the organization files this amicus curiae brief in support of the position of the Charlotte-Mecklenburg Board of Education, which harmonizes with this view.

The parties to the proceedings in Nos. 281

and 349 have consented in writing to the filing of this brief, and the writings evidencing such consent have been filed with the Clerk.

The members of the Supreme Court bar who submit this brief in behalf of the organization do so without compensation in the hope that they may aid the Supreme Court to reach a decision which will restore tranquility to much troubled areas of our land and enable the public schools operating in them to function economically and efficiently as educational institutions.

#### OPINIONS BELOW

The opinion of the Court below consists of the opinion and judgment of the United States Court of Appeals filed May 26, 1970, which are not yet reported and which appear in the Appendix (Volume 3, pages 1262a to 1304a).

In its opinion and judgment, the Court of Appeals reviewed and approved in part and remanded in part for further consideration the rulings and findings made by the United States District Court in the following orders and documents:

1. Order dated February 5, 1970 (819a-839 a), as amended, corrected, and clarified on March 3, 1970 (921a).
2. Supplementary Findings of Fact dated March 21, 1970 (1198a-1220a).
3. Supplemental Memorandum dated March 21, 1970 (1221a-1238a).

#### JURISDICTION

The Supreme Court has jurisdiction to review this case by writ of certiorari under 28 U.S.C. 1254(1), and has accepted it for such purpose by granting writs to the petitioners in No. 281 and the petitioners in No. 349.

#### QUESTIONS PRESENTED FOR REVIEW

This case presents the following questions for review:

1. Does a public school board comply with the Equal Protection Clause of the Fourteenth Amendment when it creates non-discriminatory attendance districts or zones and assigns all children, black and white, to neighborhood schools in the district or zone in which they reside without regard to their race?
2. Does the Equal Protection Clause of the Fourteenth Amendment empower a federal court to order a public school board to assign children to the schools it operates to balance the student bodies in such schools racially or to bus children outside of non-discriminatory attendance districts or zones to effect such purpose?
3. Does Title IV of the Civil Rights Act of 1964, which prohibits the assignment of students to public schools to balance the student bodies in such schools racially and to bus them from some schools to other schools or from some school districts to other school districts to effect such purpose, constitute appropriate legislation to enforce the Equal Protection Clause within the purview of the Fifth Section of the Fourteenth Amendment?
4. Does the order entered by the District Court and affirmed in part by the Circuit Court usurp and exercise the authority of the Charlotte-Mecklenburg Board of Education to devise and implement a non-discriminatory assignment plan conforming to the Equal Protection Clause, and require the Charlotte-Mecklenburg Board of Education to violate the Equal Protection Clause by treating in a different manner students similarly situated and by denying students admission to their neighborhood schools because of their race?

The amicus curiae insists that the first, third, and fourth questions must be answered in the affirmative and that the second question must be answered in the negative.

#### CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The case involves the first and second sections of the Fourteenth Amendment; the first and second sections of Article III of the Constitution; and Title IV of the Civil Rights Act of 1964. These constitutional and statutory provisions are printed in the Appendix.

#### STATEMENT OF THE CASE

##### A. The Charlotte-Mecklenburg Public School System

The writ in No. 281 and the writ in No. 349 present to the Supreme Court for review the judgment entered by the United States Court of Appeals for the Fourth Circuit on May 26, 1970, in the civil action entitled James E. Swann and others, Plaintiffs, v. Charlotte-Mecklenburg Board of Education and others, Defendants. For ease of narration and understanding, James E. Swann and his associates in this litigation are hereafter called the plaintiffs, and the Charlotte-Mecklenburg Board of Education is hereafter designated as the School Board.

The School Board operates the Charlotte-Mecklenburg Public School System in Charlotte and Mecklenburg County, North Carolina, political subdivisions of North Carolina. Charlotte, which is the county seat of Mecklenburg County, is inhabited by 239,056 persons who are concentrated within the 64 square miles embraced by its city limits, an area larger than the District of Columbia. Mecklenburg County embraces 550 square miles, has an east-west span of 26 miles, a north-south span of 36 miles, and has a population of 352,006, exclusive of those residing within the area embraced by Charlotte.

In the discharge of its state-assigned duties, the School Board operates 10 high schools, 21 junior high schools, and 72 elementary schools to house and instruct the 84,500 school children residing in Charlotte and Mecklenburg County. Of these school children, 24,000, or 29 percent, are black, and 60,500, or 71 percent, are white. Approximately 95 percent of all the black children who reside within the limits of the City of Charlotte live in predominantly black residential sections in northwest Charlotte, and a substantial portion of the other black children in Mecklenburg County reside in predominantly black residential areas adjacent to it. (293a-298a).

Prior to *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954), the School Board operated the public schools of Charlotte and Mecklenburg County as racially segregated schools in conformity with the interpretation then placed upon the Equal Protection Clause of the Fourteenth Amendment. Subsequent to the *Brown Case* and prior to 1965, the School Board established an effective system of determining admission to its public schools on a non-racial basis. It did this, and thus converted its formerly dual system into a unitary system by establishing non-discriminatory attendance districts or zones, and assigning the school children subject to its jurisdiction to their neighborhood schools irrespective of race.

Inasmuch as some of the attendance districts or zones in rural Mecklenburg County and some of its suburban residential districts or zones in or adjacent to Charlotte are extremely large, the School Board voluntarily established a transportation system for the sole purpose of carrying children residing in these geographically large districts or zones to the nearest available schools. As a consequence, it now uses 280 buses to bus some 23,000 school children to rural and suburban schools. (864a)

In 1965 the plaintiffs brought the instant action against the School Board in the United States Court for the Western District of North Carolina seeking to obtain a compul-

sory desegregation decree. After hearing the evidence in the case, the District Court found that the School Board had complied with the requirement of the Equal Protection Clause and denied the decree sought by them. *Swann v. Charlotte-Mecklenburg Board of Education*, 243 F.Supp. 687 (1965). This ruling was affirmed by the Circuit Court. *Swann v. Charlotte-Mecklenburg Board of Education*, 369 F.2d 29 (1966).

##### B. The plan submitted by the Charlotte-Mecklenburg Board of Education

Subsequent to the decision of *Green v. County School Board of New Kent County*, 391 U.S. 430 (1968), the plaintiffs filed a motion in the cause seeking further desegregation. (2a)

Although it found as a fact that the "location of schools in Charlotte has followed the local pattern of residential development, including its de facto patterns of segregation" (305a), and that the School Board members "have achieved a degree and volume of desegregation of schools apparently unsurpassed in these parts and have exceeded the performance of any school boards whose actions have been reviewed in the appellate court decisions" (311a-312a), the District Court resumed hearings in the case on the ground that the *Green Case* had changed "the rules of the game." (312a)

It is to be noted that subsequently the District Court on its own motion reversed its previous findings that any racial imbalance in the Charlotte-Mecklenburg public schools was the result of de facto segregation by asserting that "there is so much State action imbedded in and shaping these events that the resulting segregation is not innocent or 'de facto' and the resulting schools are not 'unitary' or 'desegregated.'" (662a) The amicus curiae submits with all due deference that there is no testimony in the record to sustain this particular finding.

Pursuant to the orders entered by the District Court on April 23, 1969 (285a), June 20, 1969 (448a), August 15, 1969 (579a), and December 1, 1969 (698a), the School Board filed desegregation plans (330a, 480a, 670a) which were rejected by the District Court.

Meanwhile on December 2, 1969, the Court appointed Dr. John Finger, a resident of Rhode Island, as a special consultant to devise a desegregation plan for the guidance of the Court, (819a) Dr. Finger had originally entered the case as a partisan witness for the plaintiffs, and for this reason a good case can be made for the proposition that he lacked the impartiality which is desirable in one selected for the task of assisting a judge in keeping the scales of justice evenly balanced between adverse litigants. (1279a)

While the District Court orders and the School Board plans mentioned above shed light on the School Board's devotion to the neighborhood school concept, and its reluctance as an elected public body to engage in excessive and expensive busing of school children, the subsequent School Board plan of February 5, 1970, and the subsequent District Court order of February 5, 1970, relating to it really illuminate the issues which now confront the Supreme Court. (726a-748a, 819a-839a).

By this plan, the School Board proposed that attendance districts or zones should be drastically gerrymandered in such a manner as to include as many blacks as possible in each district or zone, and that all school children subject to its jurisdiction should be required to attend the school appropriate to their educational standings in the district or zone of their residence. The plan would have accomplished a racial mixture of school children in all of the 102 schools in the system, except three elementary white schools located in neighborhoods inhabited exclusively by members of the white race. (726a-748a).

The School Board plan contemplated that from 17 percent to 36 percent of the student body in nine of the ten senior high schools in the system would be black; that not more than 38 percent of the student body in 20 of the 21 junior high schools in the system would be black; and that not more than 40 percent of the student body in 60 of the 72 elementary schools in the system would be black.

Under the School Board plan, the remaining high school, Independence High, would be 2 percent black and 98 percent white; the remaining junior high school, Piedmont Junior High, would be 90 percent black and 10 percent white; and all of the 12 remaining elementary schools, except the three white elementary schools, would be 83 percent to 1 percent black. (726a-748a).

The School Board judged it to be impossible to desegregate the three white elementary schools, and to further desegregate the nine predominantly black elementary schools by geographic districting or zoning because of the de facto segregation prevailing in the residential areas in which the children assigned to these 12 elementary schools lived. (730a-732a) The District Court made a specific finding in its Supplemental Findings of Fact of March 21, 1970, which establishes the validity of the School Board's conclusion concerning Independence High, Piedmont Junior High, and the 9 predominantly black elementary schools, all of which are located in northwest Charlotte or its environs.

The District Court expressly found that "both Dr. Finger and the School Board staff appear to have agreed, and the Court finds as a fact that for the present at least there is no way to desegregate the all-black schools in northwest Charlotte without providing (or continuing to provide) bus or other transportation for thousands of children. All plans and all variation of plans considered for this purpose lead in one fashion or another to that conclusion." (1208a)

The amicus curiae submits that it beggars imagination to conjecture how any plan could have obtained a greater degree of racial integration by gerrymandering attendance districts or zones in a political subdivision where white children outnumber black children 71 to 29, and where most of the black children are concentrated residentially in an area inhabited exclusively by members of their race.

The School Board plan did not stop with proposing such a high degree of racial integration among the student bodies in the schools subject to its jurisdiction. It made these three additional proposals:

1. That the faculty of each school should be assigned in such a manner that the ratio of black teachers to white teachers in each school would be approximately 1 to 3 in accordance with the ratios in the entire faculty of the system (737a);

2. That the School Board should furnish 4,935 additional students in-district or in-zone transportation to the schools in the proposed gerrymandered attendance districts or zones in accordance with the North Carolina law which forbids such transportation within one and one-half mile distances (736a); and

3. That any black child in any school having more than 30 percent of his race in its student body should be allowed to transfer to any school having less than 30 percent of his race; whereas a white child should be permitted to transfer to another school only if the school he is attending has more than 70 percent of his race and the school to which he seeks transfer is less than 70 percent white. (734a-735a)

At the same time, Dr. Finger submitted to the District Court his plan of desegregation which contemplated that the School Board should be required by the Court to deny

approximately 23,000 additional children admission to the neighborhood schools in the districts or zones of their residence, and to transport them by bus or otherwise substantial distances in order to produce a greater racial mixture in student bodies. (819a, 825a-827a, 829a-839a, 1198a, 1208a-1214a, 1231a-1234a, 1268a-1269a)

#### C. The order of the District Court

On February 5, 1970, the District Court entered an order approving the School Board plan, subject to certain drastic conditions and revisions recommended by Dr. Finger. (819a-839a) By adopting these conditions and revisions, the District Court commanded the School Board to do these things:

1. To deny hundreds of black high school students admission to a nearby high school which would have had a racial composition of 36 percent black and 64 percent white under the School Board plan, and to bus them from their residences in northwest Charlotte through inter-city traffic a distance of some 12 or 13 miles to Independence High School which is located in a white suburban residential area;

2. To deny several thousands of black junior high school students admission to their neighborhood junior high schools in the inner city, and to bus them substantial distances to nine predominantly white suburban schools located in other attendance districts or zones; and

3. To deny thousands of black and thousands of white elementary school children admission to 31 elementary schools located within their respective attendance districts or zones, and to bus them distances approximating 15 miles to elementary schools situated in other attendance districts or zones.

The sole purpose of the District Court in ordering the School Board to dislocate and bus the hundreds of black high school students to Independence High School was to make Independence High less white, and the sole purpose of the District Court in ordering the School Board to dislocate and bus several thousands of junior high school students was to reduce the percentage of blacks in Piedmont Junior High from 90 percent to 32 percent. (825a-826a)

The sole purpose of the order of the Court commanding the School Board to dislocate and bus thousands of elementary school children was to alter the racial composition of the student body in 9 predominantly black inner-city schools and in 24 predominantly white suburban schools. To accomplish this purpose, the District Court commanded the School Board to dislocate and bus thousands of black first, second, third, and fourth grade students from 9 predominantly black inner-city schools to 24 predominantly white suburban schools, and to dislocate and bus thousands of white fifth and sixth grade students from the 24 predominantly white suburban schools to the 9 predominantly black inner-city schools. (826a)

The order of the District Court did not stop with these things. It further ordered the School Board to establish and implement a continuing program of assigning students throughout the school year "for the conscious purpose of maintaining each school \* \* \* in a condition of desegregation." (824a)

The record clearly discloses the reasoning which prompted the District Court to seek to achieve the purposes of its order.

Prior to its order of February 5, 1970, namely, on April 24, 1969, the District Court manifested its disapproval of the School Board's adherence to the neighborhood school concept by this statement: "Today people drive as much as 40 or 50 miles to work; 5 to 10 miles to church, several hours to football games; all over the country for civic affairs of various types. The automobile has exploded the old-fashioned neighborhood \* \* \* If this Court were writing the

philosophy of education, he would suggest that educators should concentrate on planning schools as educational institutions rather than as neighborhood proprietorships." (306a)

When it entered its order of February 5, 1970, the District Court justified adding the conditions and revisions recommended by Dr. Finger on the ground that the School Board plan "relies almost entirely on geographical attendance zones," while "the Finger plan goes further and produces desegregation of all the schools in the system." (819a)

What has been said makes it manifest that the District Court entertained the opinion that the Equal Protection Clause of the Fourteenth Amendment makes it obligatory for a school board to mix student bodies racially in every school subject to its jurisdiction if children are available for mixing, and that a school board must deny a sufficient number of school children admission to their neighborhood schools and bus them to schools elsewhere either to overcome racial imbalances in their neighborhood schools or in the schools elsewhere, regardless of whether such racial imbalances are produced by arbitrary or invidious discrimination on the part of the school board or simply result from adventitious de facto residential segregation or other cause.

The amicus curiae has not undertaken to state with exactitude the number of additional school children which the District Court ordered the School Board to deny admission to their neighborhood schools and to bus from one school to another or from one school district to another, or the additional cost which the carrying out of the District Court's order in this respect will impose upon the School Board.

This action of the amicus curiae has been deliberate because these matters are in serious dispute between the School Board and the District Court.

When the District Court entered its order of February 5, 1970, and thereby adopted the Finger plan in virtually its entirety, the School Board estimated that the order required it to bus 23,384 additional students an average round trip of 30 miles each school day, and that to do this the School Board would have to acquire 526 additional buses and additional parking spaces at an original capital outlay of \$3,284,448.94; and thereafter expend each year an additional \$1,065,391.98 in employing additional personnel and defraying other operating costs. (853a, 866a)

On March 3, 1970, the District Court modified its order of February 5, 1970. (921a) The School Board then calculated that the order as modified will require it to transport 19,285 additional students and to purchase for such purpose 422 additional buses and additional parking spaces at an original capital outlay of \$2,369,100.00; and thereafter to expend each year for additional personnel and operating expenses of such buses \$284,000.00. (1269a-1270a)

The Court estimated that the execution of its order as modified would require the School Board to bus 13,300 additional students and to purchase for use 138 additional buses at an original capital outlay of \$745,200.00; and to expend thereafter annually \$266,000.00 for operating costs of such additional buses, exclusive of what it will have to expend to compensate any additional personnel necessary for their operation. (1259a-1261a, 1269a)

The Court arrived at its figures by suggesting that the School Board could reduce its estimate of the expenses incident to busing the thousands of children affected by its order by drastically staggering school openings and closings. The School Board replied to this suggestion by asserting that the suggested staggering of school openings and closings would require some children to leave home as early as 6:30 a.m. and prevent some of them from returning home before 5:00 p.m. (864a-865a)

*D. The judgment of the United States Court of Appeals for the Fourth Circuit*

At the instance of the School Board, the United States Court of Appeals for the Fourth Circuit reviewed the orders of the District Court. On May 26, 1970, the Circuit Court rendered its judgment affirming the orders of the District Court insofar as they related to the assignment and busing of senior high school and junior high school students, and remanding to the District Court for further consideration the provisions of the District Court relating to the assignment and busing of elementary school students. (1262a-1304a).

In making this remand, the Circuit Court adjudged that "not every school in a unitary system need be integrated," and adopted a "test of reasonableness—instead of one that calls for absolutes." (1267a)

The writ of certiorari granted to the School Board presents for review the validity of the Circuit Court ruling approving the orders of the District Court relating to the assignment and busing of senior high school and junior high school students and the writ of certiorari granted to the original plaintiffs presents for review the question of the validity of the ruling of the Circuit Court vacating the order of the District Court relating to the assignment and busing of elementary school students.

Subsequent to these events, namely, on August 3, 1970, the District Court reinstated and reaffirmed its order of February 5, 1970, in respect to the assignment and busing of the elementary school students. (1320a) While the validity of this particular order may not be before the Supreme Court the question which it raises is involved in the matter to be reviewed under the writ granted to James E. Swann and those associated with him in this litigation.

The amicus curiae understands that the School Board has filed an as yet unprinted motion with the Supreme Court for a stay of the order entered by the District Court on August 3, 1970, after the hearing of the case in the Circuit Court.

SUMMARY OF AGREEMENT

In the final analysis, the questions presented for review in this case do not arise out of any real controversy in respect to the testimony. They arise out of a fundamental disagreement between the School Board, on the one hand, and the District Court and some of the Circuit Court Judges, on the other, with respect to how the Equal Protection Clause applies to the assignment of students to public schools.

The view of the School Board may be epitomized in this fashion:

The Equal Protection Clause applies only to State action which is arbitrary or invidious, and, hence, it leaves a public school board, acting as a State agency, entirely free to assign students to its schools by any method satisfactory to itself if such method is not arbitrary or invidious. A public school board acts arbitrarily or invidiously if it assigns students to its schools for racial reasons, but a public school board does not act arbitrarily or invidiously if it assigns students to its schools for non-racial reasons, such as the promotion of the efficiency of school administration, the economy of school administration, or the convenience of the students or their parents. This being true, the Equal Protection Clause does not impair in any way the power of a public school board to create fairly drawn geographic attendance districts or zones, and to assign all students without regard to their race to neighborhood schools in the respective districts or zones in which they reside even though such action may result in some racial imbalances in the schools serving areas predominantly inhabited by members of one race.

The view of the District Court and some of the Circuit Court Judges may be summarized in this way:

It is highly desirable from an educational viewpoint to mix students in public schools racially in the highest possible degree. Hence, the Equal Protection Clause imposes upon a public school board the positive duty to balance racially all the schools it operates if black and white children are available for this purpose; and to deny school children admission to their neighborhood schools and bus them to other schools in other areas, no matter how distant, in sufficient numbers to effect such racial balancing.

The School Board refutes this proposition by saying that the Equal Protection Clause does not require action which may be desirable; it merely prohibits action which is arbitrary or invidious.

When it is stripped of irrelevancies and surmises, the record discloses a surprisingly simple state of facts which are relatively free of conflict insofar as they relate to the crucial issues.

After the first *Brown Case*, 347 U.S. 483 (1954), the School Board converted its previously dual system of schools into a unitary system of schools within which no child was excluded because of the child's race. The School Board did this by a geographic assignment plan applicable in like manner to all children without regard to their race. Its action in this regard was adjudged to be in compliance with the Equal Protection Clause by both the District Court and the Court of Appeals.

Subsequent to the *Green Case*, 391 U.S. 430 (1968), the District Court ordered the school board to submit another plan for the desegregation of its schools. Pursuant to this order, the School Board proposed a plan which was reasonably designed to secure the maximum amount of racial mixture obtainable in the student bodies in its schools without abandonment of the neighborhood school concept by restructuring its geographic attendance districts or zones, and assigning all of the children subject to its jurisdiction without regard to their race to their respective neighborhood schools in the districts or zones in which they reside.

The Court rejected the School Board plan simply because it did not racially balance one senior high school out of the system's ten senior high schools, one junior high out of the system's 21 junior high schools, and nine predominantly black and three predominantly white elementary schools out of the system's 72 elementary schools.

Instead of approving the reasonable plan submitted by the School Board, the District Court, in essence, adopted the Finger Plan which requires the School Board to deny thousands of children admission to their neighborhood schools, and to bus them to other schools in other areas merely to eliminate the racial imbalances in these particular schools. The School Board insists that the action of the District Court was not only inconsistent with the Equal Protection Clause, but violates Title IV of the Civil Rights Act of 1964, and that the Circuit Court erred insofar as it approved the action of the District Court.

ARGUMENT

I

"The Charlotte-Mecklenburg Board of Education has complied with the Equal Protection Clause of the Fourteenth Amendment and the Supreme Court decisions interpreting it by establishing and operating a unitary public school system, which receives and teaches students without discrimination on the basis of their race or color. Any racial imbalance remaining in any of the schools under the jurisdiction of the Board represents de facto segregation, which results from the purely

adventitious circumstances that the inhabitants of particular areas in and adjacent to the city of Charlotte are predominantly of one race."

The Equal Protection Clause of the Fourteenth Amendment, which was certified to be a part of the Constitution on July 28, 1868, forbids a state to "deny to any person within its jurisdiction the equal protection of the laws."

By these words, the Equal Protection Clause requires a state to treat in like manner all persons similarly situated. *State Board of Tax Commissioners of Indiana v. Jackson*, 283 U.S. 527 (1931); *Maxwell v. Bugbee*, 250 U.S. 525 (1919). The clause does not require identity of treatment. *Walters v. St. Louis*, 347 U.S. 231 (1934). It permits a state to make distinctions between persons subject to its jurisdiction if the distinctions are based on some reasonable classification, and all persons embraced within the classification are treated alike. It merely outlaws arbitrary or invidious discrimination. *Avery v. Midland County*, 390 U.S. 474 (1968); *Missouri Pacific Railway Co. v. Mackey*, 127 U.S. 205 (1888).

From July 28, 1868, until May 17, 1954, the Equal Protection Clause of the Fourteenth Amendment was interpreted to sanction the "separate but equal doctrine," which permitted a state to segregate school children in its public schools on the basis of race when it furnished equal facilities for the education of the children of each race. *Gong Lum v. Rice*, 275 U.S. 78 (1927); *Cumming v. Richmond County Board of Education*, 175 U.S. 528 (1899); *Plessy v. Ferguson*, 163 U.S. 537 (1896).

On May 17, 1954, the Supreme Court handed down its historic decision in *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954), adjudging "that in the field of public education the doctrine of 'separate but equal' has no place" and holding that a state violates the Equal Protection Clause if it denies any child admission to any of its public schools on account of the child's race.

On the same day the Supreme Court handed down *Bolling v. Sharpe*, 347 U.S. 497 (1954), ruling that the Due Process Clause of the Fifth Amendment imposes the same inhibition on the public schools of the District of Columbia that the Equal Protection Clause does on the public schools of a state, and one year later the Supreme Court announced its implementing decision in second *Brown*, which is reported as *Brown v. Board of Education of Topeka*, 348 U.S. 294 (1955).

Since these decisions the Supreme Court has applied the Equal Protection Clause to varying factual situations arising in various Southern public school districts in the following cases: *Cooper v. Aaron*, 358 U.S. 1, 20 (1958); *Shuttlesworth v. Birmingham Board of Education*, 358 U.S. 101 (1958); *Bush v. Orleans Parish School Board*, 364 U.S. 500 (1960); *Watson v. City of Memphis*, 373 U.S. 526 (1963); *Goss v. Board of Education of Knoxville*, 373 U.S. 683 (1963); *Griffin v. County School Board of Prince Edward County*, 377 U.S. 218 (1964); *Bradley v. School Board of City of Richmond*, 382 U.S. 103 (1965); *Rogers v. Paul*, 382 U.S. 198 (1965); *Green v. County School Board of New Kent County*, 391 U.S. 430 (1968); *Raney v. Board of Education of the Gould School District*, 391 U.S. 443 (1968); *Monroe v. Board of Commissioners of the City of Jackson*, 391 U.S. 450 (1968); *United States v. Montgomery County Board of Education*, 395 U.S. 225 (1969); *Alexander v. Holmes County Board of Education*, 396 U.S. 19 (1969); *Dowell v. Board of Education of the Oklahoma City Public Schools*, 396 U.S. 269 (1969); *Carter v. West Feliciana Parish School Board*, 396 U.S. 226 (1969); *Carter v. West Feliciana Parish School Board*, 396 U.S. 290 (1970); and *Northcross v. Board of Education of the Memphis City Schools*, 397 U.S. 232 (1970).

Besides, individual Supreme Court Justices, acting as Circuit Justices, have expressed opinions on the subject in these cases: *Board of School Commissioners of Mobile County v. Davis*, 11 L. ed. 2d 26 (1963); *Keyes v. School District No. 1, Denver*, 396 U.S. 1215 (1970); and *Alexander v. Holmes County Board of Education*, 396 U.S. 1218 (1969).

The record in the instant case embraces hundreds of pages of evidence, orders, and judgments, and for that reason, the case lends itself to much writing. But the issues arising in the case are simple, and it would complicate that simplicity to analyze the cited decisions in detail. In their ultimate analysis, they interperit the Equal Protection Clause as follows:

1. The Equal Protection Clause makes it unconstitutional for a state to deny any child admission to any public school it operates on account of the child's race.

2. In consequence, the Equal Protection Clause imposes upon a State, acting through its appropriate agencies, the responsibility to establish a system of determining admission to its public schools on a non-racial basis.

3. A state, which operated a racially segregated system of public schools on May 17, 1954, fulfills this responsibility by converting its dual public school system into a unitary public school system.

4. A unitary public school system is one "within which no person is to be effectively excluded from any school because of race or color."

When the Equal Protection Clause as thus interpreted is applied to the facts in this case, it is obvious that the School Board has fully converted its *Pre-Brown* dual school system into a unitary school system within which no child is actually excluded from any school because of race or color. The School Board has done this by creating non-discriminatory attendance districts or zones and assigning all children, black and white, to neighborhood schools in the district or zone in which they reside without regard to their race.

These conclusions are explicit in the rulings made by the District Court and the Circuit Court in 1965 and 1966. *Swann v. Charlotte-Mecklenburg Board of Education*, 243 F.Supp. 667 (1965), *Swann v. Charlotte-Mecklenburg Board of Education*, 369 F.2d (1966). They are implicit in the findings made by the District Court in its order of April 23, 1969, that the School Board had "achieved a degree of desegregation of schools apparently unsurpassed in these parts" and had "exceeded the performance of any school board whose actions have been reviewed in the appellate court decisions," (311a-312a) and that the Schools of Charlotte, in essence, conform to de facto patterns of residential segregation. (305a)

To be sure, the District Court, acting *sua sponte*, undertook to recall these findings in its Memorandum Opinion of November 7, 1969, and to assert that racial imbalances in the Schools of Charlotte are not innocent or *de facto*. (662a)

The amicus curiae submits in all earnestness that there is no evidence in the record to sustain the District Court's assertion in this respect. Be this as it may, the Supreme Court is empowered in cases of an equitable nature and cases involving constitutional questions to review the evidence and make its own findings. If it follows this course in this case, the Supreme Court will be impelled to the conclusion that there is not a vestige of state-imposed segregation in the Charlotte-Mecklenburg School System.

Besides, the District Court's assertion that racial imbalances in the schools of Charlotte are "not innocent or *de facto*" is totally repudiated by its subsequent finding that there is no way to desegregate the black

schools in northwest Charlotte without transporting thousands of children by bus or other means. (1208a)

When all is said, the School Board went far beyond the call of any duty imposed upon it by the Equal Protection Clause when it proposed in its plan of February 2, 1970, to gerrymander attendance districts or zones in order to achieve the highest degree of desegregation obtainable without virtual abandonment of the neighborhood school concept. The amicus curiae expresses no opinion as to whether this proposal is repugnant to the constitutional or legal rights of any child.

## II

"The Equal Protection Clause of the Fourteenth Amendment does not require or empower a Federal Court to order a public school board to assign children to the schools it operates merely to balance the student bodies in such schools racially, or to bus children outside reasonable geographic attendance districts or zones to effect such purpose. The District Court ordered the Charlotte-Mecklenburg School Board to do both of these things, and the Circuit Court erred insofar as it affirmed the District Court order."

The facts make it clear that the order entered by the District Court on February 5, 1970, requires racial balancing in the Charlotte-Mecklenburg School System and the busing of thousands of children outside their geographic attendance districts or zones to effect such balancing.

Indeed, the District Court virtually admits this to be true by setting forth in its Supplemental Findings of Fact of March 21, 1970, a specific finding that there is no other way to desegregate the black schools in northwest Charlotte. (1208a)

Upon the entire record, the conclusion is inescapable that the District Court fell into error because it honestly believed that the Equal Protection Clause and certain decisions interpreting it impose upon a public school board an absolute duty to do these things:

1. To balance racially to the highest degree possible all the schools subject to its control if black and white children are available for that purpose anywhere within the territory subject to its jurisdiction, no matter how vast such territory may be; and

2. To effect such racial balancing by denying both black and white children admission to their neighborhood schools and busing them to other schools in other areas in sufficient numbers to overcome racial imbalances either in their neighborhood schools or in the other schools, regardless of whether the racial imbalances result from de facto residential segregation or other cause, and regardless of these other factors: the distances the children are to be bused, the time required for their busing, the impact of their exclusion from their neighborhood schools and their busing upon their minds and hearts, the effect of these things upon the management of the homes which must nurture them, the traffic hazards involved, and the additional expense foisted upon heavily burdened taxpayers.

There is no other rational explanation for the court order which disrupts the lives of thousands of school children and the management of the thousands of homes from which they come, and diverts tremendous sums of tax-raised moneys from the enlightenment of their minds to the busing of their bodies.

The Equal Protection Clause does not require any court to enter any such order. It does not empower any court to enter any such order. Indeed, it forbids any court to do so.

As interpreted in the first *Brown Case*, 347 U.S. 483 (1954), and all subsequent Supreme Court decisions relevant to the subject, the

Equal Protection Clause forbids a public school board, which acts as a state agency, to deny any child admission to any school it operates on account of the child's race. A public school board obeys the Clause by maintaining a unitary school system, i.e. a school system "within which no person is to be effectively excluded from any school because of race or color." *Northcross v. Board of Education of the Memphis City Schools*, 397 U.S. 232 (1970); *Alexander v. Holmes County Board of Education*, 396 U.S. 19 (1969). See also the opinion of Mr. Justice Black, acting as Circuit Justice, in *Alexander v. Holmes County Board of Education*, 396 U.S. 1218 (1969).

The power to assign children to state supported schools belongs to the public school board which operates them. The Equal Protection Clause does not undertake to transfer this power to the Federal Courts. It merely subjects the exercise of the power by the public school board to this limitation: The board must not exclude any child from any school it operates because of the child's race.

If it faithfully observes this limitation upon its power, a public school board has the right to assign children to the schools it operates in any non-discriminatory fashion satisfactory to itself.

The School Board exercised this right when it created nondiscriminatory attendance districts or zones and assigned all children, whether black or white, to neighborhood schools in the districts or zones of their residence without regard to race.

Since the children are similarly situated and the School Board treats them exactly alike, its action is in complete harmony with the Equal Protection Clause. It accords, moreover, with the implementing decision in the second *Brown Case*, 349 U.S. 294 (1955), which expressly recognizes that a school board may employ non-discriminatory geographic zoning of school districts "to achieve a system of determining admission to the public schools on a nonracial basis."

As is true in respect to virtually every city of any size in our land, the different races are concentrated to a substantial degree in separate residential areas in Charlotte, and for this reason the School Board's non-discriminatory geographic zoning and assignment program necessarily results in some racial imbalances in some schools.

Notwithstanding this, the order of the District Court commanding the School Board to exclude thousands of children from their neighborhood schools and to bus them long distances to other schools to overcome these racial imbalances is without support in the Equal Protection Clause.

This is true for an exceedingly plain reason. The Equal Protection Clause does not prohibit any discrimination except that which is arbitrary or invidious.

It inevitably follows that where school attendance areas are not arbitrarily or invidiously fixed so as to include or exclude children of a particular race, the Equal Protection Clause does not prohibit a state or local school board from requiring that the children living in each attendance area attend the school in that area, even though the effect of such a requirement, in a locality where the different races are concentrated in separate residential areas, is racial imbalance or de facto segregation in the schools.

The conclusion that the Equal Protection Clause does not impose upon a public school board any mandate to remove any racial imbalance in its schools occasioned by de facto residential segregation or non-discriminatory geographic assignments is expressly supported in *Bell v. School City of Gary, Ind.* (7 CA-1963), 324 F.2d 209, and *Downs v. Board of Education of Kansas City, Kansas* (10 CA-1964), 336 F.2d 998. Moreover, it is compelled by first *Brown*, 347 U.S. 483

(1954), and all the subsequent Supreme Court cases applying its holding, as well as by the language of the Equal Protection Clause itself.<sup>1</sup>

Despite the fact that the Charlotte-Mecklenburg School System is in the South, racial imbalances produced in its schools by de facto residential segregation are just as innocent as racial imbalances produced in the public schools of the North by the same cause, and are equally exempt from federal interference, whether legislative, executive, or judicial, under the Equal Protection Clause, which, as already pointed out, condemns no discrimination except that which is arbitrary or invidious.

The amicus curiae is confident that the Supreme Court will so adjudge. Indeed, it must do so if the United States is truly one nation under one flag and one Constitution.

It no longer comports with intellectual integrity to call all racial imbalances in the public schools of the South de jure, and all racial imbalances in the public schools of the North de facto.

There is now no de jure school segregation anywhere in our land. Racial imbalances in public schools are either arbitrary or invidious and, hence constitutionally impermissible, both North and South, or innocent and, hence, constitutionally permissible, both North and South. Racial imbalances resulting from de facto residential segregation or non-discriminatory districting or zoning, whether in the North or in the South, are clearly innocent and constitutionally permissible.

Moreover, it no longer comports with reality, common sense, or justice to apply one rule to the North and another to the South because the South did not precede the Supreme Court in discovering that the "separate, but equal doctrine" had ceased to be the law of the land.

### III

"The Fifth Section of the Fourteenth Amendment Empowers Congress to Enforce the Equal Protection Clause by Appropriate Legislation, the First Section of Article III of the Constitution Empowers Congress to Regulate the Jurisdiction of United States District Courts and United States Circuit Courts of Appeals, and the Second Section of Article III of the Constitution Empowers Congress to Regulate the Appellate Jurisdiction of the Supreme Court. Congress Exercised all of These Powers in an Appropriate Fashion When it Enacted Title IV of the Civil Rights Act of 1964, Which Prohibits the Assignment of Students to Public Schools to Balance the Student Bodies in Such Schools Racially, and to Bus Them From Some Schools to Other Schools, or From Some School Districts to Other School Districts to Effect Such Purpose. The Act's Prohibition on Busing is Absolute and Deprives Federal Courts of Jurisdiction to Compel School Boards to Bus Students to Overcome Racial Imbalances in Schools. Even if Such Imbalances Result From Discriminatory School Board Action. The District Court Order Violated This Act by Commanding the Charlotte-Mecklenburg School Board to do the Things Prohibited by It, and the Circuit Court Joined in Such Violation Insofar as it Affirmed the District Court Order."

The Equal Protection Clause is limited in objective and operation. It imposes this duty and this duty only on a state, i.e., to treat in like manner all persons similarly situated.

In consequence, it forbids a public school board, acting as a state agency, to exclude

any child from any school because of the child's race.

Further than that it does not go. It does not rob any public school board of its inherent authority to assign children of any race to their neighborhood school if the school board acts for reasons other than racial reasons, such as a purpose to promote ease of school administration, convenience of the children and the homes from which they come, or economy of operation.

Hence, it does not empower federal courts to deny children of any race admission to their neighborhood schools and to bus them to other schools in other areas to remedy racial imbalances in their neighborhood schools or the other schools arising out of the residential patterns of their neighborhoods or of the other areas.

And, above all things, the Equal Protection Clause does not intend that little children, black or white, shall be treated as pawns on a bureaucratic or judicial chess board.

When it enacted Title IV of the Civil Rights Act of 1964 to enforce the Equal Protection Clause, Congress recognized the validity of these observations concerning the meaning of the Equal Protection Clause. Moreover, it was not oblivious to the inescapable reality that the different races are concentrated to substantial degrees in separate residential areas throughout the nation, and that it would be virtually impossible to keep the public schools of the country racially balanced, even if the Equal Protection Clause did not prohibit such action.

For these reasons, Congress vested in the Commissioner of Education, the Attorney General, and the Federal Courts certain responsibilities regarding what it called the desegregation of public education, but limited the powers of the Commissioner of Education and the Attorney General, and the jurisdiction of the Federal Courts to keep them within constitutional bounds.

Congress was authorized to do these things by the Fifth Section of the Fourteenth Amendment, which expressly empowers Congress to "enforce, by appropriate legislation" the Equal Protection Clause; the First Section of Article III of the Constitution, which authorizes Congress to prescribe the jurisdiction of the inferior courts created by it, *Chisholm v. Georgia*, 2 Dall. (U.S.) 419, 432 (1793); *Turney v. Bank of North America*, 4 Dall. (U.S.) 8 (1799); *Ex Parte Bollman*, 4 Cranch (U.S.) 75, 93 (1807); *Cary v. Curtis*, 3 How. (U.S.) 236, 245 (1845); *Sheldon v. Still*, 8 How. (U.S.) 441 (1850); *Kline v. Burke Construction Co.*, 260 U.S. 226, 234 (1922); *Lauf v. E. G. Skinner & Co.*, 303 U.S. 323, 330 (1938); *Lockerty v. Phillips*, 319 U.S. 182 (1943); and *Yankus v. United States*, 321 U.S. 414 (1944); and the Second Section of Article III of the Constitution, which vests Congress with legal power to regulate the appellate jurisdiction of the Supreme Court, *Wiscart v. D'Auchy*, 3 Dall. (U.S.) 321, (1796); *Duroseau v. United States*, 6 Cranch 309 (1810); *Barry v. Mercein*, 5 How. (U.S.) 103, 119 (1847); *Daniels v. Railroad Co.*, 3 Wall. (U.S.) 250, 254 (1866); *Ex Parte McCardle*, 6 Wall. (U.S.) 318 (1868); *The Francis Wright*, 105 U.S. 381, 386 (1882); *Kuntz v. Moffitt*, 115 U.S. 487, 497 (1885); *Cross v. Burke*, 146 U.S. 82, 86 (1892); *Missouri v. Pacific Railway Co.*, 292 U.S. 13, 15 (1934); and *Stephan v. United States*, 319 U.S. 423, 426 (1943).

The conclusion that Title I of the Civil Rights Act of 1964 is designed to enforce the Supreme Court rulings that the Equal Protection Clause forbids a school board, acting as a state agency, to deny any child admission to any school it operates because of the child's race is vindicated by the legislative history of the Act, as well as by its language.

During the course of the debate on the bill which became the Civil Rights Act of 1964, Senator Byrd of West Virginia addressed this question to Senator Humphrey, the floor

manager of the bill, and received this reply from Senator Humphrey:

"Mr. BYRD, of West Virginia. Can the Senator from Minnesota assure the Senator from West Virginia that under Title VI school children may not be bused from one end of the community to another end of the community at the taxpayers' expense to relieve so-called racial imbalance in the schools?"<sup>2</sup>

"Mr. HUMPHREY, I do."<sup>3</sup>

Senator Humphrey made these further statements relating to the purposes of the bill:

"Mr. HUMPHREY, Mr. President, the Constitution declares segregation by law to be unconstitutional, but it does not require integration in all situations. I believe this point has been made very well in the courts, and I understand that other Senators will cite the particular cases.

"I shall quote from the case of Bell against School City of Gary, Ind., in which the Federal court of appeals cited the following language from a special three judge district court in Kansas: 'Desegregation does not mean that there must be intermingling of the races in all school districts. It means only that they may not be prevented from intermingling or going to school together because of race or color.' *Brown v. Board of Education*, D.C. 130 F. Supp. 468, 470.

"In *Briggs v. Elliott* (EDSC), 132, Supp. 776, 777, the Court said: 'The Constitution, in other words, does not require integration. It merely forbids discrimination.' In other words, an overt act by law which demands segregation is unconstitutional. That was the ruling of the historic *Brown* case of 1954."<sup>4</sup>

The language of the Act discloses this twofold Congressional intent:

1. To enforce the Supreme Court rulings that the Equal Protection Clause prohibits the State from denying to any child admission to any school it operates because of the child's race; and

2. To keep overzealous bureaucrats and federal judges from straying beyond constitutional limits in cases involving the desegregation of public schools.

Since no action of his is involved in this case, the amicus curiae pretermits discussion of the provisions of the Civil Rights Act of 1964 relating to the Commissioner of Education.

In phrasing the Act, Congress uses the terms "desegregation" and "discrimination" interchangeably to express the concept made familiar by the prevalent use of the word "discrimination" to mean state action denying persons admission to public colleges or public schools because of their race.

This observation is made indisputable by Section 401(b) which expressly declares that "desegregation" merely means "the assignment of students to public schools and within such schools without regard to their race, color, religion, or national origin"; Section 407(a)(1) and (2) which refer to children who "are being deprived by a school board of the equal protection of the laws" and individuals who have "been denied admission" to a public college or premission "to continue at a public college by reasons of race, color, religion, or national origin"; Section 409 which directs its attention to "discrimination in public education"; and Section 410 which stipulates that "nothing in this title shall prohibit classification and assignment for reasons other than race, color, religion, or national origin.

There is not a single syllable in Title IV of the Civil Rights Act of 1964 giving any support to a different interpretation.

Section 401(b) merits further considera-

<sup>2</sup> Senator Byrd was evidently referring to Title IV, instead of Title VI.

<sup>3</sup> Congressional Record, Volume 110, Part 10, Page 12,714, June 4, 1964.

<sup>4</sup> Congressional Record, Volume 110, Part 10, Page 13,821, June 15, 1964.

<sup>1</sup> While such action may not be customary in briefs, the amicus curiae wishes to note that this conclusion is supported by the text writer in 15 Am. Jur. 2d, Civil Rights, Section 39, Page 433, and by one of the most recent commentaries on the Constitution of the United States, i.e., Bernard Schwartz's "Rights of the Person," Volume II, Section 501, Page 593-596.

tion because it specifies not only what Congress means by the term "desegregation," but also what Congress does not mean by that term.

Section 401(b) consists of two clauses. The first clause provides that "desegregation" as used in Title IV "means the assignment of students to public schools and within such schools without regard to their race, color, religion, or national origin," and the second clause provides that "desegregation" as used in Title IV "shall not mean the assignment of students to public schools in order to overcome racial imbalance."

As a law made by Congress, Title IV is binding on federal judges, and defines their jurisdiction in respect to public schools operated by public school boards acting as state agencies.

The first clause of Section 401(b) commands school boards to ignore race, color, religion, and national origin as factors in assigning students to public schools. Since federal judges have no power to add anything to the laws they enforce, this clause merely confers upon federal judges the limited jurisdiction to enforce its command by decrees which prevent recalcitrant school boards from denying otherwise eligible children admission to schools on account of their race, color, religion, or national origin.

Since federal judges do not have power to subtract anything from laws they enforce, the second clause of Section 401(b) denies to federal judges jurisdiction to compel school boards to assign "students to public schools in order to overcome racial imbalance." By this clause, Congress forbids federal judges to make decrees compelling school boards to take affirmative steps to commingle black and white children in public schools in proportions satisfactory to themselves to remedy racial imbalances occasioned by de facto residential segregation or non-discriminatory action on the part of school boards.

This interpretation of Section 401(b) is completely confirmed by Section 407, 409, and 410 of Title IV.

Before the enactment of Title IV of the Civil Rights Act of 1964, only the individuals aggrieved thereby had legal standing to make complaint in federal courts concerning state-imposed segregation in public education. They were restricted to seeking relief for themselves and their children and other persons similarly situated. They did not have the right to demand that federal courts should substitute federally coerced integration for state-imposed segregation.

When it drafted Title IV, Congress decided to extend to the Attorney General standing to sue for "such relief as may be appropriate" in behalf of two groups of people if he believes their complaints to be "meritorious" and concludes that they are "unable \* \* \* to initiate and maintain appropriate legal proceedings for" their own "relief." These groups of people are described in essence, as children who "are being deprived by a school board of the equal protection of the laws" and individuals who have been "denied admission" to a public college or "permission to continue in attendance at a public college by reason of race, color, religion or national origin." To this end, Congress inserted Section 407(a) in Title IV.

At the same time, however, Congress decided to preserve intact the existing rights of individuals to sue in their own behalf for relief against state-imposed segregation. To accomplish this purpose, Congress stipulated in Section 409 that nothing in Title IV "shall affect adversely the right of any person to sue for or obtain relief in any court against discrimination in public education."

Congress was determined, however, not to increase the powers of federal judges when it gave the Attorney General standing to seek relief against discrimination in public education in behalf of the aggrieved persons designated in Section 409(a). Moreover, Congress was equally as determined that federal

judges should not have jurisdiction to compel school boards to deny children admission to their neighborhood schools and transport them hither and yon to achieve racial balances in public schools, regardless of whether the racial imbalances sought to be removed to accomplish such purpose arise out of innocent causes or discriminatory action on the part of school boards.

Congress made these purposes manifest by inserting in Section 409(a) language expressly providing "that nothing herein shall empower any official or court of the United States to issue any order seeking to achieve a racial balance in any school by requiring the transportation of pupils or students from one school to another or one school district to another in order to achieve such racial balance, or otherwise enlarge the existing power of the court to insure compliance with constitutional standards."

By so doing, Congress deprived all federal courts of the jurisdiction to order public school boards to bus children from one school to another or from one school district to another to remedy racial imbalances in public schools regardless of whether such imbalances arise out of innocent causes or discriminatory school board action. As appears from the cases which the amicus curiae has previously cited, Congress has undoubtedly power to do this under the First Section of Article III of the Constitution, which empowers it to define the jurisdiction of inferior federal courts, and under the Second Section of Article III of the Constitution, which expressly provides that "the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make."

It necessarily follows that the District Court violated the provisions of the Civil Rights Act of 1964 when it ordered the Charlotte-Mecklenburg School Board to bus thousands of children from some schools to other schools and from some school districts to other school districts to overcome racial imbalances in any of its schools regardless of the origin of such racial imbalances; and that the Circuit Court erred in affirming the provisions of the District Court order relating to the transportation of senior high school and junior high school students.

While such statutes apply to the Executive Department of the Federal Government only, and for that reason are not controlling in this case, it seems not amiss to direct the attention of the Supreme Court to congressional hostility to the busing of children to achieve racial balancing in public schools. Congress manifested its hostility to such action by the Elementary and Secondary Education Act of 1965, as amended in 1966, which forbids "any department, agency, officer, or employee of the United States \* \* \* to require the assignment or transportation of students or teachers in order to overcome racial imbalance," (P.L. 89-10, Title VIII, Section 804; 20 U.S.C. Section 884); the Department of Labor, and Health, Education, and Welfare Appropriation Act of 1969, which provides that "no part of the funds contained in this Act shall be used to force busing of students \* \* \* in order to overcome racial imbalance as a condition precedent to obtaining Federal funds otherwise available to any State, school district, or school", (P.L. 90-557, Title IV, Section 410); and the Office of Education Appropriation Act of 1971, which provides that "no part of the funds contained in this Act shall be used to force any school or school district which is desegregated as that term is defined in Title IV of the Civil Rights Act of 1964, Public Law 88-352, to take any action to force the busing of students" (P.L. 91-380, Title II, Section 210).

#### IV

"A School Board has the Power to Devise and Implement any Non-discriminatory Plan

for the Assignment of Children to the Public Schools it Operates. The District Court not Only Rejected a Non-discriminatory Assignment Plan Submitted by the Charlotte-Mecklenburg School Board, but it Usurped and Exercised the Authority of the School Board in This Respect by Devising a Plan of its Own Which Commands the School Board to Deny Thousands of Children Admission to Their Neighborhood Schools, and to Bus Them to Other Schools to Mix the Races in the Various Schools in Numbers or Proportions Satisfactory to the District Court. By so Doing, the District Court Ordered the School Board to Deny to the Thousands of Children Affected by its Order Admission to Their Neighborhood Schools in Violation of the Equal Protection Clause, and to Bus Them to Other Schools or Other School Districts in Violation of Section 407(a) (2) of the Civil Rights Act of 1964. The Circuit Court Concurred in These Violations, and Erred Insofar as it Affirmed the Order of the District Court."

A school board, acting as a state agency, has the power to assign children to the public schools it operates free from interference by the Federal Judiciary as long as it obeys the Equal Protection Clause and does not exclude any child from any school because of the child's race.

When a school board violates the Equal Protection Clause, a Federal Court has jurisdiction to order the school board to devise and implement a plan sufficient to remedy its discriminatory assignment of children to its schools, and to punish the members of the school board for contempt of court if they fail to obey the order. Nevertheless, the power to devise and implement a plan to remedy the discriminatory assignment continues to reside in the school board, and the Federal Court is without power to reject a non-discriminatory plan submitted by the school board because such non-discriminatory plan will not mix the races in the schools in numbers or proportions satisfactory to the Federal Court.

Besides the Federal Court cannot usurp and exercise the power of the School Board to devise a non-discriminatory assignment plan because the Federal Court wishes to mix the races in the schools in greater numbers or proportions than the non-discriminatory plan of the School Board envisages.

The District Court violated all of these principles when it made its order of February 5, 1970 (819a-839a), its supplemental findings of fact of March 21, 1970 (1198a-1220a), and its supplemental memorandum of March 21, 1970 (1221a-1238a).

Pursuant to the order which the District Court had entered on December 1, 1969, the Charlotte-Mecklenburg School Board submitted to the District Court on February 2, 1970 its plan for desegregation of schools (726a-742a). By this plan the School Board undertook to restructure its geographical attendance districts or zones in such a manner as to promote the highest degree of racial integration obtainable by geographical districting or zoning, and to assign all school children, black or white, to the neighborhood schools in the district or zone of their residence, regardless of race. The plan undertook to further augment desegregation by a transfer system heavily weighted in favor of permitting black children to transfer from predominantly black schools to predominantly white schools.

Inasmuch as it treated all children similarly situated exactly alike and did not exclude any child from any school on account of the child's race, the plan submitted by the School Board on February 2, 1970, was in complete harmony with the Equal Protection Clause and it was obligatory for this reason for the District Court to approve it and permit the School Board to implement it.

Instead of doing so, the District Court rejected the nondiscriminatory plan submitted by the School Board, and usurped and exer-

cised the power vested in the School Board by adopting a plan of its own. The District Court accomplished this purpose by engrafting upon the plans of the School Board drastic alterations and revisions recommended by Dr. Finger, which commanded the School Board to deny thousands of children admission to their neighborhood schools, and to bus them long distances from some schools to other schools, and from some school districts or zones to other school districts or zones.

When all is said, the District Court commanded the School Board to take this action to remedy racial imbalances in black schools in northwest Charlotte arising out of de facto residential segregation in that area, and to produce racial commingling in these schools of northwest Charlotte and other schools in other areas in numbers or proportions greater than those envisaged by the plan of the School Board.

The District Court virtually confesses that its order was designed to effect these purposes by this recital which appears in its supplemental findings of fact of March 21, 1970.

"Both Dr. Finger and the school board staff appear to have agreed, and the court finds as a fact, that for the present at least, there is no way to desegregate the all-black schools in Northwest Charlotte without providing (or continuing to provide) bus or other transportation for thousands of children. All plans and all variations of plans considered for this purpose lead in one fashion or another to that conclusion." (1208a)

In addition to usurping and exercising power vested by law in the School Board, the District Court order commands the School Board to violate rights vested in thousands of school children by the Equal Protection Clause and the Civil Rights Act of 1964.

Since the power to assign children to public schools belongs to the school board administering such schools, no child has the constitutional or legal right in the first instance to attend any particular school, but when a school board adopts a non-discriminatory system for assigning children to neighborhood schools in the attendance district or zone of their residence, children acquire, as against every governmental agency except the school board, the legal right to attend the schools to which they have been so assigned. This right is additional to their right not to be excluded from such schools because of their race.

By its previous practices and its plan of February 2, 1970, the School Board had assigned thousands of senior high school, junior high school, and elementary school children to their neighborhood schools in a wholly non-discriminatory fashion.

By its order of February 5, 1970, the District Court commanded the School Board to do two things which clearly offend the Equal Protection Clause. In the first place, the District Court commanded the School Board to treat differently children similarly situated by allowing thousands of children to attend their neighborhood schools, and by excluding thousands of other children from admission to their neighborhood schools; and in the second place, the District Court commanded the School Board to bus the thousands of children excluded from their neighborhood schools to some other schools in other districts or zones to desegregate both their neighborhood schools and the other schools in numbers or proportions satisfactory to the District Court.

No amount of sophistry can erase the plain truth that the second group of children were denied admission to their neighborhood schools on account of their race.

Manifestly, the Equal Protection Clause does not confer upon any Federal Court jurisdiction to enter a wondrous order to compel a school board to obey the Equal Protection Clause by violating it. Congress appar-

ently realized this bizarre result of busing children from one school to another, or from one school district or zone to another district or zone, when it prohibited any officer or Court of the United States to require such action to achieve the racial balancing of schools.

The Circuit Court erred in affirming the order of the District Court rejecting the plan submitted by the School Board, and in affirming, in part the order of the District Court excluding children from their neighborhood schools and requiring them to be bused to other schools and other school districts in other areas.

#### CONCLUSION

For the reasons stated, the Court should reverse the provisions of the judgment of the Circuit Court insofar as they relate to the assignment and busing of senior high school and junior high school students; approve the provisions of the judgment of the Circuit Court insofar as they vacate the order of the District Court relating to the assignment and busing of elementary school children; and grant the motion of the School Board to stay the order of the District Court reinstating its previous orders relating to the assignment and busing of elementary school students.

Respectfully submitted,

SAM J. ERVIN, JR.  
ERNEST F. HOLLINGS.  
CHARLES R. JONAS.

#### APPENDIX

##### *Constitutional provisions involved*

1. The First Section of the Fourteenth Amendment, which reads, in pertinent part, as follows: "nor (shall any State) deny to any person within its jurisdiction the equal protection of the laws."

2. The Fifth Section of the Fourteenth Amendment, which specifies that "The Congress shall have power to enforce, by appropriate legislation, the provisions of this Article."

3. The First Section of Article III, which states, in pertinent part, that "The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish."

4. The Second Section of Article III of the Constitution, which reads, in pertinent part, as follows:

"The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of Admiralty and Maritime Jurisdictions;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States;—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

"In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make."

##### *Statutory provisions involved*

1. Title IV of the Civil Rights Act of 1964 which originally appeared in Title IV of Public Law 88-352 of the 88th Congress and is now codified as 42 USC 2000c-2000c-9. This statute reads as follows:

#### "Title VI—Desegregation of Public Educational Definitions

"Sec. 401. As used in this title—

"(a) 'Commissioner' means the Commissioner of Education.

"(b) 'Desegregation' means the assignment of students to public schools and within such schools without regard to their race, color, religion, or national origin, but 'desegregation' shall not mean the assignment of students to public schools in order to overcome racial imbalance.

"(c) 'Public school' means any elementary or secondary educational institution, and 'public college' means any institution of higher education or any technical or vocational school above the secondary school level, provided that such public school or public college is operated by a State, subdivision of a State, or governmental agency within a State, or operated wholly or predominantly from or through the use of governmental funds or property, or funds or property derived from a governmental source.

"(d) 'School board' means any agency or agencies which administer a system of one or more public schools and any other agency which is responsible for the assignment of students to or within such system.

#### Survey and Report of Educational Opportunities

"Sec. 402. The Commissioner shall conduct a survey and make a report to the President and the Congress, within two years of the enactment of this title, concerning the lack of availability of equal educational opportunities for individuals by reason of race, color, religion, or national origin in public educational institutions at all levels in the United States, its territories and possessions, and the District of Columbia.

#### Technical Assistance

"Sec. 403. The Commissioner is authorized, upon the application of any school board, State, municipality, school district, or other governmental unit legally responsible for operating a public school or schools, to render technical assistance to such applicant in the preparation, adoption, and implementation of plans for the desegregation of public schools. Such technical assistance may, among other activities, include making available to such agencies information regarding effective methods of coping with special educational problems occasioned by desegregation, and making available to such agencies personnel of the Office of Education or other persons specially equipped to advise and assist them in coping with such problems.

#### Training Institutes

"Sec. 404. The Commissioner is authorized to arrange, through grants or contracts, with institutions of higher education for the operation of short-term or regular session institutes for special training designed to improve the ability of teachers, supervisors, counselors, and other elementary or secondary school personnel to deal effectively with special educational problems occasioned by desegregation. Individuals who attend such an institute on a full-time basis may be paid stipends for the period of their attendance at such institute in amounts specified by the Commissioner in regulations, including allowances for travel to attend such institute.

#### Grants

"Sec. 405. (a) The Commissioner is authorized, upon application of a school board, to make grants to such board to pay, in whole or in part, the cost of—

"(1) giving to teachers and other school personnel in-service training in dealing with problems incident to desegregation, and

"(2) employing specialists to advise on problems incident to desegregation.

"(b) In determining whether to make a grant, and in fixing the amount thereof

and the terms and conditions on which it will be made, the Commissioner shall take into consideration the amount available for grants under this section and the other applications which are pending before him, the financial condition of the applicant and the other resources available to it; the nature, extent, and gravity of its problems incident to desegregation; and such other factors as he finds relevant.

#### Payments

"Sec. 406. Payments pursuant to a grant or contract under this title may be made (after necessary adjustments on account of previously made overpayments or underpayments) in advance or by way of reimbursement, and in such installments, as the Commissioner may determine.

#### Suits by the Attorney General

"Sec. 407. (a) Whenever the Attorney General receives a complaint in writing—

"(1) signed by a parent or group of parents to the effect that his or their minor children, as members of a class of persons similarly situated, are being deprived by a school board of the equal protection of the laws, or

"(2) signed by an individual, or his parent, to the effect that he has been denied admission to or not permitted to continue in attendance at a public college by reason of race, color, religion, or national origin, and the Attorney General believes the complaint is meritorious and certifies that the signer or signers of such complaint are unable, in his judgment, to initiate and maintain appropriate legal proceedings for relief and that the institution of an action will materially further the orderly achievement of desegregation in public education, the Attorney General is authorized, after giving notice of such complaint to the appropriate school board or college authority and after certifying that he is satisfied that such board or authority has had a reasonable time to adjust the conditions alleged in such complaint, to institute for or in the name of the United States a civil action in any appropriate district court of the United States against such parties and for such relief as may be appropriate, and such court shall have and shall exercise jurisdiction of proceedings instituted pursuant to this section, provided that nothing herein shall empower any official or court of the United States to issue any order seeking to achieve a racial balance in any school by requiring the transportation of pupils or students from one school to another or one school district to another in order to achieve such racial balance, or otherwise enlarge the existing power of the court to insure compliance with constitutional standards. The Attorney General may plead as defendants such additional parties as are or become necessary to the grant of effective relief hereunder.

"(b) The Attorney General may deem a person or persons unable to initiate and maintain appropriate legal proceedings within the meaning of subsection (a) of this section when such person or persons are unable, either directly or through other interested persons or organizations, to bear the expense of the litigation or to obtain effective legal representation; or whenever he is satisfied that the institution of such litigation would jeopardize the personal safety, employment, or economic standing of such person or persons, their families, or their property.

"(c) The term 'parent', as used in this section includes any person standing in loco parentis. A 'complaint' as used in this section is a writing or document within the meaning of section 1001, title 18, United States Code.

"Sec. 408. In any action or proceeding under this title the United States shall be liable for costs the same as a private person.

"Sec. 409. Nothing in this title shall affect adversely the right of any person to sue for or obtain relief in any court against discrimination in public education.

"Sec. 410. Nothing in this title shall prohibit classification and assignment for reasons other than race, color, religion, or national origin.

Mr. ERVIN. Mr. President, I offer my amendment on behalf of myself and my cosponsors to accomplish what all freedom-loving Americans should desire—an end to the tyranny over little schoolchildren resulting from the senseless, forced busing imposed by certain Federal courts to achieve "racial balance."

My proposal is in perfect harmony with the Constitution. Indeed, it is designed to enforce the true meaning of the "equal protection" clause by eliminating race altogether as a basis for the assignment of children to public schools. It accomplishes this by limiting the authority of Federal bureaucrats and restricting the jurisdiction of Federal courts with respect to our public schools where a "freedom of choice" system has been established by a local school district.

Under this proposal, a "freedom of choice system" is defined as, "a system for the assignment of students to public schools and within public schools maintained by a school board operating a system of public schools in which the public schools and the classes it operates are open to students of all races and in which the students are granted the freedom to attend public schools and classes chosen by their respective parents from among the public schools and classes available for the instruction of students of their ages and educational standings."

Where such a system has been established, the amendment would forbid the Department of Health, Education, and Welfare to do any of the following things:

First, to withhold, or threaten to withhold financial assistance from any public school on account of the racial composition of its student body;

Second, to withhold, or threaten to withhold, financial assistance from any public school to coerce or induce the school board to transport students from such school to another for the purpose of altering the racial composition of the student body at such public schools;

Third, to withhold, or threaten to withhold, financial assistance from any school board to coerce or induce such school board to close any public school and transfer the students from such school to any other school for the purpose of altering the racial composition of the student body at any public school; and

Fourth, to withhold, or threaten to withhold, financial assistance from any school board to coerce or induce the school board to transfer any member of any faculty from one school to another for the purpose of altering the racial composition of the faculty at any public school.

This amendment empowers any school board or any parent of any student affected or to be affected by any violation or threatened violation of any of the provisions of the amendment to sue the United States in the District Court of the United States and obtain such relief "as may be necessary or appropriate to re-

dress the violation or prevent the threatened violation."

In addition the amendment specifies that—

No court of the United States shall have jurisdiction to make any decision, enter any judgment, or issue any order requiring any school board to make any change in the racial composition of the student body at any public school or in any class at any public school to which students are assigned in conformity with a freedom of choice system as defined in Section 1201(g) of this Act, or requiring any school board to transport any students from one public school to another public school or from one place to another place or from one school district to another school district in order to effect a change in the racial composition of the student body at any school or place or in any school district, or denying to any student the right or privilege of attending any public school or class at any public school chosen by the parent of such student in conformity with a freedom of choice system as defined in section 1201(g) of this Act, or requiring any school board to close any school and transfer any students from the closed school to any other school for the purpose of altering the racial composition of the student body at any public school, or precluding any school board from carrying into effect any provision of any contract between it and any member of the faculty of any public school it operates specifying the public school where the member of the faculty is to perform his or her duties under the contract.

This provision is sanctioned by article III of the Constitution which empowers Congress to regulate the appellate jurisdiction of the Supreme Court and both the original and appellate jurisdiction of the Supreme Court and both the original and appellate jurisdiction of all Federal courts inferior to the Supreme Court.

Mr. President, the Subcommittee on Constitutional Rights held hearings on this proposal in February of this year. The records of those hearings are now on every Senator's desk. Witnesses before the subcommittee demonstrated again the widespread frustration felt by millions of parents and schoolchildren and school administrators about the state of our public schools. The senseless, forced busing of schoolchildren to achieve so-called "racial balance" is causing such turmoil and bitterness across the country that the very future of our public school system is at stake. Congress has the constitutional authority to put an end to this horrible tyranny and, Mr. President, I believe Congress has a moral obligation to the schoolchildren of America to exercise this authority. I strongly urge Members of the Senate to support this amendment and, thereby, raise the flag of liberty and justice again over the schoolyards of America.

Mr. President, one of the most illuminating witnesses to appear before the subcommittee which held hearings on these matters this year was William E. Poe, the chairman of the Charlotte-Mecklenburg Board of Education. I read from his testimony, on page 98:

The most difficult task of all has been to find white neighborhoods willing to have their children bused into black neighborhoods to attend school. In several instances, after school assignments have been approved and the racial mix seemed to be in line, sudden and massive movements have taken place causing large subdivisions to change from white to black almost overnight. One devel-

opment consisting of some 1,700 homes has changed from white to black in the last 2 years, and the change has all but wrecked the delicately balanced racial assignments in the affected schools. Some thought that the area would remain integrated from the housing standpoint, but like other areas in our community, blacks and whites have separated and show little disposition to remain as close neighbors on a permanent basis.

West Charlotte Senior High School, a fine physical plant built in 1962, can house about 1,700 students. As of today 2,600 high school students live closer to this school than any other high school; 2,100 of them are black and 500 are white. To comply with the present court order, we must ship or bus out some 1,500 black students and bring in some 600 white students selected on the basis of nongeographical criteria, and not only that, we must assure the court that the assignment plan which achieves this result is a stable plan—that is, one that cannot be circumvented, by white students in particular. We are presently operating under an order which forbids any change in assignment of a lottery-chosen white student assigned to West Charlotte High even if his family moves away from the area from which he was chosen. This has resulted in some bizarre transportation problems. In one case, we had to assign a driver and bus to pick up one pupil whose family built a new home and moved to the far northerly end of the county, more than 25 miles from West Charlotte Senior High School.

In our system we have more than 500 pupils on the average who change their place of residence each month. We also have a large in-migration which affects school population. It would seem to me that when people move even within the school district that their children should be able to transfer to the school that serves their new home and not have to remain in their former school to be counted in the all-important ratio as a white or a black, and really for no other reason.

Now a few words about loss of student population, sometimes called white flight.

Although Charlotte-Mecklenburg had made considerable progress in desegregating many of its schools on a geographical basis by 1969 without a significant loss of white students, the possibility of losing a great many white students arose immediately when the full impact of the cross-busing, racial balance court order hit our community. On a number of occasions our lawyers attempted to put into the record statistics and exhibits dealing with cities like Washington, D.C.; Detroit, Mich.; Atlanta, Ga.; Newark, N.J.; and other places. The judge rejected all such evidence as being irrelevant to the issues before him.

In 1969 there were more than 84,000 students enrolled in Charlotte-Mecklenburg public schools. Today, even with a new kindergarten program, there are only 77,000—despite continuing growth in our total population. By actual count there are 8,200 fewer white students enrolled today than there were in 1969. Up to 1969 we were growing in school population at the rate of about 2,000 pupils per year—more than half of them white. Conservatively estimating the loss that otherwise would have been a gain from growth alone, we can add 5,000 white pupils to the 8,200 already mentioned, and our total loss in white pupils since the spring of 1969 reaches 13,200 pupils—or to put it another way, we have lost about 20 percent of our white pupils from the public schools.

Senator ERVIN. What percentage do you say you have lost?

Mr. POE. About 20.

Senator ERVIN. Isn't that one of the tragic impacts of decrees of this kind? You lose support when those children are withdrawn from public schools. You lose the intellectual

and moral support which the public school system needs to have to fulfill its function.

Mr. POE. Unfortunately, most of those you lose are the ones whose parents have been the best supporters up to that point.

Senator ERVIN. They think an effort merely to integrate the bodies of children is wrong and unwise.

Mr. POE. Yes. Over the same period of time there has been a gain in the number of black pupils.

Where have the white pupils gone? A good many have enrolled in local private schools which are still growing in number, particularly for the southeast half of the county. These are not temporary facilities, there are some fine facilities being constructed in Mecklenburg today. Others have fled to private schools out of State. As one of our administrators has remarked, "freedom of choice" is still available to those students whose parents can afford it.

Although no statistics are available, there is little doubt that our cross-busing situation has had a substantial effect on decisions that are made by out-of-State industries considering the possibility of locating a plant or an office in our city or county.

The trend toward higher black ratio in our schools each year begins to raise the same unanswerable questions for us that cities like Washington, Detroit, Cleveland, Newark, and Atlanta are already facing.

Now a few words about transportation—busing—problems and expense. The total operating cost of transportation has risen from \$542,444—1968-69—to over \$2 million in the 1973-74 school year. The number of pupils transported per day has risen from 23,000 to 47,000—and while all the dollar and passenger increase, however, is not attributable to cross-busing per se, another court order requiring transportation of all pupils who live a mile and a half from school and the effects of inflation have accounted for some of the increase—it is fair to say that about \$1 million annually has been added to our operating budget for transportation to accommodate the court orders relating to integration of schools.

Our bus fleet has been expanded from 267 operating units in 1969 to 516 units in 1974, or an increase of 249 buses which cost Mecklenburg County taxpayers \$1½ million. In addition, we are contracting with the local city bus company to provide a substantial portion of the in-city school transportation at an annual cost of about \$250,000.

Mr. Poe made a point which the Senator from Tennessee made a moment ago with respect to the decrease in the number of parents of schoolchildren attending meetings of the PTA.

Mr. Poe made another very significant statement. He said that these figures show that rich children already have freedom of choice. They move out of the public schools and move into private schools. So the only people who are denied freedom of choice are poor people. I want to give freedom of choice to the poor, black and white, and let them attend schools that their parents select.

Mr. Poe also stated that in order to carry out the decree requiring busing, it costs them \$1 million additional every year—just for busing for integration purposes.

I had a conversation with a school principal from Long Island some time ago. He said he was required to spend \$1 million just to bus children—not to enlighten their minds, but to mingle and commingle and mix their bodies in public schools. Just think what we could do if we had all these millions of dollars, which are being spent on

senseless, forced busing, to spend on improving educational opportunities of the children of the United States.

As I have said, the equal protection clause requires every State to treat people in like circumstances in like manner; and the value of this amendment is that it carries out the equal protection clause. It treats every child exactly alike, regardless of the child's race. It puts an end to this perversion of our Constitution. It not only gives liberty back to the little children of this land, but it also gives the control of the schools back to the people of the locality, provided they have a freedom of choice system of assignment.

I urge everyone who is tired of having Federal judges and bureaucrats in HEW act as chairmen of school boards throughout this land to vote for this amendment. The value of this amendment is that it is very simple: If there is a freedom of choice system, the only matter which can be litigated is whether there is a freedom of choice. That is all you can litigate. If there is a freedom of choice, then the Federal Government must keep its hands off the local school boards, let the little children have liberty, and allow the school boards to run their schools.

The PRESIDING OFFICER. The time of the Senator has expired.

Who yields time?

Mr. PELL. I yield 10 minutes to the Senator from Massachusetts.

Mr. ERVIN. I have a question, Mr. President. I thought we had a half hour on each side.

The PRESIDING OFFICER. There is a limitation of 30 minutes, equally divided.

Mr. ERVIN. I would like to ask unanimous consent that the Senator from Georgia be given 5 minutes.

Mr. PELL. We have time on the bill. We can divide it between us.

Mr. KENNEDY. Mr. President, I think it is a rather tragic indictment of this body that in the consideration of this legislation, which is directed toward trying to improve the quality of the education of the young people in this country, that the attention of the country, and certainly the attention of this Senate, are focused on the emotional issue of busing. It is tragic, because many people fear that steps will be taken in this body on this issue to thwart the constitutional guarantees of equal educational opportunity. And it is tragic that the Nation's attention is diverted from the real issue—the issue on how best to insure quality education to all children—black and white.

I serve on the Education Committee. I have been deeply impressed by the work that has been done on that committee by the chairman of the Education Committee as well as by the members of that committee, in attempting to improve the quality of education for young people.

We have seen in this country over the period of recent years, and particularly during the presidential campaign of 1972, how the emotions of the people in this country have been played with, toyed with. We have seen how their fears and anxieties have been supercharged by appealing to fears and frustrations on the

issue of busing. All we have to do is look back over the history of public education in this country, and we find that there was no real concern for busing when white children were being bused to white schools and black children were being bused to black schools.

It is also interesting that in some States where this issue is the most emotional, where the feelings run the highest, there is actually less busing going on today to promote desegregation than there was at the time of the Brown decision or even after later decisions to promote segregation. I think that all of us in this body recognize that, or should recognize it, in spite of the speeches that many of us make.

So the matter that concerns me most deeply is that, rather than focusing the attention of the Senate on a debate as to how we can really improve the quality of education in inner cities, we are trying, in the few minutes before we start voting on this issue, to rehash old arguments and we are still appealing to emotions. Coming from Massachusetts and coming from Boston, where this issue is a highly charged and emotional controversy even today, I think it would be much more useful to attend to the vital question of quality education.

At this point, I want to commend my colleague, Senator BROOKE, for the splendid statement he made to this body earlier today. I think it was a courageous comment and one which I think deserves the full attention of all the Members of this body.

Mr. President, Massachusetts is the State in which the public school system was founded in this Nation. In South Boston we have South Boston High School. That is perhaps one of the areas where there are the highest tensions on the question of busing. Because of the various traditions of the community, due to the struggle for jobs and housing opportunities, that part of the city is virtually without any blacks. Yet there have been full classes of graduates from that high school where not one graduate has gone on to a 4-year college; not one.

We recognize that many of the children that go to that high school are the children of working people, people who work in the fire department, the police department, hard working people who work on the docks, some of the canneries or other industries that still exist in that part of the city and in other parts of the city. So many of the young people that go to that particular high school come from working families that do not enjoy the economic situation in which they can continue to send their children to 4-year colleges, although the tuition at the University of Massachusetts is virtually free for resident students from Massachusetts, and there are a number of 4-year State colleges where the tuition is negligible.

Yet the emotions of the people in that part of the city are the highest. I think this points out how tragic this debate is. We are not talking about how to try to improve the quality of education of those children in South Boston High School. The amendment we are building on here this afternoon is understood by the peo-

ple of Boston. They are waiting to see how Members of the Senate will be voting. I told them how I would vote on the Gurney amendment and the other amendments that I think are, first of all, unconstitutional, and second, I think if they are passed, would throw the entire educational system in the North as well as in the South into a terrible unfortunate state of confusion. They think that this amendment would prevent busing, yet the next nearest school provision might well affect them and, in any event, it would only be a short-run remedy since it would soon be declared unconstitutional.

The additional tragedy is in terms of our national leadership. I think many of us listened to the President of the United States in a speech a few days prior to the primary in 1972. Whether it was a few days before the primaries of 1972 or not, the handwriting was on the wall in terms of the backlash on the busing issue as it existed in many places in the north. I recognize this might be more of a problem in the North than it is in the South. We saw the President asking for an excess of \$2 billion to aid the inner schools and we were impressed. Then only a few days later we learned that money already had been approved in title I and in the Emergency School Aid Act. It was not new money at all.

In every possible way, the President has sought to use the issue of busing for political purposes. And the effect on his actions, which serve as the genesis for the amendment before us today, has been to appeal to the fears and emotions of the Nation.

So we are talking about a highly emotional issue. The Supreme Court, in spite of all the statements made by individuals here who should know better and do know better, does not require that we are going to bus students to achieve racial balance. It does not talk about the kind of lengthy busing that will provide any threat to the health, well-being, or the welfare of young people in this country, and yet we hear that statement made time and time again.

It has been found in terms of the education of the child, if the child goes to school in the morning and has not had breakfast, if he receives an inadequate lunch, because the school district does not participate in a lunch program, that student will not be educated, or if he has a poor teacher he would not be properly educated, or if there is a duplication of textbooks he will not receive an education, or if the school is cold in the morning he will not be able to learn.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. KENNEDY. Mr. President, will the Senator yield to me for 2 additional minutes.

Mr. PELL. I yield 2 additional minutes to the Senator from Massachusetts.

Mr. KENNEDY. Mr. President, the Constitution and the 14th amendment, and the Supreme Court of the United States have indicated quite clearly to the American people that black children are entitled to all of the opportunities of quality education and should be able to go to schools where quality education

is achieved. Certainly it is incumbent on those of us in Congress and in the Senate not to abide by the fears and frustrations to attempt to deny those rights and to deny those opportunities guaranteed in the Constitution. We should not abridge the rights available to young people. We should not deny those rights simply and purely because the student's skin is black.

We hear the argument made, if a school is bad, does it make any sense to bus kids from a good school to a poor school. And we should be against that, because that is only exposing a child to an inferior education. How silent those same voices are in trying to express outrage too with respect to black as well as white student attending inadequate schools today.

Mr. President, on May 17, we shall witness the 20 anniversary of the 1954 Supreme Court decision calling for an end to "separate but equal" schools. That decision not only directed an assault upon the inequitable practices in our Nation's public school systems, it also set off one of the most profound social revolutions any modern society had experienced. As seen by Robert Maynard in the Washington Post—5 days before the 20th anniversary of the historic Brown decision.

Brown against Board of Education transformed life in the United States for all Americans. And indeed, the campaign by black Americans for equality in education has evoked a striving among all minorities to seek justice in every part of our society—in housing, in employment, in the government and in the very rudimentary processes of how our institutions function.

I have joined the debate on the anti-desegregation measures presented to this Senate—because I am deeply concerned that too many people have lamented over the problems caused by busing and too little has been done to conscientiously determine how equal access to a decent education can be granted for all who seek it.

Since 1954, public officials, academicians, and researchers have invested millions of dollars and uncounted man-hours developing barriers to the constitutional guarantee upheld by the Supreme Court. Some groups have spent enormous energies in trying to find ways that would stifle the Court's ruling, instead of seeking productive methods for producing the benefits of quality education to deprived public school children.

As a Nation we have carried the cry for freedom and liberty around the world, but we have continued to deny access to those rights to nearly 20 percent of our own citizens.

The reason I oppose those who would include antibusing provisions in this legislation, is not because I am a proponent of busing for its own sake, but because I took an oath to support the Constitution and I believe this amendment strikes at constitutional guarantees of equal protection.

I am dismayed that some Senators are proposing to repeal the decision of the Supreme Court and in fact to challenge the Court's traditional independence.

I am opposed to these attempts to write laws that challenge the right of the Supreme Court to guarantee decent education opportunities for all children. Our children do not need laws that would halt schoolbusing. Our children need guidance and assistance in their search to become productive citizens. Public education was established in this country as a nurturing force of our most valuable resource. If that system is to endure then we must be prepared to attend to the interests of all our children.

And so, I would call for this Senate to reject every proposal that might eliminate busing as one tool for delivering educational opportunities to those who would not otherwise receive such benefits. But, I would also call upon the Senate to continue in its traditional manner to structure legislation that offers adequate assistance to those who are seeking support for meaningful educational programs. I am pleased with the provisions of S. 1539—the educational amendments of 1974—that continue to include Federal support of our schools as a top priority measure. Members of this Senate have an admirable record in responding to the public demand for Government aid to education and I am pleased to be associated with the sustained thrust made by those Senators who are committed to the delivery of quality education for our children. Because of the critical concern expressed by those Senators who firmly believe in educational equality. I am encouraged in my efforts to work for legislation that seriously deals with the matter of schooling and sets aside the incendiary charges of busing.

Members of all minority groups—not just blacks, but Chicanos, Indians, Puerto Ricans, and many others, are well aware that laws which restrict or limit the resources available to provide for adequate education of their children are direct attacks on their ability to achieve the same benefits and standard of living already enjoyed by those who are not disadvantaged. Any action that we take in this Senate which shuts off resources for delivering the benefits of a decent education to any American child is unfair. To enact legislation that prohibits use of any tool to provide equal education is clearly a slap in the face of deprived citizens. Such legislation effectively removes any initiative by the Federal Government or the courts to seek an end to the inequalities based on bigotry and discrimination in public schools. But this amendment now before us does more than deny use of busing. It seeks to reverse the course of history over the past two decades. It tries to reverse desegregation in the South and to prevent it in the North. It seeks to reopen the wounds that have healed in many communities and to stir those emotions which caused violence and disruption during the past decade.

Let me begin to enumerate further why I find this measure unacceptable, by quoting from the 14th amendment to the Constitution, which states:

All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States, and of the State wherein they reside . . . no

State shall . . . deny to any person within its jurisdiction the equal protection of the laws.

Since 1954, the courts have sought to bring to black Americans the protections guaranteed in this provision of the Constitution but denied to them for 60 years.

Reasonable men can surely agree that in a society that values education as highly as we do all citizens must be able to pursue the benefits of equal protection of the laws, unencumbered by the restrictions of segregation. Unconstitutional school segregation, according to the precepts of the 14th amendment, requires effective relief. And indeed, since we know that the phrase "all deliberate speed" points to interminable delay—effective relief means immediate relief, as the Supreme Court declared in 1968.

I would like to list the fundamental reasons why the antidiscrimination provisions before the Senate at this time must be defeated:

First. The next closest school provision is fraudulent. There is one feature of this legislation that commends it as the most extraordinarily deceptive and cruelly fraudulent piece of legislation that has come before the Senate. The "next closest school" provision of this amendment is deceptive because it stirs up the belief among working-class white Americans that antibusing bills will protect them from the supposed evil of desegregation. Yet, the bill actually limits busing to schools closest or next closest to home. In other words, those whites who live in areas closest to the central cities where most minority groups are confined, are the ones whose schools can be reached by the busing provided for in this amendment.

Historically, black Americans have been forced to live in segregated areas. Urban ghettos do not reflect freedom of choice on the part of black America.

Rather they are a living example of where white Americans, who fear integration, have designated that blacks must live.

The ghetto is the result of "keep out" signs. If one adheres to the principle that the neighborhood is the appropriate basis for determining public school assignments, how can anyone rationally maintain that school assignments based on racially segregated neighborhoods do not constitute educational segregation and thus a denial of equal educational opportunity?

And Federal authorities have acted, perhaps, with more destructive effect than any other agent, to solidify the barriers of residential segregation.

Federal Housing Administration mortgages were at one time assured only when a racially restrictive covenant was obtained.

Through restrictive zoning, and other policies that discouraged low-income housing. We have established and perpetuated racial and cultural enclaves. Any demand to return to the neighborhood school is a call for a return to segregated schools.

So the amendment will limit the "burden" of desegregation. It will place it on those white neighborhoods geographically nearest to black neighborhoods, meaning desegregation for low-income,

ethnic, working-class white neighborhoods, and no change at all for those whites affluent enough to live farther out in the suburbs. So once again, even when we view the issue from the proponents' point of view, we see that this legislation will favor the well off at the expense of the working class.

This provision also flies in the face of the most recent studies which show the most gains for disadvantaged children occurring when there is a mix of children from economically divergent backgrounds.

Second. The reopener provision undermines our courts—and it clearly is also unconstitutional.

This provision would reopen hundreds of desegregation cases long since settled, reopening old wounds long since healed, giving new opportunities for troublemakers in hundreds of cities and towns where desegregation is now a peaceful fact of life—much to the detriment of the entire community.

By enabling the reopening of these countless hundreds of cases, many of which do not even involve transportation, the bill is a betrayal of the thousands of courageous school administrators and hard-working community leaders who dared to face down the racists and the demagogues, who calmly and responsibly went about obeying the law.

What does the bill's reopener clause say to those who stood for "law and order"? "It says you were wrong." It says the demagogues will have their day, regardless of the Constitution.

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.

Those words affirmed the equal protection right to nonsegregated public parks in Watson against City of Memphis. Clearly, therefore, the right to nonsegregated public schools enjoys the same status as the right to public park facilities.

I share the conviction of the Honorable Justice Arthur Goldberg that "segregation injury is so intolerable that the right to nonsegregated schools is the right to them now."

"Thus, the remedy merges into the right. Any suspension of the remedy is a suspension of the right itself."

The provisions of the legislation before us are not only fraudulent but they blatantly contradict every precept that white America has consistently demanded that blacks pursue.

Throughout our history, black citizens have been urged to look to the courts for remedies to the injustice they suffer.

But this measure would seek to close the courthouse door for black children who have been denied equality in our public schools and it would undo all the court decisions that were issued in good faith and compliance with the Constitution over the past 20 years.

Third. The amendment also says that failure to achieve racial balance is not a denial of equal educational opportunity.

This is irrelevant, since the courts themselves have specifically stated that racial balance is not required, and no court rulings have ever sought it.

The courts have ordered desegrega-

tion only where they have found dual school systems illegally operating on a segregated basis. It would seem, then, that the only purpose of citing racial balance in the amendment is to perpetuate the false myth, energetically advertised by antibusing force, that the courts have been requiring racial balance.

Time after time the courts have reaffirmed standards and guidelines for desegregating formerly de jure segregated schools. In the 1971 Swann case a unanimous Court held that desegregation plans cannot be limited to the walk-in school. The court found that in previously segregated districts, devices such as clustering, free transfer, and the creation of noncontiguous zones must be utilized.

The procedures and guidelines of the Supreme Court are clear. They require desegregation and they do not require racial balance.

Fourth. This amendment places seriously restrictive limits on the courts.

This amendment could not be better calculated to undermine the authority of our courts. It tells the courts they cannot carry out their constitutional duty to remedy violations of the Constitution.

By placing limits on the remedies the courts may invoke, this bill is not only a major threat to the delicate balance of powers prescribed by the Constitution among our three branches of Government. It is also a clearcut example of congressional opposition to law-and-order, for it tells the American people that if they really want to break the law, if they really want to ignore the 14th amendment badly enough, well, go ahead and do it. And Congress will even help you.

Two years ago, when another antibusing bill was under consideration by the House, Congressman McCulloch told the Judiciary Committee that while Congress has in the past enacted legislation limiting the remedies the Federal courts might give in particular cases, in all prior instances of limiting legislation, Congress has made certain that other effective remedies were available. This amendment, of course, does no such thing. It limits, or totally eliminates, what is in many places the one and only remedy to a finding that a school system is operating in violation of the law.

Of course, it is clear that Congress has the authority to regulate the jurisdictional growth of the Federal courts, but the Congress cannot use the courts to accomplish unconstitutional ends.

I fear that enactment of the antibusing provisions under consideration by this Senate would precipitate a constitutional crisis in this country.

It would overthrow the 14th amendment guarantee of equal protection for all citizens. It would seek to place limits on the remedies courts may provide; it would distort the balance of powers among the three coequal branches of government; it is in direct conflict with the constitutional requirements determined by the past 20 years of rulings by the Supreme Court, including the 1971 finding by the so-called Nixon court that

"desegregation plans cannot be limited to the walk-in school"; it would leave citizens without adequate remedy at law to secure their right to an equal education; it would overthrow the principle that the Federal Government, like the States, cannot frustrate the constitutional mandate of the 14th amendment; and it flies in the face of the Supreme Court rulings that Congress, under section 5 of the 14th amendment, has no power to restrict or dilute that amendment's guarantee of equal protection.

Fifth. Why desegregate our schools?

If we accept the notion that the purpose of education is to acquire the ability to live in and contribute to our diverse national community, then it follows that any educational system purposely designed to segregate black from white, Jew from Catholic, Irish from Italian is doomed to fail.

Probably no other facet of the busing issue receives as much attention as the question of what good comes from desegregating our public schools?

There has never been a definitive study on just how much better or worse students perform under varied conditions. Part of this is due to the fact that there is no universally agreed upon standard for measuring just what "learning" is.

In too many instances, when it is claimed that black students do no better after moving to integrated schools, all that is really being proved is that youngsters from ghetto backgrounds do not fare too well when they take standardized educational measurement tests designed for children from white, middle-class backgrounds.

But overall, the weight of most attempts to measure the rate of learning indicates that black students do slightly better when moved to an integrated school, while whites do about the same.

This is not to contend—as is charged by some antibusing sponsors—that anyone is claiming that blacks learn better just by the magical act of sitting in the same classroom with whites. What it does say is that where white children are present, those schools will receive their full share of money, equipment, and facilities. Where white children are not present, some of that money due the black school just does not find its way there.

But the quality of an education cannot be measured by test scores alone. We have this on no less authority than the President of the United States.

President Nixon has said that the school "is a place not only of learning but also of living."

And when he was Commissioner of Education, Sidney P. Marland, said:

The most important objective of the schools is to help people learn and grow and become developed human beings.

It stands to reason that on the basis of the criteria offered by President Nixon and his former Commissioner of Education, we must support the idea of multiracial schools as being beneficial to our multiracial society.

And it would further stand to reason, then, that President Nixon's own criteria for schools would quickly eliminate any proposal which would serve to segregate those schools on the basis of race.

Mr. President, it may be well for the Senate to remember that people do not learn to function very well in a multi-racial society when they do all their learning in unracial schools.

We have heard from many quarters on this business of the value of desegregating our schools. A book by a team of Harvard researchers, headed by Prof. Christopher Jencks, has been cited as indicating that moving children from ghetto schools to better schools does not guarantee that they will earn more money in later life.

That may or may not be so; yet since when do we measure the quality of our citizens by their bank accounts? What about the nonmonetary benefits that accrue to those who have a chance for exposure to a better education? Do we downgrade teachers, ministers, social workers, carpenters, plumbers, or electricians, because they have less money than bankers? At least one of the recognized results of an adequate education is that educated people are more openminded, less authoritarian, more sensitive to esthetic experiences, better informed, more likely to become leaders, more independent, more confident, more internationally aware, and more likely to have jobs which bring them a fuller measure of satisfaction.

Are not those very characteristics also the criteria by which we judge good citizenship? Do not those characteristics describe what we hold forth as the type of persons most valuable to a democratic society?

Then why are we considering legislation that will have exactly the opposite effect? Why are we considering legislation that will condemn generations of Americans to a flagrantly distorted system of public education?

William Chapman writing in the Washington Post on May 12 put the case for desegregation as clearly as it can be made:

Integration helps the young black catch onto the first rungs of the upward mobility ladder which leads up to college and better jobs.

As he continues, Chapman reports that—

In one major survey, Robert Crain of Johns Hopkins University questioned 1,600 35-year-old black men, some of whom had gone to largely integrated schools. He found two results:

Those who had gone to integrated schools were more apt to finish high school and more apt to go on to college than those who had attended segregated schools.

They also were apt to find better jobs that paid higher salaries.

The explanation by Crain is that the schools gave the blacks the connections and know how to find their way into college and good jobs, regardless of test scores and falling self-esteem. "They had white friends who put them on to jobs, which is how you get jobs anyway," says Crain.

The greatest achievement of school integration, then, may be just that. Integration may not raise test scores much and it doesn't seem to help the young black think better of himself. But in the end it may do something more valuable.

It seems to give that little boost toward life's more coveted things. It puts him in what Pettigrew of Harvard calls the "influence network," that indefinable and untest-

able system that whites have had going for them for years.

Mr. President, I submit that is what education is all about—getting a job, raising a family, and becoming a productive member of our society.

Let us not return this Nation to the unjust practices of the 19th century. Let us help all Americans seek the benefits of life in this great Nation. The Senate should have no part of any legislative provisions that seek to resegregate our schools and cripple our courts.

#### Sixth. Busing and safety.

Interestingly, the critics of busing find it useful to cite the risks to health and safety that are imposed upon youngsters who are "forced" to ride buses to school. There are approximately 46 million youngsters in the Nation's public schools. About 20 million or 43 percent of these students use buses to get to school. Of those 20 million, less than 1 million ride them for purposes of desegregation.

Thus, if all busing for desegregation were stopped today, 97 percent of all students who ride buses would still be riding them tomorrow. Are the busing critics making an outcry about those youngsters? Or are the critics basically concerned with the safety of the 1 million children who are bused for desegregation?

The National Safety Council reports that school busing is the safest form of transportation in America, and that includes walking to school.

In fact, the accident rate for boys who walk to school is three times higher than for boys who ride buses to school. And more than twice as high for girls who walk. One reason buses came to be used, indeed, was safety. As urban areas became more congested and traffic more reckless, it became safer for children to ride buses than to try to cross dangerous streets.

If the safety issue were anything more than another part of the smokescreen, those who are so concerned about safety might better be spending their time passing antifootball legislation rather than antibusing bills. For, while the accident rate for boys riding a bus to school is .03 per 100,000 student days, the football fatality rate—not just the accident rate, but the fatality rate—from football accidents has averaged 19.1 deaths per year, or 1.41 per 100,000 who play the game. That is roughly 47 times as high as the injury rate on school buses.

But, of course, no one is going to try to ban football. And no one who wants to ban busing really means it when he says it is a safety risk.

This bill also says "the risk and harms created by excessive transportation are particularly great for children enrolled in the first six grades." The bill fails, of course, to define "excessive." Perhaps this is because of findings like the survey of 10 segregated private schools which found that 62 percent of the pupils got there by bus, with an average one-way ride of 17.7 miles. By contrast, public schools in the same eight States where these schools are located, bused less than half their students, and at an average ride of only 10.1 miles.

In other words, the segregated schools

bused more pupils, and they bused them an average of 7 miles longer, one way. Perhaps that is why the bill ducks away from defining "excessive."

The bill also fails to support its assertion that busing is harmful for youngsters. There is simply no such evidence. Besides the fact that an accident rate for children walking to school is two to three times higher than for those who ride buses, there is no evidence that busing harms children's psyches or learning ability.

In fact, there is only one scientific study that has ever been made of this subject. Dr. Robert Coles, the world renowned child psychiatrist, actually rode buses back and forth every day for considerably more than 1 year, to study the affect on the children.

#### This is Dr. Coles' conclusion:

I never saw children get sick because they were being bused; I never saw children become emotionally disturbed because they were bused; I never saw children's school work suffer because they were bused. Physically, psychologically, educationally, the experience of busing was, in fact, neutral.

Antibusers say their children are being transferred to unsafe schools. No responsible school board should allow any school to be unsafe. If school boards cannot take measures to insure the safety of all students, whether from the neighborhood or from 10 miles away, the school in question should be closed and the students transferred elsewhere.

Antibusers ignore the fact that almost without exception, desegregation plans are working smoothly and peacefully. In the rare cases where some rides are unnecessarily long, that is an administrative matter to be corrected, lawfully, by local officials. But national legislation to correct a weakness in one community will only create problems in another where the situation is different.

As for any "turmoil" created by court-ordered busing, that activity is almost exclusively the result of actions by adults. Experience shows that time after time, as soon as adults stop throwing up picket lines, shouting at children, or burning houses, the commotion dies down.

Perhaps, parents, should step back and learn something from their children. In Pontiac, Mich., for example, after a parent group had made a lawless spectacle of themselves, their youngsters formed a group of students called "we can make it work."

John Kindig, 13 and white, a seventh grader, made this observation about his elders to Time magazine:

All these adults keep telling us we're supposed to be against busing. They tell each other "burn the buses, tear down the schools, beat up the blacks." Who do they think they are? We're the ones who are going to school. We're the ones who have to live together. We can do it fine if they will let us alone.

Brenda Briscoe, a black student, made a telling observation:

People in my neighborhood think busing is good. Since the white people have come over here, they're putting new stuff in the school. Before, it would take three weeks to get a broken window fixed and now they do it the next day.

Another student in Pontiac, April Barr, put it in a nutshell:

The parents are the trouble, and we wish they'd stay out of it.

John Kindig added the finishing touch:

The adults say seventh-graders can't grasp the situation, that we're too young. Well, how can they tell? They're not trying to make it work. We are. We have to live together and grow up together so we can keep this earth going.

But those are not just northern sentiments. A white student in Leon County, Fla., says:

The problem with integration is more of the parents' fault than the students. If they would let the students alone, everything would work out very well.

An elementary school teacher in Alachua County, Fla., says:

Children adjust better than adults. If the grown-ups would leave them alone, they'd adjust.

Proponents of anti-busing measures know, then, that such legislation is a fraud. It is not needed, except for cynical political purposes by an unprincipled few. One is either against segregation, or one is not. That is the issue here.

Seventh. Schoolbusing is not the real issue.

To begin with, the amendment before us at this time has nothing to do with improving the quality of education for anyone. Instead, it will only lower the quality of education for some.

Many of those who loudly denounce "busing" know very well that busing has nothing to do with what they pretend to be talking about.

The test of this is simple: If busing is so terrible, then why is busing used to carry children to consolidated schools?

Why is it used to carry children to special schools? Why is it used to relieve overcrowded schools? Or to prevent double sessions? Or to enable citywide use of special schools? Or to transport handicapped children?

Or to take children to zoos, museums, parks, sports events, and on field trips? Clearly, busing is not the issue.

Buses have been used to carry children to schools for nearly 60 years, and Massachusetts was the first State to require State supported transportation programs.

The Department of Justice has identified only 20 school desegregation plans which involve racial balance. The Supreme Court has never required racial balance or racial quotas to desegregate school systems.

The little red schoolhouse has long since been replaced by the big yellow schoolbus as the symbol of American education.

Indeed, many Members of this Senate attended school because buses carried them there.

Busing is not the issue. The real issue is what parents believe is waiting for their children at the end of the bus ride.

If they think there is quality of education waiting at the end of that ride, they will go to almost any lengths to get their children on that bus.

Even parents who pulled their kids out of desegregated schools to enroll them in all white segregation academies,

get their children to the segregated school by putting them on the same old devil, the school bus.

Those segregated schools may not be very good—in fact by most indications they are so bad that the children in them will come out with a distinctly second-class education—but their parents apparently feel that keeping their children segregated is more important than giving them a quality education. And they use a schoolbus to realize their choice.

We see this choice made at the other end of the spectrum, too. How do the children of the very richest parents get to the most expensive private schools?

They, too, still stick with that tried and true old method—the school bus.

Eighth. Black Americans demand an end to turmoil over busing.

America has been through enough agony on the issue of race. We have been torn apart, our progress stymied, and the promise of our democracy distorted, by the issue of race. The last 20 years have seen progress—slow but painful—away from those ugly myths that have brought us nothing but pain. This is not the time, with the possibility of brighter days ahead, to start enacting legislation which will reopen bitter wounds, will tell our minority citizens “we lied to you. We do not want to give you a fair chance after all.”

Black Americans are fully aware of the hard reality that whites are not going to pay for things that do not bring direct benefit to themselves or to their children. They never have and they never will.

That fact was demonstrated vividly by a black parent from North Carolina. She found it marvelous how quickly funds could be found for schools that were all-black, once those schools began to include white children:

Within 1 month, the parents of the white children who were being bused managed to get the black school painted, repairs made, new electric typewriters and sewing machines, and the shelves filled with books. Busing for 1 year will upgrade all our schools quicker than anything the President or the Congress can do.

Some blacks may, indeed, oppose busing, but their number is surely small in comparison with those blacks who have been willing to make such tremendous sacrifices to get their children into desegregated schools. And it has of course been black families who have had to make the overwhelming number of the sacrifices in this endeavor. Often made to feel like outsiders, cut off from extracurricular activities, insulted, and unable to afford clothes and other extras so important among peer groups, these youngsters have hung on—knowing that a better school meant at least a chance—if not a guarantee—for a better life than their parents know.

Some black people have grown cynical over the idea that whites will ever truly open the doors to the constitutionality guaranteed promise of equal opportunity for all. And they have decided they would rather try to go it alone.

This may sound like a desirable idea, and it is desirable—as an idea. What has always happened, whenever whites manage to segregate minorities, or minorities managed to segregate themselves—in re-

ality what has always happened is that control over separate but equal schools turns out to mean control over communities with no money. Thus, black parents know well that it makes more sense to remain “plugged in” to the flow of the majority population, than to seek isolation from the source of funds that can assure the delivery of educational adequacy.

#### CONCLUSION

We have seen that the antidesegregation provisions pending before the Senate this year were resurrected from past attempts to negate constitutional guarantees for deprived American citizens. These measures will place the legislative and judicial branches in direct conflict; will impair the Supreme Court's role of final arbiter of constitutional matters; they will remove a constitutionally required remedy for the vindication of minority rights, and they will reopen two decades of judicial decisions, many having nothing to do with busing whatsoever, this leading to divisiveness and confusion in the hundreds of communities that were naive enough to think that all Americans should obey that law.

The framers of these proposals know the courts have never ordered racial balance, and they further know that recent rulings have specifically barred long-distance busing. They know very well that more specific limitations already seem to be on the way through upcoming litigation. Thus the proposed legislation is undesirable by any standard.

This incredible list of distortions, all employed on behalf of a measure which comprises a radical attack on our Constitution and our courts.

The antibusing forces know this. That is why they must resort to hysteria, distortion, and demagoguery to press their cause. And their cause, of course, is deceptive. They hope to stir up enough passion to cause their constituents to overlook the real issue in America today, and to deceive them through a false belief that measures like this are accomplishing something.

They ignore many things. They ignore the fact that in many places, bus rides after desegregation are shorter than they were before.

They ignore the fact that there was no such outcry during all the decades when busing was one-way, when it affected only black children, when its only function was to cheat them out of what was rightfully theirs.

They ignore the fact that even today, by far, the greater burden of busing is on black children.

They ignore the fact that 15 States today pay the cost of busing children to private and other nonpublic schools.

If busing is so evil, why are not all the elected officials in those 15 States being thrown out of office by the voters?

And why is it that this legislation contains no prohibitions against the use of public money to transport pupils to private and parochial schools—including segregated academies?

Or why—if this bill is so vital—did a massive study commissioned by HEW officials conclude that there can be almost complete desegregation of public schools,

even in some large cities, within practical limits of travel time and cost?

There are other important facts that the anti-busing advocates choose to ignore. They have tried to paint court-ordered busing as a form of discrimination against the South, for example. Yet the fact is that, for all its State-enforced segregation, which had to be undone to comply with our Constitution—the proportion of children riding buses to school in the deep South is less than 3 percent above the national average.

Anti-busing forces also claim that excessive new sums of money are being spent on school busing. The fact is that the percentage of education money being spent today on school buses is slightly less than it was 30 years ago. Furthermore, it cost more to maintain two school systems under segregation than it does to operate one under integration.

This statement fully explains why I oppose the amendment before the Senate at this time. I request unanimous consent to place several news articles on this critical issue in the RECORD.

Mr. President, I ask unanimous consent to have printed in the RECORD certain material relating to this matter.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the New York Times, May 12, 1974]

SCHOOL INTEGRATION ORDER OF 1954 DID MUCH, BUT MUCH IS UNDONE

(By Robert Reinhold)

It was cloudy and warm that spring Monday in Washington, May 17, 1954. On Capitol Hill, the Army-McCarthy hearings stalled over President Eisenhower's refusal to disclose his private conversations. In London, Churchill was calling for a negotiated peace in Indo-China.

But a story of truly momentous proportions was unfolding at the United States Supreme Court, where a hardy band of civil rights lawyers emerged jubilantly from the marbled corridors of justice clutching a document, to be known forever to lawyers as *Oliver Brown et al v. Board of Education of Topeka et al*, declaring that black children in America shall no longer be forced to attend school separately from white children.

That historic document was to alter profoundly the American political and moral landscape. In those innocent, less-complicated days—the days of “Uncle Miltie,” “Dragnet” and “See It Now”—many of those lawyers believed that school desegregation could be undone in two years.

#### FLOODGATES OPENED

This Friday, two long, tumultuous decades will have elapsed since that electrifying moment. Despite enormous strides by blacks and other aggrieved minorities, the battle for equality is far from over.

The Brown decision opened the floodgates against Jim Crow and set the country on the road to resolving what Gunnar Myrdal, the Swedish chronicler of American racial troubles, once described as “perhaps the most glaring conflict in the American conscience and the greatest unsolved task for American democracy.”

Gone are the dual public school systems, the separate rest rooms and lunch counters, all the other manifestations of racism under which blacks chafed for so long. Black aspirations and pride have soared. But having achieved this and much more, a splintered civil rights movement seems to have reached an impasse, a political and social bedrock against which its legal weapons have been blunted.

Indeed, in one sense the Brown decision has been effectively overruled in 20 years—not by judges, not by recalcitrant Southern school boards or deputies with snarling dogs, but by the hard facts of demography, ethnicity, and the inexorable flux of human migration.

It has been overruled by the buses carrying black families seeking a better life to the great cities of the North and West and the moving vans carrying whites, seeking a better life and escape from the incoming blacks, to the suburbs.

These forces are imprinting on the American social fabric a new kind of school segregation—one based not so much on race as on socio-economic class. They are forces that judges—no matter how supreme—are no more likely to blunt than they are to stay the waxing of the tides.

#### REMOTE AS EVER

And if social science is right in stating that school achievement is closely related to the socio-economic level of one's classmates, then the goal of equal educational opportunity for black citizens, if measured in terms of performance on achievement tests, is almost as remote as ever.

Social scientists, with their computers and statistics, have begun to assess the consequences of desegregation, insofar as it has been achieved. Their studies are tentative and sometimes contradictory, but, in general, integration has not yet been found to have a pronounced effect on the learning of black children. Neither, however, is there much evidence to support fears that it would damage white youngsters.

Over the last few weeks, veterans of past and present civil rights wars have been meeting to commemorate the 20th anniversary of the Supreme Court ruling.

They have many sweet victories to savor, but their deliberations have been tinged with controversy. Most of them probably still consider integration a top social priority, but not a few feel further efforts are not worth the trouble. There is a widespread feeling that the moral urgency that crystallized into the Brown decision has been dissipated.

"The whole morality of the school desegregation issue disappeared when it moved North," said Dr. Kenneth B. Clark, the black psychologist and educator whose studies of black children's insecurity were cited by the Court in 1954. "It was the end of the age of innocence."

Probably the most striking and ironic result of Brown is that the Deep South, particularly the rural South, is more thoroughly integrated than the North.

Ten years ago, scarcely one per cent of the black children in the 11 Confederacy states were in school with whites. As of 1972, the latest year for which comprehensive figures are available from the Department of Health, Education and Welfare, 46 per cent were in predominantly white schools; by contrast, only 28 per cent of the blacks in Northern and Western states attend white schools.

Put it another way, 25 per cent of Southern black children are still enrolled in virtually all-black schools—schools where blacks total at least 90 per cent—while 49 per cent are in such schools in the North and 53 per cent in the Border states.

Nationally, more than 90 per cent of the 2.5 million black pupils have at least some white classmates. For those who prefer to call the glass half-empty almost two-thirds of them are still in schools in which they form a majority and nearly 40 per cent go to classes that are virtually all black.

The figures improve somewhat each year, but the gains in the South are largely offset by growing de facto segregation in the North.

Thus Muscogee County, Ga. (the Columbus area), in the heart of Dixie, is far better integrated than Boston, seat of the Abolitionist movement. Three of every four black youngsters in Columbus are in majority-

white schools, while in Boston 82 per cent are in majority-black schools. Both systems are about one-third black.

And in Boston, a modest state-ordered busing plan that would only partly redress the imbalance has provoked a frightening political storm.

The situation is even more difficult in other major cities, such as Chicago, Atlanta, Philadelphia, Detroit, Cleveland and Washington, where there are not enough white pupils left within the city limits to provide balance.

Washington, one of the five districts named in the Brown decision, is almost totally segregated largely because there are fewer than 5,000 white children in a school system of 140,000. The Supreme Court has yet to rule on whether busing between the inner cities and the suburbs is required under the Constitution.

But the statistics tell only a part of the story. They say nothing, about the court orders needed to integrate such diverse cities as San Francisco; Charlotte-Mecklenburg, N.C.; Pasadena, Calif., and Pontiac, Mich., or about the bus burnings, the fist fights, the bitter rallies.

The statistics also say nothing about how countless communities, such as Tampa, Fla., have quietly come to accept integration, or about the way black children were greeted with flowers and ice cream last fall when they arrived at newly desegregated schools in Prince George's County, Md., which achieved extraordinarily smooth desegregation.

And they do not tell about the small successes and disappointments that loom so large in individual lives.

There is the white couple in Greensboro, N.C., who backed up their liberal convictions by dutifully busing their youngster to a school in the black part of town, only to have him announce one day that he did not like his black classmates. And there is the black cab driver in Washington, a product of segregated public schools, who now lives in Laurel, Md., where his 15-year-old daughter attends a mostly white school.

Like many blacks, he feels that in white America the green goes where the white goes and in black schools "all they learn to do is shoot dope and ——— girls—that won't get you into college." He keeps his daughter's report card, studded with A's, in the front seat of his cab to display to passengers.

#### RACE TO THE SUBURBS

And there is the former Navy officer and his wife who recently moved to the outer fringe of San Diego to escape their sons' heavily black primary school.

However complex the picture, it is leagues away from the America of 1954. The lawyers, black and white, who argued the five Brown cases before the high court, had to walk six blocks to the railroad station in Washington to find a place to eat together. Today that would be unthinkable, even in Jackson, Miss.

"Brown was the beginning of a lot of things that changed the United States from something like South Africa," said Jack Greenberg, one of those lawyers and now head of the N.A.A.C.P. Legal Defense and Educational Fund, Inc.

"While it is important to count how many blacks and whites sit together in school and whether reading scores are up or down, that is not sufficient."

It is probably fair to say that most blacks, like the Washington cab driver, still prefer their children to go to predominantly white schools.

"This is a high priority," said John A. Buggs, staff director of the United States Civil Rights Commission. "Schools are socializing institutions. They are the only institutions where all children are required to do so. If we cannot desegregate education, I don't think we can desegregate anything."

But an increasingly vocal group of black leaders is singing a different tune, saying

it is more important to concentrate on improving the education of the black youngsters where they are—in the inner cities—than to worry about transporting them to hostile white neighborhoods.

Ruby Martin, a black woman who is a former director of H.E.W.'s Office for Civil Rights, astounds friends by saying that school integration has become a low priority with her.

"It is easy to put black kids in white school systems," she said. "But just to integrate will simply compound the problems we have and polarize the community more. I would not close a black school without going into the community to find out what will be the impact."

Ronald R. Edmonds, director of the Center for Urban Studies at the Harvard School of Education, contends that black children should be transferred to distant white schools "only if such transfers can be justified by greater certainty that all affected black children will educationally profit from court-ordered desegregation."

Federal Judge Constance Baker Motley, who represented James H. Meredith in his bid to desegregate the University of Mississippi, said: "It seems today Brown has little practical relevance to central city blacks. Its psychological and legal relevance has already had its effect. Central city blacks seem more concerned now with the political and economic power accruing from the new black concentrations than they do with busing to effect school desegregation."

Whatever the disagreement over where to go now, few would turn the clock back.

Their psychic investment in the struggle has been too large for that.

It was a full 10 years after Brown before any substantial desegregation took place. The passage of the Civil Rights Act of 1964 finally gave the Federal Government the financial club—in the form of Title VI, authorizing the withholding of funds from segregated districts—to enforce the law.

Lawyers and experts from the Justice Department and H.E.W. criss-crossed the country, helping to draw up compliance plans and rattling sabres at the recalcitrant.

Court decisions, meanwhile, closed off most of the loopholes, North and South. Green v. New Kent County, Alexander v. Holmes County, Swann v. Charlotte-Mecklenburg and Keyes v. School District 1 (Denver) are the judicial landmarks that swept away the delaying tactics, ordered all reasonable measures to eliminate segregation "root and branch" and began the assault on de facto neighborhood-based segregation in the North.

But for all these victories, the civil rights movement finds itself grappling with a host of "second generation" problems in some ways more intractable than the massive resistance of the sixties. Once in white schools, black children have often found themselves excluded from extracurricular activities, "tracked" into classes with no whites, and expelled from school for disciplinary reasons more often than whites.

#### THE "ACADEMIES"

In addition, it is estimated that as many as half a million white pupils have been enrolled in all-white private "academies" in the South. Desegregation has also meant that thousands of black teachers and educators have lost their jobs, been demoted or kept from promotion.

Also coming to the surface is the long-submerged complaint of other minorities—Puerto Ricans, Mexican-Americans, Indians, Chinese—that their children, too, suffer educationally from linguistic and ethnic barriers.

All this occurs against a political backdrop that many black citizens find hostile to their aspirations. The Nixon Administration is viewed widely as an enemy of blacks, and not a few white liberal politicians have run from the busing controversy.

J. Stanley Pottinger, Assistant Attorney General for Civil Rights, denies that the Administration has turned its back on integration, but he maintains that there is little political pressure for it.

"The steam is gone," he said. "The pressure on Nixon is almost zero now."

With national controversy raging over busing, what can be said about the educational and social impact of integration?

The Brown decision was based not only on law but also on the testimony of psychologists and educators that separate schooling for blacks, in the Court's words, "affected their hearts and minds in a way unlikely ever to be undone."

The implication was that desegregation would lift the low self-esteem and academic performance of blacks.

#### A MORAL IMPERATIVE

It can be argued that integration is a moral and political imperative that is right regardless of whether it "works" in terms of raising test scores. But in view of the social cost of bringing about mixed schools, it is perhaps fair to ask what has been gained in terms of achievement, aspirations and racial attitudes.

There are no definitive answers yet. Substantial desegregation has existed for only a few years, during which the schools have been buffeted by unsettling change. Because of this, along with the rancorous turmoil often surrounding busing orders, it is perhaps too soon to expect major returns. And it may be years before the ultimate payoff, in college attendance and success in later life, will be apparent.

Still, some preliminary studies have been done. Although social scientists, applying different yardsticks, have quarreled over what they mean, these tentative patterns emerge:

Desegregation appears to have a positive, albeit slight, effect on black achievement scores, but the gap between whites and blacks remains large.

Contrary to white parents' fears, desegregation does not seem to damage white pupil performance.

Integration generally seems to work better, for both races, if accomplished early in a child's school career.

#### "THE COLEMAN REPORT"

More dramatic effects perhaps should not have been expected on the basis of school integration alone, given the results of the massive Equality of Educational Opportunity study, the so-called "Coleman Report" of 1966. That landmark document suggested that the wide variations in pupil performance were more closely related to differences of pupils and the socio-economic status of one's classmates than anything the schools did.

The implication was that blacks had to be integrated with middle class whites. Given the massive flight of more affluent whites to the suburbs and private academies in recent years, it is perhaps too soon to judge this theory.

A major study of Southern desegregation was undertaken recently to evaluate the Emergency School Assistance Program, which provides Federal funds to lubricate the process. The study "Southern Schools," was carried out by the National Opinion Research Center under contract to the United Office of Education.

On the basis of tests and questionnaires administered to 32,000 fifth and tenth graders in a random sample of about 600 Southern schools, the statistical study concluded that school racial make-up did not seem to make much difference for achievement, although both races did somewhat less well in schools more than 70 per cent white or more than 59 per cent black.

Racial tension was found to have damaged white high school achievement, and

tolerant racial attitudes among white pupils were correlated with improved black performance. Blacks and whites, except for high school blacks, were found to have better racial attitudes if integrated early in life.

Probably the best data come from several longitudinal, or "before and after," studies.

Evanston, Ill., a 16 per cent black Chicago suburb of 80,000, was integrated smoothly in 1967. Before pupil reassignments, researchers for the Educational Testing Service tested pupils and teachers and then followed up their study for four more years.

Except for some marked improvements in mathematics for both races, the study found no significant gains or losses in achievement for blacks and whites, after desegregation.

Still, the director of the study, Mrs. Jayjia Hsia, said "Integration is working well in Evanston" on other grounds.

The black and Chicano minorities in Riverside, Calif., were integrated in 1965 and achievements tests taken every year until 1970.

Dr. Mabel C. Purl of the school system and Dr. Jane Mercer of the University of California at Riverside found encouragement in that minority students desegregated before the second grade advanced just as quickly as whites.

Although the gap between whites was not closed, this was taken as an improvement over the usually observed widening of the gap as students got older. Other researchers have found less promise in the Riverside study but the majority whites do not seem to have suffered.

And in Berkeley, Calif., which coupled voluntary desegregation in 1968 with sweeping curricular innovations, Dr. Arthur D. Dambacher reported that the normally growing gap between whites and blacks was being slowly reduced, particularly in the lower grades.

#### A NEGATIVE VIEW

Probably the most negative and scholarly view of desegregation came from Dr. David J. Armor, whose hotly disputed article in the magazine "The Public Interest" in the summer of 1972 said that the results of "induced" integration in five Northern cities—Ann Arbor, Mich.; Riverside, Boston, Hartford and White Plains—were not promising.

He interpreted the results as showing that integration had done little to reduce the black-white performance gap and had accentuated racial identity. On this basis, he maintained that "massive busing for purposes of improving student achievement and interracial harmony is not effective and should not be adopted at this time."

Other scholars have accused Dr. Armor of reaching sweeping conclusions on the basis of inconclusive data and questionable research methods.

Prof. Thomas F. Pettigrew of Harvard contended that it made no sense to measure the effects of desegregation without regard to the quality of the interracial interaction in the schools.

Indeed, a number of experts say the real task is to find out under what conditions desegregation works and when it does not. To that end, the Office of Education has commissioned the Educational Testing Service to do a \$1-million study of 183 schools judged to have achieved successful integration to find out how they did it.

"When you try to make integration work it does," said Prof. Robert L. Crain of Johns Hopkins, designer of the "Southern Schools" study.

"That's the story—we have not tried."

#### TWENTY-FIVE YEARS IN BATTLE FOR RIGHTS, FUND'S LAWYER SEES VICTORY

(By Tom Buckley)

Jack Greenberg ticked them off: Ocala, Fla.; Oklahoma City; Topeka, Kan.; Little Rock, Ark.; Greensboro, and Raleigh, N.C.;

Albany, Ga.; Meridian, Miss.; New Orleans; Montgomery, Selma and Birmingham, Ala.; Detroit; Chicago; San Francisco; New York.

In all of them, and in scores of others, he has tested the scales of justice during his 25 years as a lawyer with the N.A.A.C.P. Legal Defense and Educational Fund, Inc., the last 14 as its head.

During this quarter-century of struggle, the fund has been, by general agreement, the most potent private force in securing the rights of blacks in the legal arena and Jack Greenberg has been its most durable warrior.

It has been a journey of hundreds of thousands of miles, a long road with many turns, but the goal has never changed. It is nothing less than full citizenship for blacks and other minorities.

"We've come a long way," Mr. Greenberg said the other day in his office at 10 Columbus Circle, "but we've still got a long way to go. It may take decades, but I'm as certain as I was the day I started that we'll get there."

#### STRATEGY JUSTIFIED

He is just as certain that events have proved the correctness of the strategy the fund has followed since its founding in 1939; that is, to fight for equality only by legal, nonviolent means.

The brief blaze of black firebrands urging militant solutions—guerrilla warfare, separatism, Communism—has caused distractions.

Mr. Greenberg's decision not to undertake the defense of Angela Davis when she was accused of abetting a courtroom break, for example, caused a deep, though temporary, split among the fund's lawyers.

"I just didn't think it was a civil rights matter," Mr. Greenberg said.

There were angry words and then resignations, but Mr. Greenberg notes that the angriest militant of all then went to work for a Wall Street law firm.

It was a temptation, Mr. Greenberg said, that he faced when he graduated from Columbia University Law School in 1949, and for several years thereafter.

#### THE DIFFERENCE

"The last time it occurred," he said, "was when a very dear friend of mine, who by then was a partner in a big corporate law firm, said to me, 'The difference between us is that when I have a case I wish I cared how it came out.'"

He is still somewhat puzzled about the events that led to his career in the civil rights movement.

Growing up in the Bensonhurst section of Brooklyn and in the pleasant area near Bronx Park, he knew no Negroes. He saw no examples of racial injustice until he served as an officer aboard a landing ship in the Pacific.

"I was unhappy because the only blacks on board were three or four stewards' mates," he said. They were our servants. It made me uncomfortable. I remember I tried to get one of them another job."

More decisive in shaping his thinking, he said, was a course at law school taught by Prof. Walter Gellhorn.

"It was called legal survey," he said. "Professor Gellhorn, who was and is a great teacher, set it up to provide a chance to work on cases for people and organizations in the civil rights area."

"I volunteered and worked with the fund, the American Civil Liberties Union and the American-Jewish Congress."

#### HE TAKES THE JOB

"About six months after I was graduated, Thurgood Marshall, the head of the fund, asked Professor Gellhorn to recommend someone for an opening that had come up. He suggested me and I decided to take the job. It was absolutely clear to me that racial justice was the burning issue of the time,

and that it was susceptible to a legal approach."

The fund in those days had only four lawyers—it now has 25—and was housed in cramped quarters at 20 West 40th Street.

In addition to the broad issues of education, the ballot, employment and housing, the fund has fought for the legal rights of individual blacks, which were almost invariably infringed upon in one way or another in the South and elsewhere.

"Shortly after I went to work, a woman came into the office," Mr. Greenberg said. "She told me that her son had been to jail in Richmond, a long sentence, for stealing a bag of peanuts. I was outraged. I told Thurgood about it, but he sort of raised his eyebrows and didn't say anything.

"I got busy on the case, and it turned out that the bag was one of those enormous burlap sacks that are used down there to haul peanuts to the market. He had also stolen the truck it was in."

#### A KEY ASSIGNMENT

Soon after he went to work for the fund, Mr. Greenberg was assigned to an education suit that, by its successful conclusion, inevitably led the way to the great decisions of the United States Supreme Court in 1954 and 1955.

"It involved the integration of the University of Oklahoma Graduate School," he said. "That was quite a novel subject in those days. The first thing that Thurgood insisted I do was to research the question of whether it should be heard by a one-judge or three-judge Federal court. I must have spent two or three weeks on the problem.

"I found out that it was typical of Thurgood Marshall's approach. It was scholarly, detailed, technical, dry, perhaps, but very solid. It's the same kind of approach to a case that we use today."

Mr. Marshall, who has been a member of the Supreme Court since 1967, was utterly different on a personal level, Mr. Greenberg said.

"He was jovial, informal, with enormous warmth and a sense of fun," Mr. Greenberg recalled. "It was a ritual in the office for years that, at 5 o'clock on Friday afternoon, he would break out a couple of bottles of whisky and there would be a poker game for a couple of hours."

When Mr. Marshall decided to accept an appointment to the Circuit Court of Appeals in 1961, he urged that Mr. Greenberg be chosen to succeed him. The decision was made unanimously by the fund's board of directors, and Mr. Greenberg has enjoyed its backing ever since, even in the face of the opinion that is heard more frequently these days that a black man should have the post.

For Mr. Greenberg, the cause of racial justice long ago became a life's work, and he said he had no plans to leave it.

#### EMPLOYMENT RIGHTS

As the worst instances of educational and political injustice have been obliterated, the fund has turned its attention to equal employment opportunities.

It has also had to divert its attention to what Mr. Greenberg called the blatantly cynical appeals to residual racism of the Nixon Administration that threaten the gains made during the Kennedy and Johnson years.

"We see now what we always suspected," he said. "Nixon manipulated racial problems to keep political power without regard to principle. And as to blacks who have gone to work for him. . . ."

Typical of the Nixon approach, Mr. Greenberg said, was the recently announced settlement of a case alleging discrimination against black workers in the steel industry.

"The unions and the companies got a sweetheart agreement," he said. "For a vague

agreement and undefined rights in the future, black workers have been asked to sign away their right to object to anything that happens, no matter what it is."

Mr. Greenberg and the fund are committed to "affirmative action" in securing employment for blacks. It is, Mr. Greenberg acknowledges, a thorny and complex issue on which it is possible for men of good will to disagree.

He avoids speaking of "quotas," which has become a dirty word in some White circles, but emphasizes that the requirements for employment and promotion in government and industry are often heavily weighted, for one reason or another, against blacks and other minorities.

It is an issue without the dramatic impact of freedom marches, boycotts and midnight ambushes, but to find an equitable solution, Mr. Greenberg believes, is just as important to the quest for racial justice to any that have gone before.

"Public attitudes ebb and flow," he said. "Progress never comes in a straight line. I have to tell myself sometimes that progress isn't inevitable. Nevertheless, I think we're moving down the road."

[From the New York Times magazine, May 12, 1974]

#### TWENTY YEARS AFTER BROWN: NEGRO PROGRESS AND BLACK RACE—THE SOUND OF ONE HAND CLAPPING

(By Roger Wilkins)

The first time I ever walked through the Atlanta airport was in 1962. I was a Northern black working for the State Department. It was my first trip to the deep South and the sounds of white Southern voices were strange and threatening. The mores of the region were foreign and I liked little of what I had read about it. It was late in the evening when I got to Atlanta and I had a several-hour wait for my connection to Birmingham. The airport was fairly empty except for a few family groups scattered here and there and a group of young white men who were in and around the bar. The young men wore rough clothes and talked—according to my Northern ear—the language of the deep South. I was alone and uneasy, if not afraid. I was struck then by the irony of being an employe of the American people and yet feeling like a lost and threatened alien in my own country.

This spring, I walked through that airport again and I was not alone. This time, I was with an old friend named Andrew Young. He is black and represents the Fifth District of Georgia in the House of Representatives. We were laughing about something and I felt completely at ease. Before leaving the airport, we stopped at a newsstand to read a headline announcing that the Mayor of Atlanta had proposed to raise some of the money needed to increase the salaries of municipal employes by asking the genteel citizens of Atlanta to carry their garbage cans out to the curb.

"Poor Maynard," we said, "garbage is a damn tough issue for mayors." We called the Mayor of Atlanta by his first name because he is a friend of ours. He is a black man.

There was no question in this spring of 1974—20 years after the historic decision by the Supreme Court in *Brown v. Topeka Board of Education*—that things had changed. And for the better. The real question had to be: How much change had occurred, and what were the implications of that change for the quest for racial justice in this country?

Attempting to answer that question is much like participating in the Indian parable about the blind men trying to describe an elephant by touching its various parts. That is a particularly difficult task in this spring of Nixon's discontent, which overwhelms the intellect and sours the mood across the country. Even so, the task must

be attempted because perceptions about the nature and extent of black progress to date, and the reactions to those perceptions, are apt to be the basic determinants of the nature of relations between the races for all of the next decade.

It is clear that the progress looks very different to different people, depending in large measure on the color of the viewer's skin and on the place from which he views it. The view from the corner of 120th Street and Lenox Avenue up in Harlem differs greatly from the view that one might have from a corporate board room down on Wall Street. And, the question is not simply whether the glass is half empty or half full, but rather, whether the glass will ever be filled to the brim, and if so, what it will take to accomplish that task. To put it another way, the question is whether the momentum generated by the activities of the last 20 years has set in motion an irreversible process which will almost automatically lead to racial justice in this country, as some whites seem to think, or whether, as most blacks hold, the largest and hardest job is yet to be done, and whites have quit the game before the first quarter has even ended.

The gut issue to be affected by the answers to those questions is: What will be the fate of that one-third of America's black population still mired in poverty? There are other and related questions, of course, having to do with whether, and how soon, blacks will acquire the power and the capital to participate fully in the decisions which affect the course of this country—decisions which, to such a large extent, shape their own destinies. But for most thoughtful blacks to whom I have talked over the course of the last several years, and in interviewing for this article, the misery and the degradation of the poorest blacks in this society is the number one item on the agenda.

Black and white perceptions differ sharply. The task of improving the quality of life in Harlem—where Maynard Jackson's election to the Mayor's chair in Atlanta City Hall, or Andy Young's journey from the Movement to the halls of Congress is deemed virtually irrelevant—is a case in point. Dr. Robert S. Browne, a black economist and head of the Black Economic Research Center, sat in his 120th Street office recently and gestured toward Lenox Avenue. "Look at that," he said. "What do you think it's going to take to fix that? Where's the political will to do it?"

Browne, who advocates a massive transfer of capital from whites to blacks working in black-controlled institutions devoted to black development, expressed his deepest concern this way: "I know there has been an absolute real improvement in the income of blacks, but I think it's been distributed unequally. The real danger is that an enormous gap will develop between the blacks who have, and those who don't. Then we're on our way to having a permanent black underclass. That would be intolerable." Then he turned away and looked out the window again. He sighed and said, "Look at the housing around here. Look at some of the people who live in it. Think of the kids. Is it any wonder that I get depressed?"

Nelson Rockefeller, on the other hand, looks at the results of the last 20 years from a different perspective. Gliding in from LaGuardia airport in his Cadillac limousine the other day, the former Governor talked with some pride about the number of blacks who had moved into new positions of responsibility in state government during his terms in Albany. While recognizing that it had been a lonely role for many of them, he said, "What they've done will make it easier in the next cycle. It's like Jackie Robinson. The ice is broken. It'll be broader and easier for everyone."

Yes—but what about Harlem? Rockefeller was optimistic about that, too, despite frustrations experienced as Governor. "I started working on that problem 15 years ago," he said, "and I was really excited." He went on to talk about some of the hopes he had, and then he detailed the factors that had frustrated his best hopes. Was he still optimistic about solving the problem? "Yes. What you need is the appropriate mix of governmental incentives and penalties to induce a massive infusion of private capital in the area. Pension funds can be used. I think it can be done and I think it can be done within the next 20 years."

Whether Rockefeller's optimism is more justified than Browne's pessimism, both men agree that the task of breaking the back of the problems of the Harlems and the Houghs, and the poverty areas of the rural South, is a monumental one, and that whites will have to make massive contributions if solutions are to be achieved.

White responses to that imperative will depend in large measure on how whites perceive today's racial situation in the country, and how much they think the country has achieved in the last 20 years. Ben J. Wattenberg and Richard M. Scammon, in a highly optimistic report on black economic progress in the April, 1973, issue of *Commentary*, took black leaders and other liberals to task for virtually ignoring the real progress blacks have made. Wattenberg and Scammon judge that to be a very bad tactical error on the part of blacks and their liberal white allies.

Nevertheless, it is blacks who think about the problem constantly, and who dominate as professionals in the struggle for racial justice. It is their perception of how far we have come, and how much farther we have yet to go, and it is their ability to communicate those perceptions to an erratically attentive and not always sensitive white population, that will form the major dynamic in the next round of the struggle for racial justice.

Roy Wilkins leaned back in his chair in his office at N.A.A.C.P. headquarters high over Broadway in mid-Manhattan and admitted that he had been overly optimistic in 1954. "Everybody in the civil-rights movement, including me, expected the Northern states to follow the lead of the Supreme Court, although the decision was specifically applied only to the Southern states. Everybody thought that it would be accepted that segregation was evil, whether it was fostered by law or by administrative action. We were quickly disillusioned. We soon got Louise Day Hicks in Boston, and resistance all over the North." Then, taking some obvious delight in the fact that his interviewer had grown up in Michigan, he added, "Pontiac, Kalamazoo, Jackson and Detroit haven't done so well either."

M. Carl Holman, President of the National Urban Coalition, sat in his Southwest Washington home and put the grounds for disillusionment even more succinctly: "A lot of blacks had it figured wrong. They thought that poor whites acted viciously and badly, but that 'quality' whites did not. That was wrong. Racism comes much more naturally, and to a much broader spectrum of whites, than we could have imagined."

Though the grounds for disillusionment were firmly laid in these overly optimistic hopes, few blacks would deny that great strides had been made. Wilkins said, "The sixties produced a change in the standard of behavior for whites. It is no longer right or appropriate to segregate or to discriminate. That is not to say that it's no longer done. It is to say that the whole thing has been flipped over. It used to be the right thing to do. Now it's wrong. That's no mean accomplishment."

The Urban League's Vernon Jordan sees enormous changes too. "The Voting Rights

Act of '65 was probably the most significant accomplishment, although we couldn't have gotten it without the Civil Rights Act of '64. But, voting is power—the whites in the South knew that, and that's why they killed people who were trying to get black people registered. Employment is basic too. Title VII of the Civil Rights Act is vital. It's the ghost that haunts all those employers. They know they've done wrong, and they know that at some point they're going to have to deal with that."

Dr. Browne thinks that the psychological changes that have occurred were the most significant. "The Brown decision gave blacks a vision of themselves as citizens, and the re-assessment of the late sixties completed the process. The most important development in the last 20 years has been the development of the spirit of black consciousness. There is much more racial pride, and enormously greater self-confidence among individuals."

While all of the blacks to whom I talked would agree that the country had made large strides in knocking off the outer scales of American racism, they agreed that the hardest part of the job was yet to be done.

John Lewis, once head of the Student Non-violent Coordinating Committee, and now Executive Director of the Voter Education Project in Atlanta, looked out over Fairlie Street and said, "There may be a change in the atmosphere, but solid changes haven't occurred. It's frightening to look at the poverty in rural Alabama. When it got to the hard things, and when the problem started to touch the North, the whites turned around and seemed to go the other way."

"The biggest disappointment to me," Vernon Jordan said, "is that the vast majority of white Americans never really understood what we were talking about. They thought we were just talking about defining elementary rights and responsibilities for black Americans. That was just a wedge in the big door. It's the big door we really need, and it's the big door they've turned their backs on—the full range of economic and political rights that they enjoy."

But one white who did hear was President Lyndon Johnson, who listened and tried to act before he let Vietnam steal his time and sap his energies. He promised that he would complete the job Lincoln had begun, and even before he got the Voting Rights Act of 1965, he had cajoled the Congress into passing President Kennedy's antipoverty program. In 1965, he realized that the seamless web of poverty, degradation, bad housing and all of the rest of the legacies of slavery and discrimination, had to be attacked head on with Federal money if anything were to be achieved. President Johnson stood that fall in the East Room of the White House and exhorted every person who could conceivably be called a civil-rights leader to "work all day and stay up at night and work some more" to help him devise a program that would break the cycle.

And the President followed through with Model Cities, rent supplements, experimental efforts at new ways to deliver health care, increased aid to education, new experiments in manpower training, a plan to extend home ownership to the poor and a host of other efforts which came under the rubric of the Great Society.

The Vietnam war closed down on Lyndon Johnson and the days of his Presidency were shortened because of it. As a result, blacks and the rest of the poor people in this country never saw these social experiments perfected and expanded as they had expected them to be. At this writing, too little is known about the extent to which those foreshortened experiments might have achieved their intended aims. There can be no doubt, however, that the beneficial side effects in the black community were enormous.

The greatest immediate effect on communities which were starved economically, and every other way, was that new jobs were created. There were options for people who had been underemployed, and there were new employment and training opportunities for people who had been out of the labor market. The whole notion of employing paraprofessional assistants in a variety of fields—who could first gain employment, and then receive training that could enable them to climb up career ladders—exploded in poor neighborhoods all over the country. Moreover, management of the new programs required sophistication about Government operations on all levels, knowledge that blacks and other minorities had lacked, but quickly acquired, as they fought for their share of the dollars these programs offered. Such programs provided opportunities for thousands to move out of poverty into the lower-middle class, and to glimpse life opportunities they had never before imagined.

Other things were happening in black communities around the country. Blacks were casting off the psychological shackles that had been forced upon them from the day they had been introduced as alien slaves on this continent. They began examining U.S. America had told about them, and which, to a certain extent, they had come to believe. As a result, they began believing in their own worth as full human beings, and in the worth and the value of their forebears and their history. At the same time, although Great Society legislation was beginning to be implemented, the results were not instantaneous—as they could not possibly have been—nor were even the early effects clearly visible. What had become much more visible, however, was the pervasiveness of racism in America.

The result of the commingling of all of these factors was an explosion of black rage. Until the late sixties, rage had been a luxury that blacks could ill afford. White America's power had been too great and retribution for any true expression of black anger was expected to be sure and swift. But, in the late sixties, the expression of rage—especially by young adults—became not only possible, but also fashionable. Those expressions took many forms.

The most obvious were in rhetoric, hair styles, modes of dress and in flaming cities around the country. It also took the form of attempts at withdrawal—again, mainly by young blacks—from a society that had duped them and their forebears into actually believing that they were inferior. "This society does not suit us," they were saying. "Its values and its assumptions have destroyed and diminished us through history, and we will have no more of it. We will withdraw and develop a more humane and pertinent set of values which nurture black strength and black humanity."

As a part of that generalized movement, a group of young blacks in Oakland—the Black Panthers for Self Defense, they called themselves initially—formed a new organization which they hoped would ultimately give strength, pride and power to the poorest of America's black poor. Their earliest program was to try to defend the black community from the Oakland police, whom they deemed to be racist and brutal. Their organizing symbol was the gun. No matter what their initial intentions, the mix of black rage, white racism, guns, police insularity and black rhetoric was too flammable to be contained. People got shot—Panthers and police alike—and some were killed.

It was too much for white America. Incessant civil-rights demands by the "responsible" Negro leaders; the specter of white school children being bused into ghetto schools; fiery rebellions in the cities; black rhetoricians screaming at "whitey" all over the country, and blacks withdrawing from whites on college campuses, and from old

alliances, was too much for white Americans to ingest. It was especially too much when piled on top of the Vietnam war, almost a decade of assassinations and the development of a culture among white youths that jarred and frightened their own parents. A battered and weary populace was ready for a return to "normalcy," and they got it under a banner of "law and order" and limited busing, all undergirded by a "Southern strategy." The "one brief shining moment" when America seemed about to come seriously to grips with problems of race and poverty was over.

By clear design, the new Administration began to unravel the Great Society. The elimination of the categorical grants—which had formed the core of the Great Society programs—and the movement to block grants did not seem to blacks to be the return of "power to the people" which President Nixon proclaimed it to be, but rather, a wrenching from their hands of the first slim elements of control they had ever had over their own destinies. Control of "their programs" was to be returned to the same state and local governments that had failed throughout history to alter the wretched conditions of their lives.

For example, Model Cities, they learned, was to be phased out. It was to be replaced by a program called "Better Communities" and the more they learned about it, the more aptly it seemed to be named. The money seemed intended for those better communities where fortunate whites and the luckiest blacks lived in splendid isolation from the poor, protected from them by the policies of the Federal Government. The Community Action program was to be destroyed and the Office of Economic Opportunity dismantled.

Documents leaked from the White House suggested that these policies rested on intellectual foundations that blacks found to be insidious and dangerous. One memorandum suggested that the ship of civil rights was going down, and since it wasn't the Administration's ship, the captain could, with a clear conscience, leave the bridge. Then, in a memorandum that lent itself to a variety of interpretations, Daniel P. Moynihan, then a member of the President's White House staff, analyzed the racial climate in the country for Mr. Nixon at the end of the first year of his Administration. He urged that less attention be paid to "hysterics, paranoids and boodlers on all sides"; that the Administration pay close attention to black progress and that it court the "silent black majority." Dr. Moynihan also asserted that "the Negro is making extraordinary progress," citing census income figures to make his case. Later, in his paper, he suggested that "the time may have come when the issue of race could benefit from a period of 'benign neglect.'"

Whatever Dr. Moynihan may have meant, blacks read this as a suggestion that the momentum of the sixties had generated such a powerful force that the American Government could safely lay its black burden down. Those facts, coupled with the Southern strategy, and not-so-subtle appeals to America's white silent majority, screamed racism to watchful blacks.

Meanwhile, the urgency of the concern for the cities, and for finding solutions for urban (read black) problems, seemed to be waning. A good white friend who is in a position to observe such things suggested to me the other day that, although the drive to hire more members of minority groups in the large corporations, and to recruit ever-increasing numbers of black students in principally white institutions, would not subside, the feeling of urgency about other problems had clearly waned in the upper reaches of American power. Roy Wilkins observed that "the social structure . . . the power points in white society, are getting pretty tired of the constant cry of discrimination.

They seem to be saying to themselves, 'We stand ready to do as much as we can to get Negroes business opportunities—employment opportunities—but that's about enough.' Housing and the other things are another matter. This attitude is reflected in the current lack of enthusiasm which they bring to the cause of integration. Our white membership in the N.A.A.C.P. used to be about 10 per cent. Now it's down to 6 per cent."

Blacks who lived in poverty, worked with people who were mired in it, or, in other ways, rubbed their hands across its grainy surface, knew that the problem could not be cracked without the massive intervention of the Federal Government. Yet, as they watched their good white friends drift away, they wondered where America had gone. And, remembering the sophistry undergirding the White House retreat from the cause, they became wary of white men trumpeting the miracles of black progress.

No blacks deny the progress of the last two decades. There is no question that the easiest parts of the problem have been licked. Blacks can stay at the best hotels if they can afford them, or eat at the lunch counters of their choice.

There is also no question that, in some distant future, the Voting Rights Act will have a profound impact on this country. As Vernon Jordan noted, "It had the effect of empowering blacks in the South and waking them up to political possibilities in the North."

The possibilities can already be discerned. John Lewis gives impressive statistics from Mississippi. "In 1964, of a black voting-age-group population of 460,000, only 22,000 were registered. Now, out of a black voting-age population of 450,000 almost 300,000 are registered."

Mayor Jackson of Atlanta, himself more than 250 pounds of dapper living proof of the possibilities of that piece of legislation, says, "We've only seen the beginning of what it's going to take to change how the system operates on the masses of people. We're going to need a great deal more power, both in actual numbers and in possibilities for leveraging power. . . . In the end, my guess is that politics will precede economics for the masses of the people."

There can also be little argument with the figures showing that the ratio of black family income to that of white family income did increase from 53 to 63 per cent in the decade ending in 1971, or with the figures showing that, nationally, black males aged 25 to 34 had not only advanced in terms of the quality of jobs they held, but also that their income level had climbed to 80 per cent of the income level of their white counterparts.

But the day when the trends indicated by either of those sets of figures—assuming that the trends continue—can be translated into sufficient power to attack so massive an American problem as black poverty is a long way off. Certainly, black progress in politics can be measured by the fact that the number of black elected officials in the United States has increased from 1,185 in 1969 to 2,991 in 1974. The flip side of that coin is that the 1974 figure represents only one-half of 1 per cent of the total number of elected officials in the country—a long way down the road from the leveraging position Mayor Jackson talked about.

The income figures have little to do with real power. As Carl Holman points out, "black income is principally consumer income. Most of that money goes right back into white hands for consumer goods and services. And that middle-class status is often earned at a fearful cost. First, it is often achieved by a wife who is working one job and a husband holding down another, or maybe two. The second cost is that one of the goals of achieving middle-class status

is to move to some other neighborhood. It may be good for the particular family, but it drains their old community of whatever leadership they had provided."

In a society in which it has been graphically demonstrated over and over again that wealth is power, blacks possess very little wealth. For example, economist Henry S. Terrell has found that blacks own 1.2 per cent of business equity in this country, the same percentage of farm equity and 0.1 per cent of the value of all stock holdings.

Moreover, control of all of the institutions in the society remains in white hands, and only in highly unusual cases is there marginal internal black input on decisions—even those vitally affecting the welfare of blacks. This is true in industry, publishing, broadcasting, education, philanthropy and government. Those blacks who do penetrate to some place near the upper reaches of such institutions lead a lonely existence, surrounded, and sometimes almost suffocated by, white attitudes, values and fantasies.

Thus, selected raw figures on the advances blacks have made in the last decade have little bearing on current black problems as blacks perceive them. While most thoughtful blacks would agree that political empowerment and economic empowerment are the keys to the "big door" Vernon Jordan talked about, those keys are not yet nearly in hand, while the problem of black poverty still looms large. Governmental help on a massive scale is the *sine qua non* for cracking that problem, and white commitment to solving the problem is essential to obtaining that help.

Blacks are thus left with the task that has burdened them throughout their history on this continent: attempting to determine where white heads and hearts are on questions of racial justice. But blacks have an advantage now that earlier generations only had in limited measure. For the first time, numbers of blacks are working on relatively equal terms with whites—a new, useful, but disillusioning vantage point from which to make their crucial assessments.

Lisle Carter, the new Chancellor of the Atlanta University system, recognizes a general cooling of white interest in the cause of social justice. "Our values have shifted," he says. "Blind reliance on the strategies, timing and good faith offered by whites has been replaced by a determination to set our own agendas based on our own perceptions of the needs of the black community."

Dr. Kenneth Clark, a past President of the American Psychological Association (and the principal architect of the social-psychological arguments that went into the briefs of the N.A.A.C.P. Legal Defense Fund in behalf of the plaintiffs in the Brown case) for decades has been observing the cast of mind that pervades Northern institutions. "Unlike Southern white supremacists, who make no bones about their feelings, the strongest supporters of institutional racism have an exactly contrary personal image. These proponents of invidious racism—as I call it—think they're free of it, or if they acknowledge it at all, they claim the distinctions they make are empirically based. They really think they're not like other whites."

"Therefore, given that self-image—a powerful defense mechanism—any attempt at discussing the subject evokes an emotional polemic, and probably an attack on the questioner for being a racist himself. That, of course, postpones coming to grips with reality or with facing the real issue, for you first have to deal with the question of who is a racist. Such people will then trot out their liberal credentials. Basically, this is all diversionary, and by the time you've dealt with the diversion, you're emotionally exhausted before you get at the real issue.

"The intensity of the delusion you're dealing with is really a deep unwillingness to

change. The psychological devices that are used merely indicate the depth of the racism. For these people have invested so much of themselves in the emotional part of all this, that any significant change would make them admit much more than they can possibly admit about themselves."

Dr. Clark's thesis is hammered home in story after story told by middle-class blacks who are attempting to alleviate black poverty while working in white institutions. Here are only a few of them:

A noted white social-welfare executive in the Johnson Administration invited an outside group of blacks to brief him on current civil-rights trends. His top black civil-rights aide had to call one of the outsiders to request that his own boss be prompted to invite him. The boss had just forgotten.

A white public servant, then noted only for his labors in behalf of civil-rights, described one of his employees to me. "He's black," the man said, "but he's soft-spoken and he takes orders well." The man never blinked an eye, and never knew how much he had just revealed about himself.

Representatives of two "good" white institutions—one a foundation and the other a private organization formed to deal with a wide range of social problems dealing with blacks—met to discuss the private organization's financial future. Neither the black vice president of the private organization nor the foundation's black program director, from whose budget the money was to be taken, were invited to the meeting. After the meeting was over, the black vice president was apprised of the decisions taken, and the black program director was advised of the amount by which his budget had been diminished.

"If the blacks involved had told their good white colleagues about the racist assumptions and values involved in those actions," Dr. Clark said, "they would have been afflicted with an enormous emotional overload. All of their circuits would have been busy. And remember," he said, "these were good white people. And that's the tragedy."

Aside from such occasional piercing glimpses blacks get into the psyches of their white associates and colleagues, it is difficult to learn directly how whites feel about racial issues these days. Eleanor Holmes Norton, New York City's Commissioner for Human Rights, puts it this way: "I am pessimistic about the climate whites have created in the seventies as opposed to the sixties. They are much more defensive—much less open to blacks."

One white person who does appear to be open is Judy Herman, a young staff member of the American Jewish Committee. Mrs. Herman did acknowledge that there had been some diminution of interest in the civil-rights cause among some Jews, but suggested that the fall-off had not been so great as many blacks had come to believe. It seemed to me that she might well have been talking about a large segment of the white population, not just about Jews, when she said, "The equilibrium in the country is upset today. There is tremendous anxiety. People want things as they imagine they used to be. I have a feeling that people can't understand why these problems aren't solved by now. And, of course, a lot of people blame the victims."

Interracial communications are profoundly cluttered and filled with static in this spring of 1974, 20 years after the Brown decision. On the white side, racism remains in many unexpected quarters; there is also anxiety, insecurity and fear. On the black side, there is a continuing sense of injustice, there is rage and deep frustration at the selective perceptions of whites on the race issue. And, there is also fear and insecurity, although perhaps not quite so much as there used to be.

And all of this at a time when even the

most inattentive citizens are gaining a sense that the old cornucopia "ain't what she used to be." Many blacks suspect that the arguments made by entrenched white academics against attempts to aggressively recruit blacks are prompted by the academics' awareness of the increasing marginality of life, and their fear of fair black competition for a limited number of jobs.

Impending scarcities affect the black side of the dialogue too. Carl Holman scoffs at notions that projected increases in the gross national product, or other structural factors in the economy, will automatically take care of black poverty. "Look at what happens when there's a shortage," he says. "Middle-class Americans didn't change their habits very much when there wasn't enough gas. They just let the price drift on up and you know who couldn't afford to drive."

"And," he continued, "even the best of the white people predicate an attack on hard-core poverty in this country on the assumption of an expanding economy. Now, what if the economy doesn't expand? Seems like economic justice for blacks is a luxury that Americans are willing to pay for if there's a little money left over. Otherwise, nobody's willing to make the sacrifice."

So, this already incredibly difficult dialogue is bordered by inflation, recession, dwindling resources, a growing awareness of world hunger and by profound political uncertainty in Washington. In the early days of this Administration it seemed mainly the blacks who hunkered down to consolidate their gains, and to wait out the Presidency of Richard M. Nixon. Now, the whole country seems suspended—waiting for the final shoe to drop off one side of the bed or the other.

Meanwhile, blacks continue to try to communicate—to elicit white responses to crushing American needs, which will not be met without their help. Roy Wilkins says, "No society gets very far, or gets very solid, if it prohibits one-third of any minority from achieving. To deny them the tools of achievement—to deny them the opportunities of making something of themselves—is a very unsafe thing for any society to do. There can be an upheaval of the poor that will endanger the seemingly strong, but very illusory, solidity of that society."

Vernon Jordan adds, "If we don't find a way out for that hard core one-third, I believe that we have the seedbed for the most rebellious revolution we can imagine."

So, black Americans keep trying to talk to America. Right now, it is almost like the Zen question—what is the sound of one hand clapping?

But blacks are not prepared to give up. John Lewis put it best. "Of course, I'm optimistic. In this effort you have to be, or you become immobilized. I think it goes in cycles. We're not where I thought we'd be by now, but there has been some change. I think that's the way life is. You struggle and you go on to the next obstacle. Always working toward an ideal. Eventually, something has to give."

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WHATSOEVER HAPPENED TO SCHOOL  
DESEGREGATION?

(By Alex Poinsett)

In May 1954, the grade schools of Topeka, Kan., were segregated. Today, 20 long and tumultuous years after the Supreme Court outlawed one-race schools there and elsewhere, Topeka's schools are still largely segregated. The U.S. Department of Health, Education and Welfare (HEW) recently gave that city's school board another 30 days—not to desegregate—but merely to plan how. If Topeka was only a minor blemish in an otherwise flawless picture of school desegregation around the nation, there would be little cause for concern. Unfortunately, how-

ever, Topeka very nearly typifies the state of the nation's school desegregation, as if the often violent educational spasms of the last 20 years had been, after all, like so many Chinese firecrackers, mere exploding puffs of insignificance. While almost 2.5 million black pupils attend majority-white schools (an increase of nearly one million since 1968), that 2.5 million is only one third of all black students. In other words, 20 years after the U.S. Supreme Court declared racially separate schools unconstitutional, HEW reports that nearly two-thirds of the nation's black pupils are still attending schools that are overwhelmingly black.

The segregation pattern varies, of course, from region to region but it has been dramatically shifting its focus in recent years from the South to the cities of the North. The pattern has remained virtually unchanged in the North and West since 1968 with only 29.1 percent of black pupils in desegregated schools and 43 percent still attending predominantly black schools. Surprisingly, if any substantial statistical progress has occurred anywhere, it has been in the South where, HEW reports, desegregation has been substantial in every state and nearly complete in some. Court decrees have sharply increased the number of desegregated black students from 18 percent in 1968 to 46 percent, a spectacular contrast to the less than one percent of blacks who attended predominantly white schools in the South 20 years ago.

But quantitative shifts in decimal points on HEW's computers have not necessarily produced qualitative changes in the schools. And so, black pupils have been restricted to segregated classrooms within allegedly desegregated schools and have been victimized by such other "second generation" problems as separate bell systems for calling black and white children to classes, segregated school buses and segregated extra-curricular activities. All too often, faculty and staff members have been so assigned as to leave schools unmistakably identifiable as black or white. In short, allegedly desegregated schools still operate on terms set by whites, governed by white rules and committed to perpetrating white values, attitudes and traditions.

Yesterday, Southern parents stood in public places shouting that their children were not going to attend school with "them niggers." Today they simply remove their children from the public, desegregated schools and place them in all-white, private academies. The Southern Regional Council estimates that as many as 500,000 white pupils are attending—often at public expense—these segregated academies which, ironically, are sometimes identified in their nomenclature as "Christian" or "Church."

That school desegregation has fallen far short of the goal set in 1954 is quickly apparent after only a cursory survey of the last 20 years. Yesterday the national mood was summed up by protesting whites screaming: "Two, four, six, eight, we don't wanna integrate!" Today white sentiment is still as grudging as ever, saying in effect to blacks: "If you get in, you'll pay dearly." And so, the desegregation price for too many black children has been increased anxiety, problems of racial identity and internalization of whites' assertions of blacks' inferiority. If school desegregation has been a major educational issue during the last two decades, it also has been a plaything unscrupulously manipulated by politicians. If the federal courts have consistently spelled out the ground rules for eliminating dual schools, the U.S. Congress and Presidents Dwight D. Eisenhower, John F. Kennedy, Lyndon B. Johnson and Richard M. Nixon have been unaggressive about implementing the courts' decrees. If school desegregation has summoned the blazing courage of black children, physically and psychologically abused in racially mixed schools, it also

has exposed the cowardice of their white assailants.

There were only four grade schools for blacks in Topeka 20 years ago and these were administered by a black man, Herman Caldwell, whom many parents accused of trying to "re-segregate" the city's "integrated" high school. For instance, Caldwell inaugurated a system of two bells for assemblies. The first called white students to the auditorium. The second, known as "the nigger bell," called black students to an upstairs classroom where they had to listen to a talk by Caldwell, or perhaps watch some photo slides. Caldwell also isolated the black athletes and set up a Jim Crow schedule for them with all-black teams from out of town. Black girl students were not included in the regular domestic science classes, but were farmed out as unpaid mother's helpers in the homes of black housewives. And once, at Caldwell's order, black students were turned away from the door at the senior prom and directed to another address where there was to be a "special party" for them alone.

"He woke some of us up to what a horrible thing segregation was," one black parent later admitted. "We'd been living with it so long it had become almost a way of life. But when Mr. Caldwell began tearing down any little gains we'd made over the years, that started us to thinking. When we wanted to get rid of him, we found we had to get rid of segregation itself. Because that was what he was put in office for—to keep other blacks in their places!"

Topeka's school segregation was challenged by the Rev. Oliver Brown (and 12 other parents), because his seven-year-old daughter, Linda, was barred from a white school only three blocks from her home and was forced to travel 21 blocks to a black school. *Brown v. Topeka*—or more formally, *Oliver Brown et al. v. Board of Education of Topeka, Kan., et al.*—came to be one of five cases consolidated by the Supreme Court for its landmark 1954 decision. These cases from Kansas, South Carolina, Virginia, and Delaware attacked state laws requiring school segregation, while a similar District of Columbia case (*Bolling v. Sharpe*) attacked federal statutes which segregated the schools in that reputed citadel of democracy, the nation's capital.

The unanimous Supreme Court decision addressed to these injustices was read slowly by Chief Justice Earl Warren. All of his colleagues were present that momentous Monday morning in May 1954 to make their agreement plain—even Justice Robert Jackson, who was seriously ill and had to leave a hospital bed to be there. In language that he had been careful to make "short, understandable by the lay public, and unemotional," Warren answered the constitutional question that had been raised: "Separate educational facilities are inherently unequal . . . such segregation is a denial of the equal protection of the laws (guaranteed by the 14th Amendment)."

In more detail, Warren set forth the reasons for the Court's opinion:

"Education is perhaps the most important function of state and local governments . . . (It) is required in the performance of our most basic public responsibilities . . . It is the very foundation of good citizenship . . . In these days it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity . . . is a right which must be made available to all on equal terms.

The decision rejected the "separate but equal" doctrine set forth 5 years earlier in *Plessy v. Ferguson*. Thus was sounded the death knell of segregated education—at least on paper. The former Dean of the Yale Law School, Louis H. Pollak, speculated that "except for waging and winning the Civil War

and World Wars I and II, the Court's decision was probably the most important American governmental act of any kind since the Emancipation Proclamation." Black psychologist Kenneth Clark, whose scholarly researches on the devastating impact of segregation on black children had helped buttress the decision, predicted in a burst of optimism that significant desegregation would take no more than 10 years. At the very least, the decision seemed to vindicate those who still tenaciously held to the faith that the ultimate solution to the black man's agonies lay within the Constitution. Less than an hour after Warren's historic pronouncement, the Voice of America and the U.S. Information Service shortwaved the news around the world proclaiming *Brown* a victory for democratic principles and practices and graphic proof that blacks were not universally mistreated in white America.

And the boast was true—at least on paper. For *Brown* had declared that segregating the races by law stigmatized the excluded school and its children, no matter how excellent its educational quality. In other words, if separate schools were "equal" in all respects except only the fact of separation, or even if a black school had better facilities and instruction than its neighboring white school, segregation still denied equality to the excluded children. Furthermore, segregated schooling taught black and white children that qualitative differences existed between them, that each white was superior to all blacks and each black child inferior to all whites. True enough, black children were repeatedly told they were equal to everyone else, but their segregated schools—indeed their entire segregated existence—never allowed them to practice that equality.

Beyond that, *Brown* decided that blacks had a human right to enjoy freely and equally services provided at public expense, including, of course, public-financed education. On the question of just how and when the corpse of Jim Crow was to be buried, however, the Court postponed its final decision pending answers to questions about details and timing. After all, thousands of communities with different conditions and problems were involved. How far should the Court go in making rules to apply to all? And how fast should it proceed? "Forthwith" or with enough time to permit a "gradual adjustment" to the new order of things? The answers came a year later in *Brown II*. On the basic question of desegregation, the Court held to its 1954 position. But on the question of how fast it should be achieved, the Court compromised. It instructed federal courts to issue such directives as were needed to desegregate public schools "with all deliberate speed."

Predictably, *Brown I* and *Brown II* generated mixed reactions around the nation. Southern newspapers and journals lashed out against the decisions, crying "Never!" and calling for Chief Justice Warren's impeachment. Extremists threatened secession while moderates promised they would not comply with the decisions. Outraged Southern politicians accurately predicted "a generation of litigation" and 69 congressmen from Southern and border states produced a manifesto attacking *Brown*, accusing the Supreme Court of abusing its judicial power and arguing that the Constitution had not even mentioned education.

Accordingly, no major desegregation occurred in any of the 11 Deep South states in 1955 and there was little prospect for any under President Eisenhower, the darling of Southern voters who, in the 1952 election, helped him become the first Republican president in 20 years. By January 1956, Eisenhower had sent to Congress a plan of federal aid to school construction. When Congressman Adam Clayton Powell suggested a rider to this bill, withholding funds from states that had not desegregated their school sys-

tems, the President waspishly dismissed the amendment as "extraneous" to the legislation.

Indeed, the White House seemed serenely indifferent to Southern non-compliance until the fall of 1956 when National Guard troops went to Clinton, Tenn., and Sturgis, Ky., to quell violence while desegregation proceeded. Significantly, the governors of the two states—not the federal government—had acted. Even when Texas Gov. Allan Shivers defied the federal government by sending Texas Rangers to remove black students from newly-desegregated schools in Mansfield, Texas, the President did absolutely nothing. Indeed, whatever desegregation occurred in 1956 came without his help. As late as July 1957, he said: "I can't imagine any set of circumstances that would ever induce me to send federal troops into an area to enforce orders of a federal court."

Three months earlier, however, the U.S. Court of Appeals had approved a plan submitted by the Little Rock, Ark., school board to desegregate, among others, its Central High School. An injunction to halt the action was voided by a federal judge and the school was scheduled to desegregate on opening day. Immediately, Gov. Orval Faubus called out the Arkansas National Guard to bar blacks from Central High. The painful results were later recalled by Elizabeth Eckford, one of the new students who had mistakenly walked to the school alone.

*At the corner I tried to pass through the long line of guards around the school so as to enter the grounds behind them. One of the guards pointed across the street. So I pointed in the same direction and asked whether he meant for me to cross the street and walk down. He nodded "yes." So I walked across the street conscious of the crowd that stood there, but they moved away from me. For a moment all I could hear was the shuffling of their feet. Then someone shouted "Here she comes, get ready!" I moved away from the crowd on the sidewalk and into the street. If the mob came at me I could then cross back over so the guards could protect me.*

*The crowd moved in closer and then began to follow me, calling me names. I still wasn't afraid. Just a little bit nervous. Then my knees started to shake all of a sudden and I wondered whether I would make it to the center entrance a block away. It was the longest block I ever walked in my life. Even so, I still wasn't too scared because all the time I kept thinking that the guards would protect me.*

*When I got right in front of the school, I went up to a guard again. But this time he just looked straight ahead and didn't move to let me pass him. I didn't know what to do. Then I looked and saw that the path leading to the front entrance was a little further ahead. So I walked until I was right in front of the path to the front door. I stood looking at the school—it looked so big! I guess they were waiting to see what was going to happen. When I was able to steady my knees, I walked up to the guard who had let the white students in. He, too, didn't move. When I tried to squeeze past him he raised his bayonet and then the other guards closed in and they raised their bayonets. They glared at me with a mean look and I was very frightened and didn't know what to do. I turned around and the crowd came toward me. They moved closer. Somebody started yelling, "Lynch her! Lynch her!"*

*I tried to see a friendly face somewhere in the mob—someone who maybe would help. I looked into the face of an old woman and it seemed a kind face, but when I looked at her again, she spat on me. They came closer, shouting, "No nigger bitch is going to get in our school. Get out of here!"*

*I turned back to the guards, but their*

faces told me I wouldn't get help from them. Then I looked down the block and saw a bench at the bus stop. I thought, "If I can only get there I will be safe." I don't know why the bench seemed a safe place to me, but I started walking toward it. I tried to close my mind to what they were shouting, and kept saying to myself, "If I can only make it to the bench I will be safe."

When I finally got there, I don't think I could have gone another step. I sat down and the mob crowded up and began shouting all over again. Someone hollered, "Drag her over to this tree! Let's take care of this nigger." Just then a white man sat down beside me, put his arm around me and patted my shoulder. He raised my chin and said, "Don't let them see you cry."

But the terror-filled experience reduced Elizabeth to hysteria. A federal judge again ordered the school desegregated and again Faubus refused. Although he and Eisenhower met hurriedly to avert any further trouble, violence erupted at Central High within eight days and bystanders were injured. Finally, the reluctant President acted. Nationalizing the Arkansas National Guard, he also ordered elements of the 101st Airborne Division into Little Rock—not because he personally favored integration however—but in order to insure the integrity of the U.S. government.

Even so, numerous desegregation-related bombings, burnings and murders occurred in the years that followed. The schools of Prince Edward County, Va., one of the original Supreme Court defendants in 1954, were closed for four long years. In almost all cases it was blacks who suffered most but not even Supreme Court justices were immune. Justice Hugo Black was denounced so bitterly by his fellow Southerners that it was 13 years before he made an official visit home. The determined resistance to *Brown* produced more White House inaction, eroded black faith in the legal-political process and detonated the 1960s—that passionate decade which spawned the sit-inners, freedom riders and eventually the blast-furnace angry urban guerrillas, grown up survivors of the violent days of Elizabeth Eckford and others.

To undermine *Brown*, school districts first declared policies of desegregation, then permitted only handfuls of black children to attend mixed classes. Atlanta, for example, desegregated only nine blacks in 1962 after much fanfare. Under a Nashville plan, tediously stretching desegregation over a 12-year period at the rate of one grade a year, 19 blacks entered mixed classes in 1957. Five years later the city had a token 270 blacks in the first five grades of formerly white schools. Eight years passed after *Brown* before either Alabama, Mississippi or South Carolina desegregated even one school. After nine years, only about one in every 100 black children attended a desegregated school.

The South's massive resistance to *Brown* was counterpointed in the North where protecting the neighborhood school was the Northern equivalent of preserving the Southern way of life. Many Northern school boards were as guilty of perpetrating segregation as those in the South. In an important, 1961 decision, anticipating Northern litigation still to come, U.S. District Judge Irving B. Kaufman declared segregation illegal in New Rochelle, N.Y., thus making New York the first Northern State to have a school within its borders desegregated by Federal court order.

Judge Kaufman's decision triggered more than a dozen suits in Northern communities, including Chicago, Philadelphia, Newark, N.J., and Kansas City, Kan., and spurred voluntary school desegregation in numerous other communities. By 1963, however, only a thimbleful of black pupils were desegregated in the 17 Southern and border states and within a year Northern boycotts of the schools by protesting blacks erupted in New

York, Chicago, Cleveland and Boston. Faced with only three percent desegregation in ten years, Congress enacted the Civil Rights Act of 1964. Titles IV and VI of the new law removed school desegregation enforcement from the courts, where it had been at a near-stand-still since 1954. Accordingly, the U.S. Commissioner of Education had the primary administrative responsibility with assistance from the U.S. Attorney General, newly empowered to sue local school systems refusing to desegregate. Since the Commissioner was empowered to cut off federal funds to law-breaking school systems, he was armed with a bludgeon.

Apparently, political considerations stayed his hand, however, after Southern politicians campaigned vigorously in Congress and elsewhere to convince the nation that the Commissioner's Office of Education had "gone beyond the law" in enforcing Title VI. While Southerners assaulted OE Commissioner Harold Howe II, he reportedly was summoned to the White House and told to cease talking so much about desegregating the schools. Then when President Johnson was queried later about how hard the government should push for school desegregation, he, like Eisenhower, was ambiguous. He wanted the law "fully enforced at all times," he said, then added: "I realize that in some instances there has been some harassment, some mistakes have been made, some people have been enthusiastic and differences have developed."

Many Southerners quickly concluded that the President had apologized for OE's alleged misbehavior. At the very least, they had successfully shifted the spotlight away from the illegal dual school systems in their states and from the nation's paper-commitment to dismantle them. By February 1967, OE had cut off funds to only 39 school districts in the South and delayed funds to only 152 others. OE's enforcement lagged despite its own massive study—the Coleman Report—which presented data to prove that desegregation helped blacks to make significant gains in their educational achievement while whites maintained their previous achievement levels as long as they remained in the majority.

Hitch-hiking on much of the Coleman Report's data, the U.S. Civil Rights Commission's study of *Racial Isolation in the Public Schools* also argued strongly for an end to school segregation after finding it was not only intense in more than 75 U.S. cities, but also growing worse despite the Supreme Court's 1954 decision.

Thoroughly disheartened by the snail's pace of school desegregation around the nation, many blacks in the mid-1960s rejected the idea of entrusting their children to schools dominated by whites and began demanding "community control" of black schools. Many were appalled by the "re-segregation" that often occurred in newly-desegregated schools which turned all-black as soon as white parents were able to move their children. Many blacks also felt that attending schools with whites would not alone solve the peculiar problems of black children. Therefore, went the argument, black control of black schools was a necessary first step toward salvaging the millions of black students systematically mis-educated in the nation's schools. Henceforth, school officials would have to answer, at last, to the very people they were mis-serving. Through local school boards and advisory panels, black parents would help insure better education for their children and thus exercise the same kind of power traditionally wielded by white suburban parents.

Public debate over community control and the hundreds of questions it raised was caught up in the whirling dynamics of desegregation during the 1960s. Southern educators devised plans and schemes that they hoped would satisfy federal judges that the

systems under litigation were acting in good faith and were making reasonable efforts to desegregate their schools. A favorite ploy was the so-called "freedom of choice" plan which put the burden of desegregation on the children seeking it. In hundreds of school districts either no change or only token changes occurred in the rigidly segregated pattern. Hundreds of complaints flooded into the Office of Education about widespread efforts to discourage black parents from choosing white schools for their children. In some of the worst areas no overt threats were necessary, since many blacks received little cards showing a picture of eyes peering through a tiny square in the middle. "The eyes of the Klan are on you," was the printed warning. It was signed: "United Klans of America, Inc."

Finally, a series of federal court cases (*Green v. New Kent County*—1968 in Virginia, (*Alexander v. Holmes County*—1969 in Mississippi), (*Swann v. Charlotte-Mecklenburg*—1971 in North Carolina), not only struck down the "freedom of choice" plans but also instructed school authorities to take all necessary steps to eliminate segregation "root and branch." The courts defined a desegregation plan as inadequate if it did not actually bring about a unitary system, that is, schools that were neither black nor white, but "just schools." And the Supreme Court refused to tolerate further delays in implementing school desegregation, declaring unanimously that its 1955 all-deliberate-speed rule was "no longer constitutionally permissible."

In the wake of *Swann*, federal courts throughout the South ordered extensive busing programs (some of them drawn up by HEW), which in many cases were designed to achieve a racial distribution in each school roughly equivalent to that of the entire school district. As schools prepared to open for the 1971 fall term, however, statements by President Nixon and Chief Justice Warren E. Burger short-circuited these busing plans. First, the president declared that he was "against busing as that term is commonly used in school desegregation cases." Announcing that he had ordered the federal government to disavow a HEW-devised busing plan for Austin, Texas, he also proposed a \$1.5 billion Emergency School Assistance Act and ordered HEW Secretary Elliot L. Richardson to draft an amendment to prohibit use of federal funds to finance busing. Later, the U.S. Justice Dept. joined the Corpus Christi, Texas, school district in asking the Supreme Court to delay implementation of a HEW busing plan for that city. Then Chief Justice Burger, who had written the *Swann* decision, warned federal judges that they were misreading *Swann* and, in essence, going too far by attempting to achieve fixed racial quotas in school districts.

Amidst this Washington backlash, national attention focused momentarily on Pontiac, Mich., a small industrial town 20 miles north of Detroit and the first large northern city to be ordered by a federal court to bus children to achieve school desegregation. Judge Damon J. Keith, a black jurist, had noted in his decision involving the busing of approximately 9,000 of the city's 24,000 students: "The harm to another generation of black children while awaiting implementation of 'long-range plans' to integrate cannot be tolerated and no degree of expense is unbearable when placed alongside of the unbearable situation which exists for these black children..."

Nevertheless, white parents in Pontiac thumbed their noses at Judge Keith's decision by staging a massive, anti-busing rally. Then, one late August night, vandals ripped a hole in the chainlink fence surrounding the school bus yard, dynamiting and burning ten buses worth about \$50,000. On the opening day of school, five women chained themselves to a gate at the bus yard to prevent buses from leaving. Drivers who

managed to move their buses were jeered by mobs who blocked passage with their bodies, hurled stones through the windows and punctured the radiators with sharpened broomsticks. Cars attempted to run off the road buses loaded with children and one bus barely missed plunging into a river. Pickets ringed a number of schools, yelling "Nigger! Nigger!" at black children and black teachers. At one school, sheriff's deputies and state police had to escort black pupils to their classes.

Warned by the FBI of a Ku Klux Klan plot to "execute" him, Judge Keith not only ignored the threats, he sternly warned protesting white parents that his busing order would be carried out even if U. S. marshals or FBI agents had to ride the buses. Eventually, the former Grand Dragon of the Michigan Ku Klux Klan and four of his associates were indicted for the bus bombings. Judge Keith's decision was upheld by the U. S. Court of Appeals and, in effect, confirmed by the U. S. Supreme Court which refused to review it.

Even so, busing became a month-by-month, carefully manipulated exercise in political gamesmanship as well as an education issue during the 1972 presidential campaign. In his January state of the Union message, President Nixon announced he would oppose busing to achieve what he called "arbitrary" racial balance. In February, he called for a federal study of alternatives to busing. In March, two days after the Florida presidential primary in which 74 percent of the state's voters said they favored a constitutional amendment against busing, Nixon asked Congress to approve a moratorium on all court-ordered busing and new educational bills to stop all new busing. But he said absolutely nothing about prohibiting the use of public funds to transport pupils to parochial schools and to racially segregated, private academies. In April Ziegler announced that Nixon would support a constitutional amendment against busing if Congress did not pass antibusing legislation. In May, seven lawyers from the Justice Department's Civil Rights Division resigned in protest over Nixon's school desegregation policies. And in June, the President signed a Higher Education Bill which provided all further court-ordered busing would be stayed until all current appeals were exhausted or until January 1974.

Following President Nixon's lead, several states—North and South—have passed laws, resolutions, and even constitutional amendments opposing busing as a means of achieving desegregation. The NAACP Legal Defense Fund anticipates that continued gasoline shortages may adversely affect school desegregation programs requiring busing. But in Memphis, where the busing issue has been litigated, federal courts have ruled that gasoline may not be withheld to thwart desegregation.

Meanwhile, local, state and national election candidates have vied with each other in declaring their unalterable opposition to busing, instead of rationally debating the issues involved. With opposition to busing as their subterfuge, school districts presently under court orders have filed new appeals to postpone school desegregation. And the federal executive branch has diminished its role as enforcer of desegregation requirements to such an extent that a law suit against HEW has led to a court order directing the department to resume its responsibility for requiring compliance with the law.

As might be expected, Nixon's obvious manipulating of the busing issue to win votes has obscured a number of important facts compiled by the Metropolitan Applied Research Center (MARC) and others. From 1929 to 1954 there were no outcries against busing when it made possible the transition from the one-room schoolhouse to the con-

solidated school. MARC notes that there also were no emotional outcries or demands for restrictive legislation from Congress or the President when white and black children were (and are) being transported long distances at greater cost to maintain racially segregated schools. Indeed, during the year before the *Brown* decision, the courts repeatedly ruled against black parents who had sued numerous school boards for assigning their children to segregated schools. In short, the outcries against busing only began when it was used to desegregate.

Nixon claims busing is "massive" and expensive. But the facts are that only three percent of public school busing has been for desegregation purposes and the total per-pupil cost has ranged only between \$30 and \$60 annually for each student or only about 1.5 to 3.0 percent of the total school budget. Nixon claims busing is "inconvenient" to students. But in six of 11 school districts studied by the NAACP Legal Defense Fund there was no increase in the average time spent by students on the bus. The average increase for the other districts was only 15 minutes. Nixon claims busing is unsafe. But the facts are that school busing is the safest means of transportation in the nation—both in terms of accident and fatality rates.

Whether busing is the only realistic way that urban school systems can be desegregated is still very much an unsettled question, but most of the techniques that have not involved busing have failed because of heavily segregated residential patterns in the cities (In Chicago, 98 percent of the black pupils attend predominantly black schools; in Los Angeles, 92 percent; in New York, 84 percent). Accordingly, the U.S. Court of Appeals in March 1972 ordered the Norfolk, Va., school board to provide free transportation as part of its desegregation plan on the grounds that without transportation to the assigned school, the whole desegregation plan would be a "futile gesture" and a "cruel hoax." If, then, busing is the most practical means by which most cities can desegregate their schools, HEW estimates that it will involve about 33 percent of the grade school students in a typical urban area. Accordingly, the federal courts have been erasing the geo-political boundaries between urban and suburban and between *de facto* and *de jure* segregation.

The Latin distinctions figured prominently in a Denver case (*Keyes v. School District No. 1*), the first school desegregation suit to reach the Supreme Court from a major city outside the South. One-race Northern schools had generally been considered the result of "de facto" segregation in housing rather than the result of state or local government action. Northern schools had been distinguished from the *de jure* (state established) segregated schools of the South and had not been subject to the remedial orders issued by Southern federal courts.

But in *Keyes* the Supreme Court found that *de jure* action in Denver (as also in Pontiac, Mich., and elsewhere) had produced a segregated attendance zone which contained 40 percent of the city's black students. The Supreme Court said the burden of proof was on the school to show that its action in segregating one district was unrelated to the entire system. If the Denver board cannot prove segregation in one sector is isolated from the rest of the system, then the entire system will be considered tainted and will have to be, in the Court's view, desegregated "root and branch" just as any Southern system would be.

The more elusive urban-suburban issue grows out of the so-called "white flight" to the suburbs. In two dramatic examples, Richmond, Va., and Detroit, Mich., no amount of redrawing of attendance zones, pairing schools, or even busing within each city can produce a unitary system, since not enough white pupils remain in the school

systems to produce substantially mixed student bodies. Though mindful of this, federal district courts in Michigan and Virginia nevertheless have ruled that state and local government officials as well as school officials followed practices which segregated and discriminated against blacks and thus violated the 14th Amendment. Since the Detroit and Richmond school systems are, in fact, segregated, declared the courts, they ought to be merged with their surrounding suburbs.

In the Detroit case (*Bradley v. Miliken*), Federal District Judge Stephen Roth's 1971 ruling was upheld by the U.S. Court of Appeals, but a later rehearing of the case has left further decision still pending. In the Richmond case (*Bradley v. Richmond*) the 1972 ruling of Federal District Judge Robert R. Merhige Jr. was voided when the Supreme Court, in a dramatic 4-4 vote (Justice Lewis F. Powell abstained because he had once been a Richmond school board member) upheld a lower court ruling that the merger of the predominantly black Richmond school district with the largely-white, adjacent school districts of Henrico and Chesterfield counties was unconstitutional.

Since the population shifts which created the Richmond and Detroit cases have created other metropolitan bullseyes—black centers ringed by white—the national issue of merging city and county school districts to bus students has been joined.

Clearly, the work of dismantling the nation's dual school systems has only begun with the first generation of students since the 1954 Supreme Court decision. The advent of the so-called unitary school systems in the South, where schools were declared neither black nor white but "just schools," has ushered in a "second generation" of desegregation problems involving more obstacles than the massive resistance of the 1960s. The price of desegregation has included either a wholesale shut-down of black schools or their merger with others which, in either case, shifted to blacks the burden of adjusting to a new white authority structure in the hands of policy makers who had staunchly resisted desegregation.

Moved into white-dominated schools, black pupils too easily have become special targets of policies which favor whites while rejecting black traditions and culture. They have been excluded from extracurricular activities, tracked into segregated classes "pushed out" or confronted with condescension and hostility. In one desegregated school where black and white students sat on opposite sides of a classroom, a teacher regularly turned her back to the black students and addressed the whites. School confrontations have been provoked through discriminatory disciplining of black students, through malicious display of Confederacy symbols and through the massive displacement of black principals, teachers and coaches. Since 1954, at least 31,584 black educators have been dismissed, demoted or displaced, thus creating an estimated \$240.5 million loss in the southern black community.

These "second generation" problems have received little public attention by comparison with the evils of *de jure* segregation itself and, even more unfortunate, neither the U.S. Office of Education nor HEW has made a serious, ongoing monitoring effort to gauge the breadth and intensity of these problems. Yet, the problems threaten efforts to create unitary systems.

Even so, the evidence is by no means conclusive that desegregation alone is educationally beneficial. On the one hand, the U.S. Civil Rights Commission's 1973 study of 10 communities has found that school desegregation contributed to some educational improvements largely because the "shock of desegregation" had forced local officials to take a "new and hard look" at school pro-

grams and, in many cases, revise them. Officials have also given teachers specific training in preparation for desegregation and special federal grants have helped to broaden course offerings and to add staff specialists.

On the other hand, some educators have come to believe that desegregation is a necessary but not sufficient condition for positive results. For equal education implies more than just equal physical space in the same classroom, the same teacher or the same principal. It also implies equal say-so over curricula, equal access to all available resources and equal access to school policy makers and managers. So far, desegregation has not guaranteed these additional rights to black parents and, to that extent, it has not guaranteed quality education. The Supreme Court declared school desegregation a national policy 20 years ago. Since only one-third of the nation's black pupils are desegregated, and since the would-be hero of the Watergate hearings, Sen. Sam Ervin (D., N.C.), is waging a new offensive against busing, and, since blacks have little reason to believe that white school officials will treat black students any more fairly today than they treated Central High School graduate Elizabeth Eckford and others yesterday, since all of these and more are serious considerations, the question is: Will, say, 40 more years be required to finally construct a unitary school system? And, if so, will this be in the best interests of black people? If not, what will be? On the resolution of these sorts of questions rests the future of public school education for both black and white America.

#### 1954 REVISITED

(By Jack Slater)

Everything has changed, and so little has changed. Since May 17, 1954, when the U.S. Supreme Court outlawed racial segregation in public schools, it has been as if we have spun through the center of a contradiction, past the first brave hopes engendered by the Court decision itself, past the mobilization of the first White Citizens Councils, past the sit-ins and the freedom rides and the massed swaying crowds at the 1963 March on Washington—past all of it, across a trail of burning cities, lynchings and assassinations, into—finally—the terrible knowledge that, for all of the changed landscape around us, America remains much the same.

A Civil Rights Act of 1964 was passed, an era of segregation in transportation and other facilities was ended, a black political base in scores of cities was established. Yet it is still a country in which too many social institutions and particularly the public schools abort and butcher their meaning for black children—and this despite a Supreme Court ruling issued 20 years ago. The ruling, won only after extraordinary labor was achieved by a handful of lawyers, social scientists and others who refused to accept less than full legal equality for black people. It was their refusal which started America on its long journey through the contradiction of the past 20 years. They changed everything by bringing the country forward even to this place in which so little has changed.

Most of them are middle-aged or elderly now. Some have retired or have, like Dr. Kenneth B. Clark, threatened retirement; and some are still very much at the helm. Like Thurgood Marshall, nearly all of them were carried upward by the 1954 victory into the highest levels of their careers, while a few such as the Rev. Oliver Brown and his daughter, Linda, remained stationary, or became heroes only for the moment before vanishing once more into obscurity.

A fiercely determined yet gentle black man who had lived all of his life in Topeka, Kans., Oliver Brown, along with his daughter, served the 1954 decision in the same manner that Rosa Parks would later serve

the Montgomery bus boycott. He challenged a way of life, as Mrs. Parks did, and thereby gave birth to a series of events which changed the direction and expression of American racism.

In 1950, he sued the Topeka Board of Education after he attempted unsuccessfully to enroll his seven-year-old daughter in a white school only three blocks from their home. A three-judge federal court ruled against him in 1951 by holding that it was bound by the 1896 "separate-but-equal" doctrine of *Plessy v. Ferguson*. Brown promptly appealed to the Supreme Court which agreed to review his case, just as it later agreed to review the school segregation cases then in litigation in South Carolina, Virginia, Delaware and the District of Columbia. The Brown case, however, won top billing, and when the Court eventually consolidated all of the school cases under a single heading, they became known forever as *Brown v. Board of Education*.

Oliver Brown lived long enough to witness only a part of the extraordinary history he helped to create. In 1961, he died of a heart attack on the eve of the decade's battle for civil rights. His daughter, Linda, however, did witness the 1960s. Yet to her regret, she remained in Topeka, on the outskirts of the protest movement, and grew to become a woman influenced now not so much by the sweep of history as by the claustrophobia of small-town Americana.

"I'd like to leave Topeka," she says, sitting down in the living room of her townhouse. "There are so few opportunities here. Topeka is a good place to raise children, but . . ." and then she smiles a little and completes her sentence with a slight shrug of her shoulders.

Divorced, the mother of two grade-school children and a keypunch operator working nights at Goodyear, Linda Brown Smith is a soft-spoken, heavy-set, somewhat diffident woman who sees her life clearly defined by that single transcendent moment when she and her father entered the all-white Sumner Elementary School to seek her admittance. It is that moment and the subsequent 1954 decision concerning it which gives not only meaning but victory to her life. Later, years later, after she experienced disappointment in marriage, disappointment in Topeka's vistas and disappointment at not being able to finish college ("I went to Washburn University of Topeka for two years," she says, "but my family just didn't have enough money to allow me to finish"), the year 1954 and her relationship to it would remain the single, happy constant in her life. And her pride in that relationship emerges now as she takes a visitor on a late afternoon tour of her Topeka, driving past the formerly white Sumner Elementary School, past the once all-black Monroe Elementary School to which she traveled 21 blocks, and under the recently constructed freeway trestle where the Brown family home once stood only three blocks from Sumner. It is a short tour of familiar mid-western streets which have become the map to Linda Smith's consciousness.

"My father was a strong, courageous man," she suddenly says. By now, the tour has ended, and she is heading homeward to get ready for work on the nightshift at Goodyear. "If my father had lived, he might have become another Martin Luther King. I often wish he could have seen it all, the '60s, the civil rights movement, all of it," she says, her voice rising for the first time with an edge of emotion. Then the car comes to a stop in front of her home, and she leaves the past behind her to get ready for the present.

"It is difficult now to understand the climate in which we were developing the cases during those years," says James Madison Nabrit Jr. "It's been a long time, after all. And it's almost impossible to make some-

body else understand, to make you understand the animosity we encountered in those days as we went from courtroom to courtroom throughout Mississippi, Alabama, Georgia, Florida, South Carolina, Texas, Kentucky. It's difficult to transmit the feeling of those times, the atmosphere."

A year younger than the century, he sits in his Washington, D.C., home smiling the gentle, worldly smile of a wise old man and speaking in the thrilling measured cadences of a country preacher. Yet James Nabrit, former president of Howard University, is no preacher, although he is—in the broadest sense of the term—an evangelist, an evangelist who chose the law rather than the Gospel and became a civil rights attorney at a time when such a species hardly existed. Much of his distinction today rests on his participation in the *Brown* case as one of the principal attorneys for the plaintiffs. But he had been toiling in the vineyards toward *Brown* many years before 1954.

"Your travel was restricted," he continues, "your accommodations were restricted and your life, once you arrived in those towns, was threatened. Nor was there any pay, except for those who were employed by the NAACP. Now in that kind of situation, lawyers had to have something else, some commitment, otherwise they wouldn't have been fools enough to subject themselves to that sort of thing. The rewards were just not apparent at that time. People would say, 'Why are you wasting your time? You can't win. This is a white man's paradise. You've got white judges, white lawyers, white prosecutors, white juries.' And as though that weren't enough, we had difficulty getting clients, because in those days there was a great fear among black people about exposing themselves as opponents to the system. We had difficulty finding people to represent. Ethically, of course, we weren't supposed to go out and look for them. But if we had sat in our offices waiting for clients to come to us, we'd be sitting there now."

The lawyers were directed by special NAACP counsel Thurgood Marshall. How did he react to the hostility and the threats?

"Thurgood developed a way of shedding the animosity we encountered," Dr. Nabrit replies. "I think he played a make-believe game that the hate directed toward him didn't exist. He tried to pay no attention to it. Also, he could be a cold-blooded type—and that quality was obviously a protective device. He could go for the jugular vein and not be too concerned about the reaction of whites or blacks. At the same time, Thurgood was a charming man. He had the ability to encase himself in a kind of aura which attracted people to him. Then once he had encased himself completely in this aura, he would leap out of it at the opposing lawyers, at the jury. And when the thing was over, even though he had clawed these people to their very guts, the facade of charm, humor and coolness still captivated them."

Dr. Nabrit became actively involved in the long series of legal battles preceding the *Brown* case in 1936 when he joined the law school faculty at Howard University. During that year, the law school initiated the now-famous "dry-runs" in which faculty members, NAACP lawyers, students and community members turned themselves briefly into skeptical, disbelieving Supreme Court justices. Going through their dry-runs shortly before a Court appearance, Dr. Nabrit and others, including Thurgood Marshall, would argue before the Howard "court" in preparation for the real Court. "Through the years the cases involved transportation, education, and voting rights," Dr. Nabrit recalls. "They were always difficult and often complex, but I don't remember being asked one question in the Supreme Court which had not already been asked and answered during

those dry-runs, which, incidentally, went on regularly for 19 years—till 1955."

The first of several successful NAACP suits seeking admission of black students to graduate and professional schools also began in the late 1930s. Always losing those suits in the lower courts, the NAACP Legal Defense Fund appealed to the sympathetic high Court. And more than other single factor, the cumulative effect of the decisions rendered by the Court, decisions which opened graduate schools to blacks in Missouri (1938), Oklahoma (1950) and Texas (1950), served as precedents to influence the landmark decision rendered in 1954.

In fact, the big push toward what was to become the Court's school desegregation order began in the years immediately before the Legal Defense Fund won the 1950 graduate school cases in Oklahoma and Texas.

Constance Baker Motley was there at that time, employed as a Legal Defense Fund staff member writing briefs for the Oklahoma and Texas cases, and participating in all of the dry-run arguments at Howard. "It was a great time for all of us," she recalls, referring to the important desegregation efforts of those early years.

Mrs. Motley, who conveys an impression of cool reserve and strength, had joined the NAACP legal staff shortly before her graduation from Columbia University School of Law in 1946. Later, in the 1960s, she was to become the first black woman elected to serve in the New York State Senate. And later still, she would serve as the first woman borough president of Manhattan before her 1966 appointment and present position as a judge of the U. S. District Court in New York. In the mid-1940s, however, Mrs. Motley was simply one of several tenderfoot attorneys committed to civil rights.

"I think we were all conscious of the fact that it was a great time," she adds, sitting in the subdued light of her chambers in Manhattan's U. S. Courthouse. "Of course, we didn't realize when we started that events would move as rapidly as they did. We thought it would be many years later, perhaps in the 1960s or 1970s, when the Supreme Court would agree to review a school desegregation case."

As Mrs. Motley sees it, the rapidly moving events came ironically in the form of three defeats which the Legal Defense Fund suffered throughout 1951 and 1952 when it pressed its school desegregation suits in the lower courts. The defeats, immediately appealed to the high Court, took place in Clarendon County, S. C.; Topeka, Kans.; and Prince Edward County, Va. NAACP attorneys, however, won their desegregation suit in Wilmington, Del., but because the Delaware court deferred to the Supreme Court on the matter of overturning *Plessy v. Ferguson*, that case was also added to the list before the Court, as was the District of Columbia case argued by James Nabrit.

After the first oral arguments were scheduled for December, 1952, events moved even more rapidly.

"We researched the *Brown* brief, wrote it, debated it—rewrote and debated and rewrote again and again," Mrs. Motley recalls. "At the same time, there were weekly conferences to attend—and weekly commuting between Washington and New York. The conferences would often involve as many as 50 people at one time and never less than 20. Sociologists, psychologists, historians, lawyers—all were involved. The writing of the brief, then, was a long, arduous task. It took many months, and many more hours were spent just trying to agree on the approach the brief should take."

With the completion of the brief, however, the end was hardly in sight. After the oral arguments closed on December 11, 1952, the Supreme Court decided the following June that it could not yet decide. The Court still

needed additional time, needed additional answers to additional questions. And so the NAACP lawyers researched once more during the summer of '53—and rewrote and researched into the late fall.

With a kind of masochistic pride, an old press release, dated November 16, 1953, describes the feverish activity of those months when it suddenly seemed possible that the NAACP might win:

"The staff of the Legal Defense and Educational Fund, consisting of six lawyers, six secretaries and two clerks, swung into action on June 9 . . .

"By midsummer, some staff workers were going two and three days without sleep, taking time out only to eat. By the end of October, no one was getting more than three or four hours sleep at a time. Enough coffee was consumed by the workers in the Legal Defense office to supply a regiment for a full week. Several of the lawyers have not had a meal with their families in four months. The same is true of the clerical staff.

"Thurgood Marshall . . . has slept in his own bed at home eight times in the past four months and has only had dinner with his wife twice in the past three months. Six of the lawyers who came to New York to work on the brief have not seen their wives in three months. The secretaries and volunteers put in shifts of 15 to 20 hours a day, seven days a week, without requesting extra pay. All members of the NAACP legal staff gave up their vacation time.

"The staff has used 1,000,600 sheets of copy paper, 6,000,225 sheets of manifold, 2,700 stencils, more than 12 million sheets of mimeographing paper and 115,000 sheets of carbon paper."

Others, however, were also working. Scores of black men and women in South Carolina, Delaware, Virginia and the District of Columbia volunteered hundreds of working hours as typists, secretaries and clerks. Black newspapers such as the Pittsburgh Courier, the Baltimore and Richmond Afro-American and the Birmingham World conducted fund-raising campaigns on behalf of the Legal Defense Fund. The Elks, Masons and the Brotherhood of Sleeping Car Porters also made sizeable financial contributions. And a prominent politician who was then a member of President Eisenhower's cabinet privately donated, at the risk of public censure, more than \$7,000 to aid the NAACP lawyers.

In the meantime, social scientists such as Dr. Kenneth B. Clark conducted their own work for the Legal Defense Fund and thereby provided one of the few instances in which the disciplines of sociology and particularly psychology met and meshed with the mechanics of American jurisprudence.

In the early 1950s, Dr. Clark, a friendly yet combative man, was at the beginning of his long and often controversial career as a psychologist. Today, with few of the hopes of 1954 fulfilled and little of the national promise kept, Dr. Clark is often labeled a "conservative" or a "moderate," because of his uncompromising, unyielding commitment to integration and to the goals of 1954. Such labels, however, were never applied to him in the 1950s when integration seemed to be an ideal beyond question.

Shortly after the NAACP launched its attack on school segregation, Dr. Clark completed a report delimiting the effects of prejudice and segregation on the personalities of American children. Although written for the Mid-Century White House Conference on Children and Youth, the report seemed exactly suited for the purposes of Thurgood Marshall who wanted to demonstrate in the Supreme Court that segregation not only stunts the personality development of black children but leads to irreversible psychological impairment.

"It was a rather risky undertaking," the 59-year-old Dr. Clark recalls, as he sits in

his New York office at the Metropolitan Applied Research Center. "It was risky because psychological damage, unlike physical damage or medical damage, had rarely been dealt with by the courts." Moreover, the risk became compounded by the fact that the high Court could only take into account the legalities or illegalities of segregation and render an opinion based solely on constitutional considerations.

Still, Thurgood Marshall felt that the risk of introducing psychological data had to be undertaken. "So one of the first responsibilities the lawyers gave me," Dr. Clark remembers, "was to contact the social scientists whose work I had summarized in that report. I was to inform them of our goals and invite them to participate as expert witnesses at the trial level. And that I did."

Then, amid more conferences with lawyers, more meetings with social scientists and more weekly commuting between New York and Washington, Dr. Clark began to prepare the social science brief which was to be signed by leading authorities and submitted as an appendix to the legal brief. In *Prejudice and Your Child*, a book published in 1955 and based on both the social science brief and the Mid-Century White House report, Dr. Clark observes:

"[Segregated] schools are in themselves concrete monuments to the prevailing racial prejudices in a community. A child who is required to attend a segregated school is being taught that race is an important factor in his education. It is perfectly impossible for him to avoid including in his appraisal of himself . . . the fact of his racial identity. In the case of the Negro child, his attendance at a segregated school establishes the fact of his 'inferiority,' since he is aware that his school is generally inferior to the one provided for whites, and that he is being rejected and prevented from associating with the other children in the community. In the case of the white child, his attendance at a segregated school demonstrates to him his 'superiority' in terms of whiteness alone and teaches him in a concrete way that the rejected Negro attending the Negro school is inherently 'inferior.'

"This situation clearly plays a major role in the total pattern of racial attitudes that these children develop . . . [Segregated] schools, therefore, stimulate, perpetuate and reinforce negative racial attitudes in children and are powerful obstacles to the attainment of genuine democratic education."

In scholarly, subdued, yet unmistakable terms, the social science brief described a diseased, divided nation inhabited by psychological and social cripples of both races. The brief was—and still remains—a stunning indictment of the American way of life. What effect the document exercised on the nine justices, however, is difficult to determine. For although the Court's opinion, written by Chief Justice Earl Warren, clearly recognized the "finding" of social science authorities, the Supreme Court unanimously outlawed segregated public schools because they denied "the plaintiffs and other similarly situated . . . of the equal protection of the laws guaranteed by the Fourteenth Amendment."

But even with the Constitution so clearly invoked, the Warren Court didn't escape criticism for having made, as the New York Times sarcastically put it, "a sociological decision." "The Court's opinion," said the Times in an article by James Reston, "read more like an expert paper on sociology than a Supreme Court opinion."

Yet the man who wrote the opinion could hardly agree.

"The sociological and psychological criticisms were made by people who were opposed to the decision," Earl Warren declares. "The *Brown* case was decided purely on constitutional grounds, although I did mention psychological factors in the opinion as an an-

swer to *Plessy v. Ferguson*. No! Equal protection of the laws alone was the basis for the decision in the *Brown* case."

A large-framed, white-haired, resplendent man of 83 years, Warren sits near a window in the drawing room of his penthouse suite in San Francisco's Fairmont Hotel. He seems to have changed remarkably little since his retirement as Chief Justice in 1969. The great gentleness, the old-fashioned courtliness and the utter lack of pretension—characteristics which had always defined him—are still his trademarks. Only his voice, with its present unsteadiness, seems to have altered with age. The voice is less commanding, less sonorous, although it is still authoritative enough to evoke the character of the man who became for 16 years one of the most powerful figures in American life.

Now, in answer to a question, the retired Chief Justice explains how he would rank *Brown* among the many important decisions made during his tenure on the Court.

"I would put it second in the hierarchy of cases," he says. "I believe *Baker v. Carr* was the most important in my time. [The decision led to the 'one person, one vote' ruling on reapportionment of state legislatures.] It seems to me that if we had already had universal voting, then we wouldn't have had many of the problems *Brown* attempted to correct." Then suggesting that *Baker* complemented and reinforced *Brown*, Warren adds, "*Baker v. Carr* made blacks a part of our political system."

His words have apparently reminded him of something, for he now describes an incident which took place shortly before the Court issued its ruling about school segregation.

"I had wanted to see some of the Civil War monuments in the South," Warren recalls, "so I made plans to spend a few days touring."

It was to be a tour by automobile, and Warren began the journey with his black chauffeur. They traveled southward together throughout the first day until evening when, somewhere in Virginia, Warren requested the chauffeur to stop at a nearby hotel. After making arrangements with his driver to be picked up at a certain hour the next morning, the Chief Justice alighted from the car, walked into the hotel and registered. He had assumed, without really thinking about it, that the chauffeur would go elsewhere, perhaps to less expensive accommodations. Yet when he met the chauffeur the following morning, it soon became obvious to the Chief Justice that his driver had spent the night in the car.

"But what happened?" Warren asked him. "Didn't you go to a hotel? Have you slept here all night?"

"Well, Mr. Chief Justice," the chauffeur began. "I just couldn't find a place—couldn't find a place to . . ."

Then it hit Warren. He had come to a town, to a state where a man in his own employ could not find a place to sleep. And his own thoughtlessness in having brought the man here overwhelmed him.

"I was embarrassed, I was ashamed," Warren now recalls. "We turned back immediately. We returned home."

Warren has obviously never forgotten that incident. "But that is over now," he resumes, after a pause. "That sort of thing is all over. Black people can find accommodations anywhere in the country. And *Brown* triggered it." Then: "So many people, it seems to me, are inclined to judge the significance of *Brown* in terms of the number of whites and blacks together in public schools today. But the effects of *Brown* have reached beyond the public schools. Its by-products have been great." Then Warren cites the "hundreds of elected black men today," and specifically points to such black mayors as Atlanta's Maynard Jackson and Los Angeles'

Tom Bradley, whom he, Warren, swore in as mayor last year. Furthermore: "Law schools throughout the South have opened up. Transportation, restaurants, all public facilities are desegregated. Without *Brown* none of that would ever have happened. We couldn't have done that before *Brown*," the Chief Justice said.

The 1954 decision, then, in Warren's view, has become the cornerstone on which the entire weight of contemporary black civil rights rests. Yet in the America of 1954, unawakened even to the suggestion of full minority rights, how was it possible for Warren to influence eight justices, some of whom were Southerners, to agree unanimously on a question which had been one of the most controversial of the century? What powers of persuasion had he used?

"There have been many theories expounded on that subject," Warren replies. "Most of them were expounded even before the Court reached its decision. I remember one Washington newspaper columnist writing at one point that the Court was divided 4 to 4 on outlawing school segregation and that I was the man determined to cast the swinging vote of nay. Well, I'll tell you the story. I've never claimed any credit for bringing those people [the associate justices] together. When the case came to us, we invited the U.S. attorney-general and any interests of the states to appear and file briefs. Eventually there were so many briefs that we decided to depart from the usual procedure and consider the case as it developed. And so, week by week, we discussed it, from the middle of November to the latter part of March, when we took a vote. There was no divisiveness and no arguing. I came out of the whole thing with the feeling that the men who should have the most credit for a unanimous decision were those men [Justices Hugo Black, Stanley Reed and Tom Clark] who came out of the South."

Warren's refusal to claim credit for the Court's unanimity, however, is open to question. In a new book, *Lawyer's Lawyer*, historian William H. Harbaugh suggests that Warren's influence in the decision was enormous. "Chief Justice Warren decided," Harbaugh states, ". . . that he [would] write the opinion himself and do everything possible to mass the Court behind it. Repeatedly that winter and spring, he discussed the case over lunch with some of his colleagues (Frankfurter and Jackson never joined them, and Black rarely did so). He concluded that the best way to win unanimity was by composing a short, nonrhetorical, unemotional and non-accusatory opinion. This he did, and on May 12, five days before the decision was rendered, Frankfurter, the last holdout, indicated that he would probably sign it. The Chief Justice, wrote [Justice Harold H.] Burton in his diary, had done a 'magnificent job'; the impending unanimous opinion was a 'major accomplishment for his leadership.'"

There was a victory celebration among the NAACP lawyers in Washington, D.C., on the night of May 17, 1954. Thurgood Marshall, James Nabrit and Constance Baker Motley came. Others were also present: Jack Greenberg, who had handled the Delaware case and who would one day become director-counsel of the Legal Defense Fund, and Herbert O. Reid, now dean of the law school at Howard, who was then a young attorney working for Legal Defense. There was laughter that night, and good talk, and good food, and champagne for toasts to the brave new world. In the distance, beyond anyone's ability to see or hear, lay the sit-ins and the marches, the armored police tanks and the burning cities. But no one who was celebrating that night could have imagined a civil rights movement—or could have visualized, even if such a movement had been imagined, that black people afterwards would still be strangers in their own land, with their economic

status still largely below poverty, with their political representation only slightly advanced and with the quality of their education (in segregated and desegregated schools alike) more inferior and more of a mockery than in 1954.

"We thought then that there would be, by now, a fuller realization of first-class citizenship," says Herbert Reid. "But in the past 15, 20 years, America has all but abandoned its public school system and utterly neglected its children, black and white, as basic human resources. We've turned into a highly selfish, highly self-destructive society."

On the night of May 17, 1954, however, a sense of optimism was in the air. The segregation era had ended! And a handful of lawyers, who had dreamed their dream and realized it that day, raised their glasses once more to toast the new America which had just been born. Everything would change now, would change, would change. . . .

#### THE BROWN DECISION: 20 YEARS LATER

(By Robert C. Maynard)

(NOTE.—Maynard is a member of The Washington Post's editorial page staff and a former Post ombudsman.)

All they knew for sure then was that it was wrong. The black parents of the children in Topeka, Kan., and Summerton, S.C., meeting in secret with out-of-town lawyers, signed those legal complaints against their segregated school districts because they were looking for a better break for their youngsters. All they really wanted was a better education for their children than they had received.

They had no way of knowing that one day it could be said that they had set off one of the most profound social revolutions any modern society had experienced. Their complaints went all the way to the U.S. Supreme Court, and when the justices decided unanimously in their favor, it is unclear now just how much even those nine men realized what would happen in the next generation. Only one thing is certain as we approach the 20th anniversary of *Brown v. Board of Education*: The decision delivered on May 17, 1954, had to do with far more than the desegregation of the public schools of this country.

Today, when the experts assess the impact of the *Brown* decision, they are prone to count black noses and white noses in school districts of the North and South and conclude that the desegregation of the American public school is a long way from completion. Many of the experts—and many parents—now question how important "integration" is for education. But if they look at the schools alone, they will have missed the point of what *Brown* did to the American political landscape.

Look, for example, at the state of Mississippi. Don't just count the desegregated school districts, but count also the number of blacks elected to state and local office: 152. That's 13 less than Michigan has. And 152 more than Mississippi had in 1954.

Look at the number of suits brought in the fields of housing, employment and recreation, all relying on the same interpretation of the equal protection clause of the 14th Amendment that the court reached in *Brown*.

Chalk it all up to *Brown*. That and much more. From the simple aspirations that moved those black parents in the late 1940s to sue for the right to send their children to a better school in the Summertons and the Topekas flowed a series of events that would overturn more than a half century of black quietude and lead to a movement that would shake the very foundations of American society. Its methods would be duplicated by the foes of an unpopular war, by advocates of equal rights for women and by activists in the causes of homosexuals and the elderly.

For *Brown* is a symbol of the start of the era of liberation movements in the United States. Its concept of the 14th Amendment was destined to affect virtually every aspect of the relationship of Americans with each other.

And it was to give to blacks the first sense of the possibilities of equal citizenship that they had dared to have in nearly 60 years. Black Americans had been living in a twilight of deprivation called "separate but equal" for all the 20th Century until the court acted in *Brown*. The joke among blacks had been that if the United States were nearly as "equal" as it was separate, "we would be in pretty good shape."

*Brown* has not changed all that. Far from it. The United States is still a deeply divided society. Race enmity still poisons the well of its social relations and mars its image as a democratic society. What *Brown* has done is two things: It threw the weight of the law to the other side, to the side of equality. And it made blacks aware that they could struggle and dare to win a social revolution whose goal is absolute equality before the law and in the eyes of their fellow man. What began as a simple plea for the right to attend the same schools with whites has become a complex of goals that includes the demand to share in the decisions that affect the very manner in which the society is governed and how its institutions function.

In the years since the decision, much blood and energy has gone into that social revolution and more will undoubtedly follow before the day comes when blacks can believe they have achieved their goals. Indeed, not all blacks agree on what those goals are. Since *Brown*, many have disdained the very notion of "integration" with white society. Yet, even in that expression of disdain, we see again the impact of *Brown*. To arrive at that conclusion suggests a sense of choice, of options. No such choice seemed real to most blacks just 20 years ago. A whole generation has been born, grown up and gone to college without ever having seen a restroom door marked "white" and "colored."

A black sophomore today might only learn through a black history course of a time in the 1940s when a black youth won admission through court order to the University of Oklahoma Law School, only to discover that his classrooms had a rope across two seats marked "reserved for colored."

It was not until the Supreme Court took up the cases we now know as *Brown* that all those changes and many more began to occur. *Brown* simply enunciated forcefully a principle that blacks had known must come one day. It was not in itself a great surprise. Blacks had lined the curbs outside the Supreme Court in the winter of 1953 in the hope of getting a seat to hear an NAACP lawyer named Thurgood Marshall argue the law and the principle they knew the court would adopt.

The social climate in which *Brown* occurred was one of increasing determination to break down the barriers that had existed for the 50 years since the Supreme Court had ruled in the case of *Plessy v. Ferguson*. To understand the importance of what *Brown* did, and thus to understand the events that followed *Brown*, it is necessary to go back a moment in history to the *Plessy* case.

When the Civil War ended, the era known as Black Reconstruction began in the South under the aegis of a Republican administration and a Republican Congress. Federal troops were used to support the Reconstruction governments of the states of the Old Confederacy. Blacks, most of them former slaves, began a process of self-government that would put more than a dozen in Congress and result in a handful holding governorships and other high offices throughout the South.

That arrangement lasted from the end of the Civil War until the presidential election

of 1876. It was then that the dreams of blacks were brutally dashed.

Republican Rutherford B. Hayes and Democratic candidate Samuel B. Tilden ended the election campaign of 1876 with neither a clear electoral vote winner, although Tilden had won a popular majority. The Democrats of the South struck a deal with Hayes. If he would agree to remove the federal troops from the South, they would support him over the candidate of their own party. Blacks were left at the mercy of planters and workers who considered them inferior, fit only for manual labor.

Alan Barth, in his new book, "Prophets with Honor," describes the legal situation in which blacks in the South found themselves over the next two decades:

"North Carolina and Virginia . . . found it wise to pass laws that forbade all fraternal organizations that permitted members of different races to address each other as 'brother.' Alabama saw fit to adopt a law prohibiting white female nurses from attending black male patients. A New Orleans ordinance segregated white and colored prostitutes in separate districts. A Birmingham ordinance made it unlawful for a black person and a white person to play together . . . at dominoes or checkers. Oklahoma banned any companionship between the races while boating or fishing. Thus did the dominant race demonstrate its 'superiority.'"

Homer Adolph Plessy was an octoroon. An octoroon is a person with one-eighth black blood, the rest white. By the standards of Louisiana law of the last century—and indeed until this day—an octoroon is considered black. The streetcars of Louisiana in 1895 were separated so that blacks were forced to ride in the rear. Homer Plessy bought a ticket, tried to sit up front, was arrested and found guilty by a local judge, John Ferguson. Thus began the case of *Plessy v. Ferguson*.

All but one justice of the Supreme Court upheld Judge Ferguson. The majority concluded that the rear of the streetcar was as good as the front, that the courts could not force people to sit beside each other, and furthermore, said Justice Henry Billings Brown for the majority:

"If the civil and political rights of both races be equal, one cannot be inferior to the other civilly or politically. If one race be inferior to the other socially, the Constitution of the United States cannot put them upon the same plane."

The lone dissenter, Justice John Marshall Harlan, argued to no avail with his brethren that "Our Constitution is color blind, and neither knows nor tolerates classes among citizens . . . The humblest is the peer of the most powerful." Then, in language that would not be equaled in the Supreme Court for a half century, he declared:

"We boast of the freedom enjoyed by our people above all other peoples. But it is difficult to reconcile that boast with a state of the law which, practically, puts the brand of servitude and degradation upon a large class of our fellow citizens, our equals before the law. The thin disguise of 'equal' accommodations for passengers in the railroad coaches will not mislead anyone, or atone for the wrong this day done."

As a New England orator had occasion to put it at another time, "rivers of blood and years of darkness" separated the days of *Plessy* from the time of *Brown*.

The reign of terror that swept across the black communities of the South was like nothing that occurred in American history before or since. Lynchings reached as high as the hundreds in some of the years between the turn of the century and the end of the 1920s. Blacks streamed out of the farmlands of the Deep South, often fleeing for their lives with no more than the clothing on their backs. They jammed into the cities in search

of refuge, jobs, education and health care. They found the cities indifferent to their plight and they knew few if any of the urban skills.

Only the great migrations of the middle 19th Century from the cities of Europe to the cities of America matched the mass movement of black Americans from the rural South in the aftermath of *Plessy*.

Depression, New Deal and World War II all were instrumental in bringing alive the hopes of black Americans that the Constitution might one day apply to them. By the end of the war, the black men who fought oppression and fascism in Europe were in no mood for oppression at home. It was the children of this generation of black veterans who would become the plaintiffs in the cases known collectively as *Brown*.

By the time of *Brown*, the black communities were simmering with discontent and determination. The contradictions of racism had become too poignant. The Cold War was in high gear and this nation was denouncing oppression in Eastern Europe while black children and white children were being kept apart in school districts across the land. Moreover, the African and Asian nations were emerging from a century of European colonialism and were looking to the West with a questioning eye and scrutinizing the moral leadership of the most powerful of Western post-war nations.

*Brown* and its implications were on every black person's mind in August of 1955 when a grisly event occurred that might well have rivaled *Brown* in its impact on the political awakening of black America. In the little hamlet of Money, Miss., hard by the Tallahatchie River, Emmett Louis Till was lynched one night. The child, retarded and slightly built, lived with his mother in Chicago. She sent him back "home" to Money for the summer vacation of his 14th year.

It is unclear whether Emmett Till ever realized his "crime." He allegedly had whistled at a white woman on the streets of Money. She went home and told her husband she had been "assaulted" by a black youth. The husband and his half-brother were later to admit that they took the child from his uncle's home at 2 o'clock on the morning of Aug. 28 and carried him to the banks of the Tallahatchie. There they brutalized and mutilated him, shot him through the head, tied a heavy weight to his body with barbed wire and dumped it into the Tallahatchie.

Late that September, with the eyes of the world—and especially those of black America—fixed on the shabby little courthouse at Sumner, Miss., the two men were tried for murder. The all-white jury deliberated for a little less than two hours before acquitting them.

The reaction of many Northern whites was outrage. The reaction of blacks, North and South, was a grim realization that much remained to be done to make the doctrine of *Brown* apply to every aspect of life in the United States.

Rosa Parks had never heard of Homer Plessy. That early evening of Dec. 1, 1955, she boarded the Cleveland Avenue bus in Montgomery, Ala., with social protest the furthest thought from her mind. She took a seat and the bus made its way to Court Square. It was then that the driver ordered Rosa Parks to move to the rear of the bus to make room up front for a white passenger. Rosa Parks, 43, said, "No." She was a weary seamstress who simply didn't have the energy to move and saw no reason she should have to. She was arrested and the next phase of the social revolution was under way.

The Rev. Dr. Martin Luther King Jr. was new to Montgomery. The son of a prominent Atlanta pastor, young King had come to Montgomery's Dexter Avenue Baptist Church, not far from the state capitol. When

Rosa Parks was arrested, the blacks of Montgomery were ready for protest and the city's black clergy asked King to lead the way. A boycott was organized and not a black was to ride the municipal buses of Montgomery for 381 days. The Supreme Court struck down the city ordinance that had mandated the segregation of the seating of buses in Montgomery and across the South. It was a victory for Rosa Parks and the end of the boycott, but it was only the beginning of Martin Luther King's journey into history.

The methods that King enunciated for the Montgomery protest were borrowed from his understanding of the teachings of two towering figures, Gandhi and Thoreau. He called it "creative nonviolence," and ordained that no matter how much he was abused by his enemies, he would respond in a spirit of love.

There had never been a protest style like that in black America, but it caught on and in the next several years it swept across the Southland. Blacks challenged every form of discrimination that they could figure a way of testing with their bodies and with King's new philosophy.

It had no ready application to the desegregation of the public schools, so it took the decision of President Eisenhower in 1957 to federalize the Arkansas National Guard before nine black children could get into the Central High School in Little Rock. That decision, however, added buoyancy and determination to the new nonviolent protest struggle. Blacks believed for the first time that they might actually break the back of segregation.

When the black students of Greensboro, N.C., sat in at a dime store lunch counter in 1960, they employed the tactics taught by Dr. King and allowed themselves to be abused without fighting back. When that news was spread across the country by television, thousands of students, black and white, began to challenge the segregated lunch counters and another barrier to equality, symbolic as it was, fell before the onslaught of nonviolent protest.

What the Supreme Court had lacked the power to accomplish in the schools was being accomplished by King's shock troops in the restaurants and hotels, the public beaches and bus stations.

It was 1961 before it became apparent that the movement for black equality was splitting into two strains, and that the disdain for integration—not taken seriously before—would one day prove to be a powerful force in black America.

The Freedom Riders swept down on the South, with blacks and whites riding buses from town to town, getting off here and there to test the segregated waiting rooms and rest rooms with their "white" and "colored" signs. At Anniston, Ala., one afternoon in the spring of 1961, a white mob attacked the bus, set it afire and slashed its tires. The photograph of the mob's handiwork went around the world. In New York City, that photograph showed up as a pamphlet with a caption asking:

"Do we really want to integrate this burning bus?"

A different version of social revolution was starting to capture the imagination of Northern urban youth who had neither the patience nor background for King's form of love for his enemies.

There was Robert F. Williams, a North Carolina NAACP leader who led a group of armed blacks to chase some Klansmen out of town. Within months, Williams was run out of the country, to Cuba and China, but the notion of stiff resistance was to have another leader in Minister Malcolm X of the Nation of Islam, or Black Muslims.

A former convict who had found the teachings of Islam while in prison, Malcolm X preached a hard line against integration on

the street corners of Harlem and soon had a massive following among young Northerners, slum dwellers and collegians alike, who questioned King's posture of nonviolence in the face of attack.

The crucial test came in Birmingham in the spring and summer of 1963. King led the civil rights movement into full battle against the resistance of Public Safety Director "Bull" Connor.

Connor turned fire hoses and police dogs on King's unresisting marchers one day in the full view of television cameras. With the powerful impact of that scene on world opinion and with the support of such patriarchal figures of the civil rights movement as A. Philip Randolph and Roy Wilkins, King organized a march on Washington to demonstrate the sentiment of "all decent Americans" in favor of a civil rights law that would carry out the sentiments expressed by the Supreme Court nine years before in *Brown*.

Nearly a quarter of a million Americans came to march. They heard one of the most eloquent speeches of its kind: "I have a dream," said King, and the Mall went wild with cheers. It was perhaps the high point of King's career as a spiritual and moral leader, and the high point, too, of the non-violent movement.

Less than a month later, at the 16th Street Baptist Church in Birmingham, a bomb went off during Sunday school and four little girls were killed. In an era in which brutality against blacks had been commonplace, and in which many black churches had been destroyed by bombs, that sickening Sunday stood out in many minds as a psychological turning point against the non-violent movement.

By the time the first decade of *Brown* had ended, there was deep disillusionment in black America. The noble language of the court had not translated into tangible change. What had seemed so simple had turned out to be profoundly complicated.

*Brown* had exposed the deep hypocrisy of racism and demonstrated that attitudes and behavior were far more difficult to change than most blacks had ever imagined.

Rather than share their schools with the blacks who had been denied access, many whites fled the cities for the suburbs, leaving those cities in a state of decline. The harder blacks tried to strive forward, the stiffer the resistance seemed to become. The major civil rights legislation of 1964 and the Voting Rights Act of 1965 showed some early promise, but the enduring legacy of racism was not to be so easily overturned by court rulings and laws.

Only a few days after passage of the Voting Rights Act, the Los Angeles community of Watts exploded with a new form of urban racial violence.

From the ashes of Watts, a new awareness emerged in black America. Malcolm X, who had been assassinated that February, became larger in death than he had been in life. His warning that blacks and whites could never become one nation seemed to have sunk in. Nothing was changing for the black man in the job market, in education or in housing. So Watts set the stage for the urban rebellion—an expression of anger that swept across the cities, an uncontrollable wild fire, for the next five years. At each turn, it became clearer that blacks were determined to choose a different course, a course of their own. Black nationalism among the young became more popular than at any time since the movement of Marcus Garvey in the 1920s.

By 1967, the goal of integration that had so strongly attracted so many blacks was all but forgotten. "Black Power" was the new slogan, replacing "We Shall Overcome."

Instead of integrated schools, the intention of those who brought the suits in *Brown*, community schools became the goal.

And it was not just schools, but the whole social structure. Many blacks no longer wanted what the white man had. They wanted a world of their own.

And young angry voices arose declaring they were ready to fight for it, to die for it. They were called Panthers and Liberators, cultural nationalists and political nationalists. They called on their brothers and sisters to look toward Africa, to think of themselves as part of the Third World, merely trapped in the belly of the American whale. Even those older blacks who considered themselves middle class could not resist the emotional tug of the new ideology so far away from the language of *Brown*.

Even as the country's attention was focused on those dramatic changes, less dramatic changes were occurring elsewhere. Throughout the South and the North, blacks were trying to get their hands on some of the power that resided within the system. From a half dozen blacks in the Congress at the time of *Brown*, the number inched up to 12, then 16, enough to have a caucus of their own and be taken seriously. In Mississippi and Alabama, Georgia and Tennessee, blacks in increasing numbers were getting elected to state office. At the time of *Brown*, you could count all the black elected officials on your fingers. Now there are nearly 3,000, many of them in the Old Confederacy.

It is not progress with a capital P, but neither have blacks been standing still. What *Brown* has done is to expose a series of contradictions in American society:

Thurgood Marshall, the man who argued *Brown*, is now an associate justice of the Supreme Court. Harry Briggs, one of the fathers for whom he argued, was forced to leave Clarendon County, S.C., for the Bronx, N.Y.

More blacks than ever are earning over \$15,000 a year, but more blacks than ever are living at the poverty line.

The black faces flash across the television screens, giving the news or acting in a commercial, but less than 3 per cent of television news professionals are black.

The antagonists of racial equality rail against the "liberal" press for its advocacy of equal rights. Yet, only seven-tenths of one per cent of all the newsroom professionals in the United States today are not white.

And so it goes, a little progress here, stubborn resistance there; a bright spot, a dark spot, hope, despair.

It is impossible now to predict what will be reasonable to say on the 25th or the 40th anniversary of *Brown*. Only this is certain: Hardly anyone guessed how much America would change, for good or ill, in the 20 years since that muggy May Monday when the Supreme Court pronounced that separate but equal was not good enough.

#### KEY ASSUMPTIONS OF DESEGREGATION UNDER CHALLENGE

(By William Chapman)

Ever since the day when it became the law of the land, school desegregation has suffered from bad predictions by the experts.

The Southern politician said it would never happen, but if it did the heavens would fall. No child born that day in May, 1954, would live long enough to see blacks and whites going to school together in Mississippi, said Gov. J. P. Coleman.

On the other side, blacks saw the millennium at hand that day when *Brown v Board of Education* was decided and the old doctrine of separate but equal was discarded. The walls of centuries were falling and the rest was just mopping up. In only a matter of years, segregation would disappear from American life, said Thurgood Marshall, who, as an attorney for the NAACP, had won the big day in court.

The bad guesses continued. There would

be no resistance in his state, said Virginia's superintendent of schools a few months before Sen. Harry F. Byrd Sr. announced his policy of "massive resistance." The country was now ready for a great package of civil rights legislation, Sen. Hubert H. Humphrey declared that day, 10 years before the Civil Rights Act of 1964.

Now, on the 20th anniversary of that historic decision, the most fundamental practical question of all is under challenge. Now there is doubt about the key assumption that the achievements and the well-being of black children would improve with integration.

Legal segregation retarded the educational and mental development of Negro children, the Supreme Court had said, and from that flowed the assumption that desegregation would change the pattern. Now that is questioned—not merely by the resisters but by many blacks and white liberals.

#### CHANGED ATTITUDES

David K. Cohen of the Harvard School of Education summed up the revisionist trend in a paper last year for the Urban League: "Until late in the 1960s, there was little confusion among liberals about school segregation. Despite much controversy and some reluctance to press ahead, there was never any doubt that racial desegregation in schools and housing was a structural prerequisite for the full social integration of black Americans. Now all that is changing. The debate is no longer over the pace of desegregation but whether it would occur at all."

The biggest irony is that attitudes have changed during the precise period when the "pace of desegregation" quickened dramatically. Until the late 1960s, when the effects of the 1964 act began to be felt, the pace had been slow in the South. In 1968, some 68 percent of the black pupils in 11 Southern states attended all-black schools. But by 1972, that had dropped to only 9 per cent. The greatest wave of desegregation occurred in a period of mounting doubt about its worth.

The statistics, however, didn't affect the change in attitudes. It was underscored recently by Ruby Martin, former director of the Equal Educational Opportunity Office in the Department of Health, Education, and Welfare and long an ardent proponent of integration. Integrating schools, she told a conference at Notre Dame, is no longer a top priority.

"I, for one, am going to leave the process of desegregation to others," she said. "Just to integrate will simply compound the problems we have and polarize the community more. I am still for *Brown*, but in terms of priorities it is now No. 10, not No. 1."

The old attitudes have been bent by the weight of evidence emerging from many professional studies of the classroom effects of integration. The old equation went something like this: "Blacks get unequal education because their schools are unequal. Given equal access to the tools of education with whites they will perform like whites. They will learn to read and write more quickly. They will shed old feelings of inferiority and low aspirations." Each element of the equation is seriously undermined by the studies of the late 1960s.

#### THE COLEMAN REPORT

It was the Coleman Report on Equality of Educational Opportunity in 1966 that started the landslide shift in academic attitudes toward integration and did so much to undermine the conventional assumptions (James S. Coleman, then professor of social relations at Johns Hopkins University, was chairman of the group which prepared the report under auspices of HEW).

First of all, it showed that for all of the charges of discriminatory treatment, the schools blacks went to in 1965 were about as

good as the ones whites attended. There wasn't much difference when it came to counting science labs and library books or in measuring pupil-teacher ratios. So a decade after *Brown*, it seemed, the schools may have been largely separate but they were also approximately equal.

"Despite popular impressions to the contrary," wrote Christopher Jencks of Harvard, after reviewing Coleman's evidence, "the physical facilities, the formal curriculum, and most of the measurable characteristics of teachers in black and white schools were quite similar."

Equally damaging, it seemed that it didn't make much difference in strictly educational terms whether the facilities and teachers were equal or not. Good or bad, they seemed to have only a modest effect on the achievement of pupils. The pupil-teacher ratio—long considered a key determinant of "good" or "bad" education—was found to have no relation whatsoever to student achievement. Nor did the amount of money spent on each student by local school boards. Per-pupil expenditures were found to account for not even 1 per cent of the variance in student performance on standardized tests.

And, finally, Coleman and other researchers down to the present day have found that school integration, in itself, had very little effect on the academic achievements of either blacks or whites. The racial composition of the classroom seemed virtually a neutral factor. Achievement scores went up very slightly for blacks who moved into white schools, but it was a modest change. The scores of whites didn't decline (as some Southerners had warned), but the notion that desegregation per se would immediately advance the black child was demolished.

#### THEORY UNDERMINED

Still another group of studies undermined an assumption that was closest to the heart of the 1954 decision. The Court had said: "To separate them (black children) from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone." It was based on the sociologists' theory that seeing himself segregated, the black child also saw himself as inadequate. From that flowed the conviction that his self-esteem and aspiration about life would improve when seated beside whites in the classroom.

Insofar as that is measurable—and many scholars contend it is not—the reverse seems to be true. Almost every experiment has shown that the self-esteem of the black child in an integrated school is lower than that of the one in a segregated one.

Confronted with attitudinal tests, a black child in a segregated school is more apt to agree with this statement: "On the whole, I'm satisfied with myself." Or he is more likely than the integrated-school child to agree that, "On the whole, I am a person of worth." Morris Rosenberg of the National Institute of Mental Health, who has administered many such tests, believes that the whole racial concept of self-esteem has been misrepresented. "Basically, black kids don't have low self-esteem—this surprises a lot of people, it destroys a lot of perceptions," Rosenberg says.

But placed in an integrated school where he experiences prejudice and ridicule, the black child is likely to experience a loss of self-esteem. Rosenberg considers it a normal reaction, very similar to what happens when Jewish children reared in a Jewish neighborhood go to a public school where the majority is gentile.

Nonetheless, the findings, when added to those depicting no gains in achievement scores, have discouraged many about the effects of integration. Most social scientists

would agree that there isn't enough information on which to judge the long-term effects; but what is known now doesn't support the optimism born 20 years ago.

#### A QUESTION OF PHRASING

Swimming against this tide are a number of researchers who see it differently. There are conditions, they observe, when desegregation "works" in the pragmatic sense of increasing learning abilities. They deplore the tendency of many colleagues to throw up their hands and say integration isn't worth the effort.

"The problem is that the question is always phrased wrong—Does integration work?" says Thomas Pettigrew, the Harvard sociologist who has testified to the value of integration in many court cases. "That's a political question."

"The important question is what are the conditions that maximize the good points and minimize the bad ones. You don't ask if the United States government works. You ask under what conditions do certain government programs work."

One condition is integration that places lower-class black children in schools with middle- and upper-middle-class whites (and middle-class blacks). Integration up in status is one of the most powerful tools in raising the learning abilities of Negro children. Jencks found this in the Coleman data: "The one school characteristic that showed a consistent relationship to test performance was the one school characteristic to which most poor black children had been denied access: classmates from affluent homes."

The explanation seems to be that children learn more from their classmates than from their teachers. They learn, by emulation, about study habits and competitiveness from white children who have been in a stronger academic atmosphere since kindergarten. It rubs off and the verbal and arithmetic scores start to rise.

It also becomes an argument for the most controversial and difficult form of integration, which requires busing across metropolitan district lines. Integration with lower-class whites in the central city, the experts argue, doesn't do much good for achievement scores; it's busing into the middle-class suburbs that counts. (The effect cuts across racial lines and is so strong that a few school districts have considered a kind of economic integration—busing poor white students into the affluent white suburbs.)

#### SCHOOL COMPARED

For the first time, there is also some solid evidence that integration can be made to work—in the most pragmatic sense—by changing the techniques and atmosphere of the desegregated school. It has long been claimed that the academic achievements of blacks were retarded by the hostile, uninviting atmosphere in the newly desegregated school. It seems obvious—but no one had proved it.

A recent study financed by the Department of Health, Education and Welfare of 5th and 10th graders in 600 Southern schools is the first largescale attempt to show what happens when school officials make a deliberate effort to improve the environment for blacks. It compared schools which received federal emergency aid with those that didn't. The emergency aid amounted to very little money per school, but it did cause the introduction of race-relations courses and encouraged teachers to change their attitudes toward black children.

For much of the sample, it didn't make much difference. But for one group—10th-grade black boys—it made a lot. Overall, that group normally scores very low on achievement tests in white schools—much lower than black girls, for example. And those 10th graders in schools which had not received emergency aid stayed low while the experi-

ment was under way. But those in the emergency-aided schools showed gains equivalent to approximately a half a school year—an unusually large achievement for blacks in a white school.

And finally, there is a smattering of surveys starting to show that integration helps the young black catch onto the first rungs of the upward-mobility ladder which leads up to college and better jobs.

In one major survey, Robert Crain of Johns Hopkins University questioned 1,600 35-year-old black men, some of whom had gone to largely integrated schools. He found two results:

Those who had gone to integrated schools were more apt to finish high school and more apt to go on to college than those who had attended segregated schools.

They also were apt to find better jobs that paid higher salaries.

The explanation by Crain is that the schools gave the blacks the connections and know-how to find their way into college and good jobs, regardless of test scores and falling self-esteem. "They had white friends who put them on to jobs, which is how you get jobs anyway," says Crain.

The greatest achievement of school integration, then, may be just that. Integration may not raise test scores much and it doesn't seem to help the young black think better of himself. But in the end it may do something more valuable.

It seems to give that little boost toward life's more coveted things. It puts him in what Pettigrew of Harvard calls the "influence network," that indefinable and untestable system that whites have had going for them for years.

[From the Washington Post, May 12, 1974]

#### A COURT THAT DARED THE UNKNOWN

(By John P. MacKenzie)

(NOTE.—MacKenzie is The Washington Post's Supreme Court reporter and author of the forthcoming book, "The Appearance of Justice.")

"Somewhere, sometime to every principle comes a moment of response when it has been so often announced, so confidently relied upon, so long continued, that it passes the limits of judicial discretion and disturbance."

So said John W. Davis, lawyer for a South Carolina school district and courtroom spokesman for the status quo in Southern race relations. He was telling the Supreme Court that whatever it might think the 14th Amendment meant in 1952 and 1954, the justices should be guided by the pronouncements of 1896 and subsequent years approving "separate but equal" as a constitutional doctrine.

When the Supreme Court handed down its famous and unanimous desegregation decision on May 17, 1954, there were more causes won and lost than Davis' or that of his opponent, Thurgood Marshall. Seen across two decades, the decision appears to have been the breakthrough for an entirely new judicial approach, a major restructuring of American government. The judicial branch has not been in "repose" since then.

In the longer view, the rule of *Brown v. Board of Education*, coming on the heels of decision opening up state-financed college and professional education to black, was an evolutionary, logical next step and nothing radical. The major new elements was that the court had lost its fear of the unknown.

Fear of breaking the 1896 precedent of *Plessy v. Ferguson* was partly rooted in respect for the past and partly in fear for the future. What social upheavals would desegregation cause, what violent reactions, what administrative nightmares would the judiciary be calling down upon itself?

#### OTHER BATTLES

Once engaged in the battles over social justice, the Warren Court looked upon other battlefields with less awe. The "political thicket" appeared more manageable and the justices saw legislative apportionment not as a "political question" but as a denial by politicians of the political rights of Americans. Looking under the rocks of the criminal justice system, the court found violations of the constitutional rights of individuals and hastened to outlaw them.

To the John Davises and others the court had slipped its moorings and was so "activist" that a judicial dictatorship seemed imminent. But to a host of other Americans, the court was opening a new avenue of redress for disadvantaged and forgotten citizens.

Richard M. Nixon, who as vice president had hailed *Brown* as the work of "our great Republican Chief Justice," was anxious as President to call a halt to the activism and restore what he called "strict construction" of the Constitution. But three of his four appointees ended up voting to uphold federal court judgments against state anti-abortion laws. And Chief Justice Warren E. Burger led a charge into the religious arena, proclaiming that the only "entanglement" to be feared was government aid entangling the state and religion.

#### WARNING SIGNALS

To be sure, Burger's principal aim has been in the opposite direction, to disengage the judiciary from some of the old conflicts and try to avoid new ones. He stated his perspective clearly shortly before his elevation to the highest court. Complaining about the inexorable development of Fifth Amendment law in case after case, he argued that it was "all too much of a good thing, this criminal law trend." The higher courts, in their concern for the individual, started down a road in which each step is a logical extension of the step immediately preceding it, "but when you get to the end of that road and look back, often you find you have arrived at a place you hadn't intended to go to all."

The court under Chief Justice Earl Warren did indeed seem to start things without being sure where they would end, confident that if one case led to another, it would still be sitting and capable of handling the next case justly. It approached the *Brown* case that way over Davis' warnings of a future with overtones of racial "quotas" and white flight.

If Clarendon, S.C., School District No. 1 desegregated perfectly and uniformly, he told the court, "if it is done on a mathematical basis, with 30 children as a maximum . . . you would have 27 negro children and 3 whites in one school room. Would that make the children any happier? Would they learn any more quickly? . . . Would the terrible psychological disaster being wrought, according to some of those witnesses, to the colored child be removed if he had three white children sitting somewhere in the same school room? . . . You say that is racism. Well, it is not racism . . ."

Justice Felix Frankfurter raised similar warning signals, questioning whether the racial isolation of the urban ghetto would not frustrate effective remedies. But he, like the other eight justices, came down hard on the threshold question—was there a violation of constitutional rights?—and answered that question first. Implementation plans could be tackled in another round of argument. In 1955, the announced "all deliberate speed" enforcement formula amounted to another postponement for much of the Deep South.

Justice Hugo L. Black disclosed shortly before his death that he favored instant system-wide enforcement in every district where segregation was under legal attack. Retired Justice Tom C. Clark said recently that he

regretted the courts' collective lack of foresight in failing to decree grade-a-year compliance starting with kindergarten. The justices must have explored these routes and many others before settling on postponement. But if they had taken on the whole problem at once, would they have made the initial constitutional judgment about segregation?

#### HOW MUCH EQUALITY

Similarly, the court began its reapportionment adventure by declaring that the courts were open to challenges by citizens under-represented in their legislatures. The precise standards could come later. When they came and they amounted to "one man, one vote," critics complained that the courts should not apply rigid mathematical formula but instead should permit deviations based on how judges measured political factors such as geography, population distribution and even competing "interest groups." The irony was that such a measurement would carry judges even deeper into the political thicket.

Criminal law, as Burger observed, developed in similar fashion. In 1964 the court threw out a confession obtained from Danny Escobedo when police cut him off from his lawyer. This opened up yet another question. What about equal justice for the arrested suspect too poor to hire his own counsel, a question settled in favor of the defendant in the even more controversial 1966 *Miranda v. Arizona* decision.

Equality, the most sought-after constitutional principle of the Warren Court from *Brown* forward, was a hard idea to contain. Paul A. Freund told his Harvard law students it was like a boy who said he knew how to spell "banana" but didn't know where to stop. In racial matters it met with massive resistance but the idea marched on so relentlessly that miscegenation laws, long a symbol of deep-seated racism, died a quiet and almost natural death in 1967 again with no justice dissenting.

The 9-to-0 voting pattern that held firm through Little Rock in 1958 and even the intransigence of school officials in Prince Edward County, Va., in 1964, remained intact through 1968 when the court, tired of a case-by-case desegregation process that was not working, gave full force to the principle that only effective remedies would be approved. Segregation was to be eliminated "root and branch," in Justice Black's phrase, and the South must produce not white or black schools but "just schools."

Only after President Nixon had appointed four justices was there a full-throated dissent on school desegregation and even then, in 1973, the vote to extend key principles of equal protection to Northern school systems was 8 to 1. Also by then, the nature of the problem was changing and new civil rights claims, such as that of "reverse discrimination" through racial quotas, were becoming more insistent.

#### A PARTIAL HALT

Now a new majority has moved to cut down the growth of new ideas of equality. The court has refused to extend constitutional protections against discrimination in housing beyond race into the field of bias against the poor. It has declared itself helpless and disinclined to intervene where states parcel out school money unequally among districts. Blacks and urban whites trying to recapture whites who have fled to suburban Detroit schools will be lucky to survive the current round in the high court.

But the effort to wind down the judiciary's "activism" does not appear likely to succeed completely. One reason is that the newly constituted court has maintained much of its commitment to racial equality and displayed a willingness to enforce that commitment. Another reason is that legisla-

tures, some of them energized by reapportionment, are creating and safeguarding new rights and remedies which the courts must enforce.

Furthermore, there are increasing signs of public acceptance of a full partnership in government for the judiciary. Last fall many Americans were saying it was the high court's "duty" to decide the question of subpoenas for White House tape recordings. Suggestions of a role long undreamed of for the courts—judicial review of a congressional impeachment verdict—have been raised by a lawyer for "strict constructionists" John Ehrlichman and H. R. Haldeman. The very fact that the Supreme Court has never flatly ruled on the question is an invitation to more judicial business and only the Supreme Court can say the review power doesn't exist.

Mr. NUNN. Mr. President, I am proud to offer my support and cosponsorship to an amendment being offered today to the education bill—S. 1539—which would remove the jurisdiction of the Federal courts to interfere with a freedom of choice school system. In my view, this legislation is essential and desperately needed to restore some order to the chaos that has resulted in schools operating under the onus of forced busing.

I congratulate my colleagues, Mr. ERVIN, Mr. ALLEN, and Mr. TALMADGE, the principal sponsors of this long-awaited legislation, for their diligent work and perseverance in purpose.

They have brought to the floor an amendment which takes a giant step toward returning control of public schools to the local level, where it belongs. For too long, our schools have been run by Federal edict and not by boards of education. Our children have literally been treated like pawns, transferred from school to school by judicial juggling, considered more as statistics than human beings.

Twenty years after the Brown decision, our counties are required to use race as a basis for assigning pupils to public schools. The imposition of forced busing to achieve some arbitrary racial balance, to meet some magic quota determined by our famous faceless bureaucrats, has threatened the very existence of our neighborhood schools. The totally illogical concept of busing children miles away from their neighborhood schools to achieve racial balance has resulted in the decimation of hundreds of education systems across the country, and has forced parents and children into situations they never envisioned.

Anyone who claims that forcing a child to spend 2 hours a day on a bus will improve his education must have received his education on a bus. He obviously missed the course in logic. Such forced busing plans are almost universally condemned by both black and white parents.

We have come to a critical point on the issue of forced busing. A firm answer must be provided and this amendment, the Student Freedom of Choice Act, is that answer.

It would permit, for the first time, the establishment of viable freedom of choice school systems. This bill prohibits the withholding of Federal funds from schools operating under a freedom of choice plan which do not agree to transfer students to achieve racial balance.

This proposal also removes the jurisdiction of the Federal courts to interfere in any way with a freedom of choice school system. A U.S. court would not be permitted to order a change in racial composition, require the transfer of students or faculty, or deny any student the right to attend any public school chosen by the student's parents.

Since arriving in the U.S. Senate, I have been an ardent supporter of legislation to correct the "education by judicial edict" condition which has only served to undermine our best efforts to provide a quality education for all American youth. In the past, I have supported efforts by Senators ERVIN, ALLEN, and TALMADGE to prohibit forced busing, and today I am proud to join them again in an effort to provide relief for our local schools from Federal domination and to end finally the senseless forced busing of our students.

I received a letter from one of my constituents last year who placed the entire issue in perspective when he wrote:

We must face problems people to people, not class to class, group to group, or race to race—we must concentrate and push for the betterment of education within the schools—we must decide to work together, not against each other.

Not one of us would disagree with that statement. This is the objective toward which we are working today.

Mr. McCLELLAN. Mr. President, I wish to express my support for the amendment proposed by the senior Senator from North Carolina (Mr. ERVIN).

All Members of the Senate are well acquainted with the reputation of the senior Senator from North Carolina as an authority on the Constitution of the United States. He believes that his amendment is, without a doubt, constitutional, and I share his belief. The main reason I support the amendment of the Senator from North Carolina is that it is the only amendment being proposed to S. 1539 which would give complete relief from the onerous busing requirements imposed on the children of my State by the Federal courts.

Mr. President, other amendments proposed today do provide some relief from busing. However, they do still allow, in some instances, busing of a child beyond the school nearest his home. I may also support some of these other amendments, but only on the basis that some relief is better than none.

The amendment proposed by the senior Senator from North Carolina does not allow the Federal Government to require involuntary busing of any child to any particular school for any reason whatsoever. I would think that the people of each state would have had their fill of courts shuffling little children like pawns on a chessboard to fulfill a bureaucrat's desire that each classroom in the Nation be racially balanced.

If we need anything in this country, we need stability and freedom. The amendment offered by the Senator from North Carolina would give each parent and each child the freedom to select the school in the community the child would attend. That would, of course, include the freedom to spend one's hard-earned

money for a home near a school for the purpose of insuring that the child would have a shorter and a less hazardous means of reaching his chosen educational facility.

Mr. President, the amendment of the Senator from North Carolina restores to each person in this country the right to select a place to live and to choose the school his child will attend with some assurance that a Federal court will not dictate a choice for him and compel obedience to an edict that is contrary to the conscience, choice and will of both the parent and the child. This Ervin amendment should be adopted.

#### MESSAGE FROM THE HOUSE

A message from the House of Representatives by Mr. Hackney, one of its reading clerks, announced that the House had agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of House to the bill (S. 3062) entitled the "Disaster Relief Act Amendments of 1974."

#### EDUCATION AMENDMENTS OF 1974

The Senate continued with the consideration of the bill (S. 1539) to amend and extend certain acts, relating to elementary and secondary education programs and for other purposes.

Mr. PELL. Mr. President, how much time remains?

The PRESIDING OFFICER. Approximately 2 minutes, until 4:30.

Mr. PELL. Then, I have 15 minutes on the bill. Is that correct?

The PRESIDING OFFICER. The time remaining on the bill runs until 5 p.m. at which time there will be a vote.

Mr. GURNEY. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. GURNEY. Is it my understanding that at 4:30 the time was to expire on the Ervin amendment and then from 4:30 until 5 we were going to debate the Gurney amendment with the time split evenly on that amendment? Is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. JAVITS. Mr. President, I yield 5 minutes to the Senator from Georgia.

Mr. TALMADGE. I thank my distinguished colleague from New York.

The PRESIDING OFFICER. The Senator from Georgia may proceed.

Mr. TALMADGE. Mr. President, 20 years ago the U.S. Supreme Court, in the case of Brown versus Board of Education, held that children could not be assigned to public schools on the basis of their race. Thus ended the so-called segregated school system. It was applicable only to the South, and a few States of the Union outside the South. The South and those other States of the Union have made good faith efforts to comply with the Supreme Court's decision in the Brown case.

The Federal bureaucracy saw that in many instances black students had no desire to leave the neighborhood schools and go to distant schools and that white

students had no desire to leave their neighborhood schools to go to faraway schools. The bureaucrats got extremely upset about the situation. They thought there must be something fundamentally wrong when free people in a freed society saw fit to attend schools of their choice. So what did they do?

They started meddling and devising exotic formulas to get certain students to go to certain schools against their will. The Federal judiciary in particular got involved in the act and have completely departed from the Supreme Court's 1954 decision. In the course of their social experiments the courts have gone full circle.

What the Supreme Court said in 1954 was that it is unconstitutional to use a child's race as a factor in public school assignment.

That means that black children should not be assigned to a certain school because they are black, or white children so assigned because they are white.

That principle ought to be well-established constitutional law. I have no quarrel with it.

Public schools ought to be open to everyone, regardless of race, creed, or national origin. I do not see how any reasonable person could object to a child attending the school of his or her choice, or the choice of the parents.

And, I might add, I think that choice is of the utmost importance to parents. But, nowadays parents do not have that important voice in their children's education.

What is happening now, Mr. President? I know of one mother who is a nurse in La Grange, Ga. She has five children, all elementary school age. And what have these Federal officials and judges done? They have assigned each of those five children to a different school.

In Savannah, Ga., in August, Ga., in other areas of my State, and in other areas throughout the land, the Federal judiciary and the Department of Health, Education, and Welfare have been assigning students to various public schools purely because of their color, dividing children in the same families, sending some North and some South to attend schools remote from their neighborhoods contrary to the desires of their parents and contrary to the desires of the local school boards. Judges and bureaucrats are making these assignments purely on the basis of color.

I know of some instances, Mr. President, where these children have to get up before daybreak, in the sleet, in the rain, and in the snow, to take buses and travel long distances from home. They are forced to go to schools they do not want to attend, because some Federal judge has suddenly decided that he is better qualified to run the school system than the local board of education.

I fear that irreparable damage will be done to education in America—damage to the education of all children, black and white—before enough elected officials in this country wake up to the stupidity of having some Federal judge order that children be herded about like cattle.

I am amazed at this absurdity. What, in the name of reason does "balance" have to do with quality education? It contributes nothing to the improvement of education. In fact, it detracts from the quality of education.

Mr. President, if ever there was tyranny, it is tyranny for the Federal judiciary to intervene in small children's affairs. It is tyranny for the Federal judiciary to presume to pick out schools for children to attend against their will and the will of their parents. The people of this country do not like it. They have good reason not to like it. Every poll I have ever seen, whether taken in the North, South, East, or the West, has shown that the overwhelming majority of the people are against this idocy.

Some of us in the Congress have tried to put a stop to this foolishness through legislative means for many years. The Civil Rights Act of 1964 provided that students could not be bused to schools to achieve a balance. It also provided that faculty members could not be assigned to schools to achieve a balance. The Senator from Minnesota (Mr. HUMPHREY), then the manager of the bill on the floor of the Senate, made that abundantly clear in the legislative history.

What did the courts do? They have absolutely and totally ignored the literal language of that act of Congress.

I think the thrust of the Ervin amendment, withdrawing power from the Federal judiciary to make these decisions, is the only remedy. Withdrawing the Federal courts' jurisdiction in specific instances is absolutely constitutional, and it has been so held by the Supreme Court on a number of occasions. The landmark case in that area is the McCordle case, where the Supreme Court upheld the power of the Congress to withdraw a pending case from the Courts' jurisdiction.

There is another important reason for adopting this amendment and ending forced busing. We are having an energy shortage in the country at the present time. Everyone—Federal officials, State Governors, the general public—is pleading that we conserve energy in general and that we conserve gasoline in particular. Yet throughout this land of ours, boards of education have to spend millions and millions of taxpayers' dollars to buy schoolbuses to transport children of those taxpayers to schools long distances away from their homes at the very time that we are being asked to conserve energy. The easiest and best way to conserve energy that I know of is to stop this needless and foolish program of busing children far beyond their neighborhoods to go to some school to achieve some half-baked theory of balance.

The parents and the local school boards alone should decide where the children are to be sent to school. I think that to do what the Federal judiciary has done under the guise of complying with the 14th amendment is the most tyrannical procedure our Government has practiced. It is the most foolhardy thing I have seen in my time. If I have to choose between Government bureaucrats

and Federal judges on the one hand and mothers and fathers on the other, I will stand with the parents and their children every time and all the time.

I want to thank the Senator from New York for yielding me this time.

The PRESIDING OFFICER. Who yields time?

Mr. GURNEY. Mr. President, I yield 5 minutes to the Senator from Kansas (Mr. DOLE).

Mr. DOLE. Mr. President, it was exactly 20 years ago this week that the Supreme Court handed down its landmark decision in the case of Linda Brown against the Topeka, Kansas, Board of Education. As numerous recent editorials and other newspaper articles have been concluding in their examinations of the subsequent implementation of that doctrine outlawing "separate but equal" school facilities, many changes have taken place in the status of racial integration in the United States since that May 1954 event.

The question to be considered, however, is just how many of these changes actually represent "progress" in the area of meeting the school racial balance problem head-on. And perhaps the most controversial of all the methods employed to date attempting to solve the great "percentage puzzle" in our schools is that of busing. It is indeed appropriate, then, that we are addressing ourselves to this vital issue at such an historic time.

At the outset—and especially because we are agreed on a time limit for discussion of the topic—I believe it is extremely vital that we place the issue before us in its proper perspective. By that I mean that we are not here to argue for or against the merits of integration or segregation. The courts have already expressed their will in those areas, and we as a nation are committed to a course of pursuing the goals of the former in our schools.

The question, rather, in this amendment, is precisely by what means are we to arrive at that designated objective? Or perhaps more specifically, is the concept of busing a desirable, or even an acceptable method of achieving the common aim of integration, at the cost of abandoning the traditional values of the neighborhood school? I could be no more firm in my belief that it is not, and as a principal advocate of the "antibusing" language we are considering, wish to point out the importance of our adopting this stand.

#### A MATTER OF CONFUSION

Certainly, the controversy which surrounds the very volatile issue of busing is complicated by the confusion in which the whole Nation is embroiled. Such a factor is evident in the difficulty the public has in making a distinction between integration—the goal, and busing—a means to that end. For far too many persons considering the problem confuse ends with means, and although busing is widely disapproved, this disapproval does not carry over to integration itself.

That is, while busing is one way to bring about integration, public opinion

polls have consistently shown an overwhelming majority of Americans opposed to achieving integration in this manner. Simply stated, their attitudes toward integration are far less antagonistic than those toward busing.

## PUBLIC ATTITUDES

But just what have these public viewpoints been—in the way of actual statistics—on the subject of busing during recent years? A review of Gallup surveys shows that in 1968—before the busing of schoolchildren for desegregation purposes really "got off the ground," it was listed as only the fifth greatest problem facing the schools. Since that time, however, busing has consistently been in the No. 2 position—except for one third place response in 1972—second only to either discipline or finance in the public's eyes as the major concern of the schools in their communities.

The most glaring example of current attitudes toward busing came out of a Gallup poll published in the papers late last summer. Appearing in the Washington Post on September 9, 1973, this survey demonstrated overwhelmingly that while a majority of Americans favor the integration of public schools, only a very small proportion—that is, 5 percent—approve of busing as a means of reaching that goal.

I feel that this is very significant and revealing data, as regards our discussion here today, and represents nationwide figures which cannot be overlooked. I therefore ask that it be printed in the RECORD at this point.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Washington Post, Sept. 9, 1973]

## THE GALLUP POLL: INTEGRATION FAVORED, BUT NOT BUSING

(By George Gallup)

PRINCETON, N.J.—A majority of Americans favor the integration of public schools, but only a very small proportion approves of busing as a means to reach this goal.

Only one person in 20 (5 per cent) in a recent nationwide Gallup Poll selects busing from a list of plans that have been suggested as ways to achieve integration in public schools in terms of different economic and racial groups.

Following are the questions asked in the survey and the key findings:

"Which, if any, of these ways do you think would be best to achieve integration in public schools, in terms of different economic and racial groups?"

[In percent]

	National Whites		Blacks
A. Create more housing for lower-income people in middle-income neighborhoods.....	22	21	32
B. Change school boundaries to allow more persons from different economic and racial groups to attend the same schools.....	27	27	27
C. Bus school children from one school district to another.....	5	4	9
D. Do something other than A, B, or C to integrate the schools.....	22	23	15
E. I oppose the integration of schools.....	18	19	9
No opinion.....	17	16	26

Note: Tables add to more than 100 percent since some persons gave more than 1 response.

This question was then asked whites in the survey:

"Would you, yourself, have any objections to sending your children to a school where a few of the children are Negroes? Where half are Negroes? Where more than half are Negroes?"

The following tables compare the latest results with those recorded in the previous survey, in 1970, and in the first survey in 1963, conducted just prior to President John Kennedy's nationwide appeal, in June of that year, to end racial discrimination:

Northern white parents  
(Percent Objecting)

Where a few are Negroes:	
1963 .....	10
1970 .....	6
1973 .....	6
Where half are Negroes:	
1963 .....	33
1970 .....	24
1973 .....	27
Where more than half are Negroes:	
1963 .....	53
1970 .....	51
1973 .....	63

Southern white parents  
(Percent Objecting)

Where a few are Negroes:	
1963 .....	61
1970 .....	16
1973 .....	16
Where half are Negroes:	
1963 .....	78
1970 .....	43
1973 .....	36
Where more than half are Negroes:	
1963 .....	86
1970 .....	69
1973 .....	69

The latest nationwide Gallup survey is based on interviews with 1,513 adults, interviewed in person in more than 300 scientifically selected localities Aug. 3-6.

## CONGRESSIONAL ACTION

Mr. DOLE. Mr. President, we as representatives of our constituents have an obligation to express our sentiment and take a stand in response to their public attitudes. This we have not done with any degree of sufficiency. Although the emergency school assistance program—in 1970—and the more permanent Emergency School Aid Act—1972—title VIII of which has been restated and extended in the present bill—have been implemented to address the problem somewhat, Congress has not acted responsibly to grant relief to school districts ordered to institute unwanted busing programs.

We can, however, fashion a clear legislative posture against this disagreeable solution for providing education equality by adopting the pending amendment. Its objectives have already been set out quite adequately and I do not need to reiterate them. The important thing is that we are presented with the opportunity of establishing once and for all that the concept of forced busing has no sanction of the Federal lawmaking bodies. And it is imperative that we do exactly that now, before the situation with respect to busing becomes further aggravated.

## WIDESPREAD PROBLEM

Mr. President, the busing dilemma today is by no means localized in one region. It is a widespread national problem causing increasing discontent. In Kansas

there are three major cities affected, and one of these—Wichita—was one of the sites of original concentration by the Department of Health, Education, and Welfare in its efforts to promote busing as an alternative to solving the desegregation impasse.

Today in Wichita, after 6 years of talk and struggle, 6,700 students are being bused solely for desegregation purposes—at a cost to the city of \$600,000. Busing involves about 90 percent of the black students leaving the relatively small area in which they live, and an additional 1,250 white students—up to 500 by lottery assignment—going into that same area. In response to the question as to the motivation for this arrangement, the superintendent there replied:

I don't think the cross-town busing would have been a part of it (desegregation) without the Federal Government's push.

The reaction to the cross-busing order in Wichita has subsided somewhat, but it surely would seem that if the dollars spent to attract voluntary reassignments of students, and the money that is spent to administer the mandatory lottery program—which brings so much uncertainty to the students—could be spent to hire more teachers, pay better salaries, or provide better school facilities, the educational opportunities for all students could be vastly improved.

In another major urban area, Kansas City, Kans., there is speculation and concern that busing across county lines even will be required to satisfy the integration demands.

For the last 5 years efforts have been underway to establish a better racial balance in these schools through programs which would not be disruptive of the community school concept. New schools have been built and adjustments made in the school district boundaries to affect a better racial balance. The entire district has adopted a policy which permits attendance by students at schools of their choice, with any change in attendance within the district being automatically approved so long as it involves a transfer from a school in which the student represents the majority ethnic race to one in which the student would be in an ethnic minority. This voluntary transfer program has not resulted in a substantial change in the ethnic composition of the schools, however, because the majority of the students do not wish to be transferred.

Thus, for that county there is a threat of imposed busing, along with a corresponding threat of impeding community development, of causing higher expenditures for noneducational school programs, and of disrupting the community school concept—with no assurance of any improvements in the quality of education to be offered in any of the schools. Instead of pursuing the mythical goal of racial balance in this area, therefore, we should be working for the establishment of black and white communities which can and will support integrated neighborhood schools which provide education at school and a learning atmosphere in the community and in the home.

In Topeka, Kans., finally—"where it

all started," so to speak, with Brown—there are plans to actually close seven schools on a permanent basis, despite public resentment of the move, in order to avoid busing as a last resort in meeting the latest Federal demands.

#### A LAST RESORT

I place great emphasis on that last phrase, for that is exactly the idea embodied in the amendment before us—to condone busing for integration purposes only as a last resort, thereby preserving to every extent possible the concept of the neighborhood school.

It is interesting and certainly ironical to note that the black parents who started Brown against Board of Education more than 20 years ago were fighting for the neighborhood school system and against the busing of their children to distant schools. But it was hardly the emotional issue then that it is today.

#### UNDERCURRENT OF BROWN

It is more important than ever to point out now, in looking back to the early 1950's, that the celebrated Brown case was initiated in part to curtail the very practice which we are still trying to overcome today—that of requiring schoolchildren to be unwillingly transported away from the familiar social and economic surroundings of home to distant locations beyond their own neighborhoods.

In the case of Linda Brown, who has been the subject of many recent interviews, she was compelled to take the bus or walk more than 20 blocks away from her home to the nearest all-black elementary school, traveling by several all-white schools along the way. She was opposed to busing then as a child, and still is today at the age of 30. She was quoted as saying:

I don't want my kids bused. I know what that's like.

#### TWENTY YEARS LATER

So here we are—20 years later—with still the same issue, still precipitating anger, disruption, and disillusion, and still unresolved. And no one knows what might result from a possible adverse decision in a pending Detroit case, in which the Supreme Court is wrestling with the question of whether urban-suburban boundaries can be breached to achieve or restore integration.

It is more timely than ever, therefore, that we let the courts know where the Congress places itself on the problem of busing. And again, with an overwhelming majority of those who elected us to represent their views solidly allied against this whole notion of taking long rides to and from remote facilities just for the sake of performing "balancing" techniques, I fail to see how we can possibly, responsibly justify the continuation of a position in the Senate which has heretofore permitted the practice to go on relatively unchecked.

#### INTEGRATION WITH ALTERNATIVES

To be sure, few of us here, if any at all, and only a very small minority of Americans, are opposed to integration itself. I have consistently supported measures designed to promote that ideal and will continue to do so. But I have

steadfastly opposed efforts to promote busing as a viable means to accomplish desegregation, and will continue just as strongly to maintain that position.

But again, this amendment must not be construed by any reasonable and fair-minded observer as an attempt to repeal the true progress and advancement we have made in reaching our present-day status. Rather, it is a rational and responsible gesture to demonstrate that the American people, and more so their U.S. Senators, are ready to face the issue of busing squarely and go on record as favoring all other alternatives available before reverting to this "last resort."

I cannot stress enough the fact that our vote here today—with all its long-range ramifications—is not for or against integration. We all want and see the values of that—but not at the cost of busing. And to quote again from the woman whose name was attached to the decision of May 17, 1954:

What about busing? I am not for it at all. To me this is a reversion to what we were getting into before Brown. It might just be me, but I had to walk all this distance to catch a school bus and be bused across town. If this is what it comes to here in Topeka, I will conform to it, but . . . if there is another solution that would give us our neighborhood schools and still give us an integrated school system, I would rather see that.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. DOLE. Mr. President, I ask the Senator from Florida whether I might have 1 additional minute.

Mr. GURNEY. Mr. President, I yield 1 additional minute to the Senator from Kansas.

Mr. DOLE. Mr. President, I thank the Senator from Florida.

I just want to stress again the thoughts of Linda Brown Smith on busing, and ask unanimous consent that a number of articles on this question be printed in the RECORD.

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

[From the Washington Post, May 12, 1974]

#### TOPEKA TREADMILL: LINDA BROWN'S CITY FACES A NEW BATTLE

(By Austin Scott)

The Red Queen in Lewis Carroll's "Through the Looking Glass." "Now here, you see, it takes all the running you can do to keep in the same place. If you want to get somewhere else, you must run at least twice as fast!"

TOPEKA, KANS.—In the wonderland of Topeka, home of both Brown and the board of education members who ran all the way up to the Supreme Court in 1954, there is indeed a sense of having huffed and puffed and ended up close to where you started out 20 years before.

The High Court's landmark desegregation order certainly didn't move the young plaintiff, Linda Brown, very far. A 1st grader when her father first filed the suit in 1951, Linda had gone through one all-black elementary school and on to a second all-black school by the time of the decision. And though Topeka repealed its segregation law a year before the Supreme Court order, the city didn't move very swiftly to rectify matters once the decision was handed down: Nine black children were placed in previously all-white schools the first year, and a few more the second year.

In fact, public controversy over school segregation had just about died out over the past 20 years—until last September, when a new suit was filed charging that Topeka schools are still "systematically" segregated. Topeka is thus facing the possibility of another painful integration fight 20 years later, but this time with the battle lines drawn quite differently and with enough ironies to bewilder even Lewis Carroll's Red Queen.

In 1951, when *Brown v Board of Education* was first filed in Kansas courts, for example, one underlying issue was that legal segregation prohibited some black children from attending their neighborhood schools. But the new suit charges that Topeka schools are still segregated in part because children attend neighborhood schools, that school segregation is an extension of the city's de facto segregated housing patterns.

Similarly, Charles Scott, the black attorney who filed the original Brown case, signed his name several years ago to another suit which tried, in his words, to "establish a school system in several cities which would give black boards of education in black neighborhoods control over all-black schools, and comparable set-ups for whites." Integration is no longer a priority issue in black Topeka, Scott says. "It's peculiar what 20 years of disillusionment can do to you."

And Topeka's black citizens, whatever their private feelings, have not publicly supported the latest suit, filed in U.S. District Court last Sept. 10 on behalf of a 10-year-old black girl by the Rev. Fred W. Phelps, a white Baptist minister who has 13 children and a congregation totaling 63.

Linda Brown, who gave her name to the historic 1954 decision, is among the many blacks who have been quiet about the new suit. Now 31, she has been married and divorced.

Her two children started their education in the same black school that her father sued to get her out of. And she seems to be taking the latest legal battle with a calm fatalism. She has not paid much attention to it, she says. But then she believes the real problem is housing, not schools.

"I think if they don't find an answer to that, we are still going to have segregation," she remarks. "Topeka today is more segregated in housing than 20 years ago . . . It seems more crowded now, more concentrated than it was."

If Topeka is more segregated than it used to be—and the dividing line between black and white neighborhoods is as easy to spot as in the rigidly segregated housing market of Chicago—then Linda Brown is one of the exceptions.

Her son Charles, now in 5th grade, and her daughter Kimberly, a 4th grader, both started their kindergarten educations in Monroe, the school their mother was attending in 1951. It was all black when she went there, and she says it was 98 per cent black when they started.

Then she moved, and the children spent three years in a public elementary school that was only 20 per cent black. She moved again, and the children spent less than a year in a suburban public school that was 98 per cent white. She moved a third time, and for the past five months the children have been attending Hudson, which is about 35 per cent black and only a block from the middle-income integrated apartment complex where they live.

As a child, Linda Brown had to travel 30 blocks to school, passing several all-white schools along the way. Sometimes the weather was so cold it was unbearable for a small child, she recalls. "I'd start crying in the middle of the walk, turn around and come back."

"Am I happier with Chuckie in the school he's in now? Yes, I am, because it's more like the world that he's going to grow up

in, relating with people of all races. This helps him adjust to the world around him."

The notion of an integrated "real world" threads constantly through Ms. Brown's talk about her own past and her children's future. She works from 4 p.m. to midnight as a key punch operator at the Goodyear plant. Her sister, Terry Ickard, who she lives with, takes care of Charles, Kimberly, and her own Michelle, in the evenings.

"I think the education my children are getting today makes for a better adjusted person," she remarks. "I feel today it would have really benefited me if I had gone through an integrated neighborhood school throughout my education, starting with elementary level, because to me in an integrated school it seems your rate of progress is faster. I notice this in my children. The times and the integrated setting both have a lot to do with it. You have more of a drive to meet competition."

#### GRUMBLING ABOUT PHELPS

Even though Ms. Brown has paid little attention to Phelps' suit, her notion of why an integrated education is a good thing does not seem to conflict with his.

Mentioning Phelps' name in some areas of black Topeka, brings grumbling sounds, however, sounds that indicate some very vocal blacks don't like what he's doing. They use words like "opportunist" and speculate about why a white like Phelps "is taking on the responsibility for a black problem."

At 43, Phelps is an intense, free-swinging legal activist who became a lawyer to help support his growing family, and is well aware that many Topekans—black and white—are put off by his style.

Those familiar with the months of careful preparation that went into the original *Brown* case, the long and difficult task of mobilizing black community support first, of persuading 20 parents to let their children be named as plaintiffs, say Phelps is an unlikely attorney for the second time around. Phelps, for example, is proud of winning a large damage award for a black woman whose television set was wrongly repossessed. Blacks have criticized the argument he says he used—that she had developed an unnatural psychological dependence on the set and that its withdrawal caused her severe emotional and physical problems.

Born and raised in Mississippi, Phelps describes himself as an independent, Calvinistic Baptist, believing in predestination, a literal interpretation of the Bible, eternal retribution, and thunderous, hellfire preaching. . . . There isn't any doubt in our minds about Judgment Day. . . . The Lord God is my contact."

He says he had never considered a desegregation suit until last summer when he was sitting in a Harvard Law School seminar. He hurried home to file it.

"How are we gonna get these black kids integrated with these white children so they can gain the advantages—that's the problem now," he says.

#### "A LITTLE BIT OF EDGE"

One of the major charges in Phelps' suit, in fact, is that the Parkdale Grade School, which is 90 per cent black and attended by plaintiff Evelyn Rene Johnson, denies "the intangible qualities of advantageous social intercourse and opportunity to study with, engage in discussions with, and exchange ideas with white children who are provisionally favored economically and socially. . . ."

"They don't have the ability to be making friends with the future white judges," says Phelps. "You can talk all you want to, if you want to school with that white judge, you get a little bit of edge."

That kind of talk tends to send advocates of black pride and black excellence into fits of rage.

The suit also charges Topeka with providing better facilities at mostly white schools. That, it contends, generates ". . . in plaintiff

and her class feelings of inferiority as to their status in the community, thus affecting their motivation to learn and generally affecting their hearts and minds in a way unlikely ever to be undone. . . ."

Although Phelps borrowed the "hearts and minds" language from a Supreme Court decision, blacks who disagree with it argue that social changes have made such thinking obsolete. Federal Judge Constance Baker Motley, once one of the NAACP attorneys active in the *Brown* case, for example, remarked in a recent speech at Notre Dame University that "it appears that it may be meaningless to talk about feelings of inferiority to a black youth in the central city where blacks no longer consider themselves inferior to whites and no longer believe that any institution which is all white is necessarily good and ought to be integrated."

Back in 1950 and 1951, those laying the legal groundwork for *Brown* were trying to avoid a decision that might have ordered separate schools to be made equal.

"We made the legal presumption that the white schools and the black schools were in fact equal, that the teachers, the books, the classrooms equal," recalls attorney Scott. "We wanted the case to rest purely on the argument that despite all the apparently equal physical facilities, segregated schools inherently provided black children and maybe even white children with an incomplete education."

The Coordinating Council of the Black Community, a black umbrella group formed after the violence of 1968, has taken "no position" on the Phelps suit, according to CCBC director Eva Lou Martin. It has joined the NAACP in telling the board of education that all parts of the community should be involved in seeking a solution to the schools problem.

#### THE HEW INQUIRY

Not until after Phelps filed his suit did the Department of Health, Education and Welfare investigate the state of desegregation in Topeka schools. It then notified the city in January that a "substantial" number of schools were not as desegregated as they should be; that student transfers were increasing segregation; that "most minority junior high school students. . . attend schools which are generally inferior in facilities. . . ." and that elementary schools with a high minority enrollment tend to have inadequate kindergartens and smaller libraries.

"You are, of course, aware that as a formerly officially segregated school district, your district has been under obligation to fully desegregate its schools," HEW said. "In order to achieve full compliance with the law, it will be necessary for you to develop and implement a plan which eliminates the violations set forth above."

Phelps' suit and the resulting HEW order generated a flurry of back and forth activity by Topeka's all-white school board. The board first voted, 5 to 2, to draw up a desegregation plan and implement it by the 1974-75 school year "if possible."

According to a local newspaper account of that meeting, "Dr. Gordon Summers, one of the two board members voting against the resolution, said an act comparable to the Boston Tea Party might be an appropriate response to federal intervention."

But just last week the board reversed its stand and voted to tell HEW it is impossible to meet federal integration guidelines of no more than 40 percent blacks in any school. Instead, board members said, they will conduct a study to see if major upgrading is needed at the black-dominated schools.

The desegregation plan they voted down—involving seven school closings and 22 boundary changes, would cause undue hardship and jeopardize quality education, the board said.

The 20 years since the Supreme Court's integration decision have produced a Topeka

school system where, according to figures from the system itself, the two oldest black elementary schools contain more than 95 per cent minority students while the three newest junior high schools have only 2 to 3 per cent minority students.

A student at Topeka's Washburn Law School, using the system's figures, recently calculated that in 1972-73, 14.1 per cent of the city's 12,614 elementary students were black, but 90 per cent of the black elementary students attended 44 per cent of the schools. Two schools were listed as all white, five were more than half black, and eight were more than 35 per cent black.

#### "SO MANY BROKEN HOMES"

There's a circular component to the whole problem that worries Linda Brown. To some extent, she says, she thinks neighborhood segregation results from school segregation.

"You get this almost ghetto situation and the black child does not have a chance to mingle with the people he will be with when he grows up. This is not the world that kids are going to enter. . . . I think you'll find the older black adult is still afraid to venture out. This will change with younger generations. The younger kids here, they go apply for these job places that the older ones wouldn't."

But for all the importance she attaches to integration, she has some fears: "Before our black children are ready to go into a more integrated setting, our black parents are going to have to get these children in hand as far as discipline is concerned. My younger sister teaches at Monroe, 6th grade. She says their discipline problem is getting out of hand. I have seen that over where my kids go. The teacher tells the kids something to do and he just talks right back. . . . we have so many broken homes now, so many mothers working. It's happening in white homes too."

Would it make any difference in Topeka if she were to get involved in the latest suit, speak out strongly, perhaps? "I don't think so. There is going to have to be a solution to people living where they are living before the problem can be alleviated."

What about busing? "I am not for it at all. To me this is a reversion to what we were getting into before *Brown*. It might just be me, but I had to walk all this distance to catch a school bus and be bused across town. If this is what it comes to here in Topeka, I will conform to it, but. . . if there is another solution that would give us our neighborhood schools and still give us an integrated school system, I would rather see that."

[From the Wall Street Journal, May 2, 1974]

WAS IT WORTH IT?: BLACKS DISILLUSIONED ON 20TH ANNIVERSARY OF INTEGRATION RULING; IN TOPEKA, WHERE THE CASE BEGAN, SCHOOL BOARD IS AGAIN BATTLING A SUIT; "THINGS SHOULD BE BETTER"

(By Pamela G. Hollie)

TOPEKA.—Evelyn Rene Johnson is black. Her city is more than 80% white. Yet her grade school is more than 80% black.

That situation angers Marlene Miller, the aunt and guardian of 11-year-old Rene. So she filed a \$200 million suit charging the local school board with failure to fully integrate the school system. The class-action suit also charges the board with favoritism in providing better facilities and better-qualified staff members for the white schools. The board contends that the school system is integrated but that some schools are predominantly black because the neighborhoods that feed them are mainly black. It denies any favoritism toward the white schools.

Several cities besides Topeka are facing similar suits involving de facto segregation—that is, separation of the races because of housing or social patterns. But the Topeka suit has special significance. For it was here that the landmark case of *Brown vs. Board of Education* of Topeka began. And it was

20 years ago this month that the U.S. Supreme Court handed down its decision in what is often called the most important case in civil-rights history.

Shortly after noon on that Monday, May 17, 1954, the U.S. Supreme Court pronounced that "segregation of white and colored children in public schools has a detrimental effect" and added that "the impact is greater when it has the sanction of law." The court said: "We concluded that in the field of public education the doctrine of 'separate but equal' has no place."

#### NO SOLUTION YET

Today, Charles Scott, the original attorney for the Brown case says: "We had great hopes that the Brown decision would solve all the warts and evils in the society, particularly education. It hasn't." Says a black longtime resident of this city: "We can't be more than two feet in front of where we started."

Indeed, 20 years later, most black students here still attend predominantly black schools, the lack of progress has disillusioned many blacks, and the Topeka board of education is back in the courts. As a matter of fact, some blacks don't believe any more that integration is the answer.

The disillusionment of many advocates of racial equality isn't confined to Topeka, for racial separation in schools remains in much of the U.S. The latest federal government figures show that in 1972 in the 32 Northern and Western states, 72% of the nonwhite pupils attended elementary and secondary schools having a majority of nonwhites. In many big cities, the white flight to the suburbs has resulted in resegregation of once-integrated schools. And the Supreme Court is still wrestling with the question of whether urban-suburban boundaries can be breached to achieve or restore integration. (Brown vs. Board of Education dealt only with de jure segregation—that imposed by law.) The South, statistically at least, appears to be doing better than the rest of the nation. In the 11 states of the Old Confederacy, the comparable figure for nonwhites in schools where they were the majority in 1972 was 54%.

For the nation as a whole, government figures do show some advances in desegregation. In 1972, Washington reports that 36% of the nonwhite pupils were attending what might be called integrated elementary and secondary schools—that is, those whose enrollment was at least half white. That 36% figure was up from 33% two years earlier. Meantime, the percentage of heavily segregated schools—those with 80% or more of their students drawn from minority groups—has continued to fall. The figure was down to 45% in 1972 from 49% in 1970 and 68% in 1968. But such improvement doesn't satisfy many blacks.

#### "THINGS SHOULD BE BETTER"

\*Here in Topeka, a city of 130,000 population, Lucinda Todd is one of those who believe that "things should be better by now." Mrs. Todd is the mother of one of the 13 plaintiffs in the Brown case. Like the other parents involved, on enrollment day in September 1950, she was turned away from a white school with her child, thus laying the groundwork for Brown vs. Board of Education.

As the inevitability of the Supreme Court decision became clear, Topeka voluntarily began to integrate its schools. In the 1953-54 school year, 10 blacks were admitted to formerly all-white schools; the next year, 113 more blacks joined them; and eventually hundreds more followed, including this reporter as a fourth-grader.

Mr. Scott, the attorney in the case, says that "the group that should have benefited most" from integration—meaning the blacks—"has paid a high price for practically nothing." Adds James Woodson, an attorney and the only black ever to serve on the local school board: "Blacks didn't

know what integration really meant, although they paid dearly for it."

For, as educational integration spread some black schools were closed so that their pupils could attend formerly all-white schools. As a result, black teachers lost their jobs. And as blacks were admitted to white hotels, restaurants and other white-run facilities, many black-owned businesses failed.

At one time, for instance, Fourth Street was called the main drag by blacks. There they met, entertained, gambled and got their hair cut. But then black customers began going elsewhere, black enterprises went out of business, and the area was devastated by urban renewal. And as the middle-class blacks moved out of black residential neighborhoods, many of those areas were left to deteriorate.

Rene Johnson lives in one such neighborhood east of the railroad tracks and just a breath away from a renewal project. She lives in a white, frame house with plastic for storm windows. The yard is cluttered with a broken air conditioner, a rusting portable barbecue grill with three mongrel puppies tied to its legs, and a plastic wading pool heaped with debris from a summer ago.

Most yards are barren in Rene's neighborhood except for a hedge or two left from former and more affluent residents. Now most residents rent homes for \$100 or so a month—less than their car payments. Many families of four have a total income of about \$7,000 a year.

"It's like a bad dream—what's happened here in the last 10 years," says a longtime Topeka resident and a neighbor of Rene's. "The neighborhood gets worse, the kids act and look worse every year, and the bad words are coming out of younger mouths every fall."

Rene's school, Parkdale Elementary, is within earshot of the occasionally passing trains. It sits alone on a barren block off a busy main street. The square, dark-stone building is 50 years old, with high ceilings that make it hard to heat. Rene's fourth-grade classroom is on the second floor; its decor is subdued, and Rene thinks it's a bit ugly. The school is 87% minority in a system where 19% of the total school population is black, American Indian, Oriental or Spanish-surnamed.

In the entire Topeka system, more than 50% of the 1,669 black children in grade school attend six of the 34 elementary schools. Four of the schools are more than 60% black.

The federal Department of Health, Education and Welfare investigated the Topeka system last fall and found "substantial disproportionate" minority composition in several schools. It also found "possible violations in the area of student assignment and in the area of equality of distribution of federal resources."

#### SATISFYING HEW

The board has submitted proposals to try to satisfy HEW, but the federal agency has not yet decided whether to accept them. Satisfying HEW is important, for failure to correct alleged inequities could constitute noncompliance with a section of the Civil Rights Act of 1964 and could cost the system \$1.7 million in federal funds.

Many people here don't agree with HEW's findings. "It isn't the school's responsibility to change the children's backgrounds or improve the neighborhood," says Winfred Tidwell, the black principal of Parkdale Elementary. "Schools can only do so much. We have fine teachers and good programs. We can't do everything."

Topeka officials contend that they have one of the finest school programs in the country. "We can offer the students any number of alternatives to traditional work and development programs that appeal to all backgrounds and talents," says Merle Bolton, the superintendent of schools. Board documents show that because of federal

funds, more money is spent per student in the schools with high proportions of minority-group students. The documents also show fewer pupils per teacher in these schools.

Mr. Bolton, the school superintendent, says that because the city believes in the neighborhood-school policy, "that necessarily means that some schools have more minorities than others."

Indeed, across the tracks from Rene Johnson's home and six miles to the west, things are much different from Rene's Parkdale Elementary. At Sheldon Elementary School, which sits in a middle-class district, only seven of the 235 students are members of minority groups. The four blacks among those seven live on an isolated piece of land bought long before the current shopping area, bowling center and medical-arts building were dreamed of.

Sheldon is a sleek, light-stone building with the name "Charles M. Sheldon" in bold, silver letters on the front. The glass foyer and many of the classroom windows look out over neatly clipped lawns and quiet streets. Sheldon is a split-level school with the decor coordinated in light colors and woods.

#### NEW GOALS AND VALUES

When Sheldon opened 17 years ago, it admitted its first black children, a brother and sister (this reporter), who found the school being built behind their home. For the children at the time, integration was an exciting introduction to new goals and values. But it was also a painful ordeal. Insulted and ignored by white pupils, they questioned integration and were told by their parents that it was necessary: It was the way to learn how to talk, act, think and compete like whites.

Some blacks still agree. But not all are sure any more. Mr. Scott, the lawyer who helped press the case for integration in Brown vs. Board of Education, more recently has appeared as a friend of the court in a case seeking separate black school systems in several cities. "That's what 20 years of disillusionment can do for you," he says.

Other blacks feel the same way. Many young blacks, who in the 1950s found integration an unpleasant initiation into the white world, were among the first to embrace the idea of black power. And like any other community, this basically white-collar, Republican city has its share of militants.

But more than militancy now is involved. If Topeka is to effectively disperse its 3,726 minority-group students among the 13,500 white in grade and junior high schools, the city might have to scrap the neighborhood-school system and turn to busing. Ironically, the black parents who started Brown vs. Board of Education were fighting for the neighborhood-school system and against the busing of black children to distant schools. Today busing is an even more emotional issue.

Most white residents oppose it. The school board says busing will be a "last resort." Mrs. Miller, Rene Johnson's aunt, who is suing the school board, is willing to accept busing if that's the only way to integrate the schools. But other blacks who still favor integration don't want it at the cost of busing.

Talk to Linda Brown. She doesn't remember much about the historic Brown vs. Board of Education case that bears her name. But she does remember being bused in the years before the decision.

"I left home about 7:30 each morning and walked six blocks to the bus stop. I got to school about 8:30, some 30 minutes before the school doors opened," she says.

Sometimes she waited in the snow and freezing weather. Sometimes the bus didn't come, and she walked to Monroe Elementary School, more than 20 blocks away from

her home. Sumner Elementary was only seven blocks away—but it was white.

Now a 30-year-old mother of two, Linda Brown Smith lives in an integrated section of town in sight of Hudson Elementary School. She is skeptical about the new integration suit because the easiest solution seems to be busing. "I don't want my kids bused," she says. "I know what that's like."

[From the Topeka Sunday Capital-Journal  
Mar. 17, 1974]

#### WICHITA BUS PLAN TOOK 6 YEARS OF TALK (By Donald Brazeal)

Wichita Public Schools were charged in 1966 with violating the 1964 Civil Rights Act. Similar charges were brought against Topeka Public Schools this year.

As is now happening in Topeka schools, the U.S. Dept. of Health, Education and Welfare Office for Civil Rights stepped in to insure compliance with the law in Wichita.

After more than six years of negotiations, Wichita schools received full approval from HEW last year. Wichita ended a school system which had included some schools containing 99 per cent black students and many schools with no black students. Cross-town busing of more than 6,500 students was the primary means used to even the racial balance.

Wichita Supt. Alvin Morris was asked recently why busing was considered necessary.

The school board decided early in the planning process that every school in the community should be involved, Morris said.

Changing boundaries around the predominantly black areas to achieve an acceptable racial balance would in general be only a short-range solution, Morris said.

Many people in these affected areas would start feeling to other parts of the city not affected by the boundary changes. As a result, the boundaries would have to be changed and extended every year, Morris said.

He said the basic question is "Do you want to have an impact on all the strata of the community?" Do you want to involve all races, cultures and income levels?

"If so, it demands that you look at a plan that affects more than a fraction of your school district," he said.

Wichita officials could have concentrated black students in a few schools with the maximum allowable percentage of blacks. But, the school board decided to equally affect all schools by trying to get as close as possible to the system-wide percentage in each school, he said.

The problems in Wichita were not exactly comparable to Topeka's current situation. Wichita officials are quick to say. For example, the Office for Civil Rights has reorganized since 1967.

However, Topeka officials have sought advice from Wichita officials because of what may be some similarities. School officials from Omaha recently visited Wichita for assistance. And, Kansas City school officials were reportedly interested in getting information about Wichita desegregation efforts.

Supt. Morrison was asked what kind of experience did you have in dealing with HEW officials?

Wichita officials had numerous contacts with HEW officials, and some contacts "were not too pleasant," Morris said.

"For us, there wasn't any question about what they wanted," he said. "The question was 'could we do everything they wanted us to do?' Our capability for meeting their demands just wasn't there."

The long period of time required to negotiate with HEW got on everyone's nerves, he said. Vagueness and slowness are inherent in government, he said.

Six years ago, Wichita schools were one of the first large school systems HEW dealt

with. Now, HEW officials should be able to operate more efficiently.

"They (HEW) now know what their authority is in enforcing the civil rights law," Morris said. "But, the Office for Civil Rights will never act so swiftly that they impose things on the community."

How has desegregation and cross-town busing affected Wichita schools?

Morris said, "It has been extremely beneficial in bringing about some social changes in this community that have been needed here and throughout the world."

The desegregation effort helped in areas outside education as well, he said.

"After we integrated, we were more aware of residential black families in every area in the city. And, it has grown."

"I am convinced, by our placing black people in every school in this community, it gained acceptance of blacks in every part of the community," Morris said.

Previously, the schools could not place black office and business education students anywhere but in black operated businesses, he said.

"We can't document achievement advances for black students because of integration efforts. But, we can document the greater holding power of the schools with black students. Therefore, they are probably achieving more on an individual basis."

Did desegregation have detrimental effects? In general, the district feels the benefits far outweigh any problems, Morris said.

Morris said there are no indications of lowered achievement levels by white students.

The schools did have increased costs in transportation. But, the district was already busing large numbers of students because the district is so spread out. Also, food service in schools had to be expanded for students who were bused and could not go home for lunch, school officials said.

Teachers who had taught only white, middle to upper income students had some traumatic experiences when black students came into their classes, Morris said.

"It wasn't easy for them to adjust to other cultures," he said. "The impact on the professional staff required a terrific amount of inservice work."

Other school officials said black students suffered some of the worst challenges in the desegregation effort. In a sense, they left the comfort of a school where they were the majority to attend schools where they were definitely the unwelcome minority, one school official said.

When a person is part of a minority, he starts following the "herding instinct" which may alienate him from the rest of the school, the official said.

What was public reaction to busing and desegregation?

The public had a lot of "fear of the unknown" and "safety anxiety," Wichita educators said.

"Parents aren't as concerned about busing as most people believe," Deputy Supt. Dean Stucky said. "The issue is what are they busing you for."

Other school officials talked about persons who moved out of Wichita claiming they opposed busing. But, they moved to rural areas which had always bused students.

"Once the plan was implemented, much of the anxiety was dissipated."

During the planning stages, Wichita schools operated a rumor control center to handle and squelch the spread of misinformation. Also, numerous public meetings were held to involve the community.

Would Wichita schools have desegregated without the push from HEW?

Morris said, "I think we would have been where we are now in most ways. I don't think the cross-town busing would have been a part of it without the federal government's push."

[From the Topeka Daily Capital,  
Apr. 17, 1974]

#### MINORITY LIMIT AT 40 PERCENT IN SCHOOL PLAN (By Mike Hall)

A Topeka school board plan to comply with a directive of the U.S. Dept. of Health, Education and Welfare to eliminate racial imbalance in Topeka Schools likely will set minority enrollment at each school at a maximum 40 percent.

That statement was made Tuesday night by Dr. Mark Morris, board president, after the board's meeting at Holliday Junior High.

The board entered into its official minutes the latest letter from the HEW, but did not schedule another meeting this month for taking action on any plan to balance the schools racially.

The latest letter gave the district until May 1 to submit a plan that would be in compliance with the 1964 Civil Rights Act. The letter threatened "formal proceedings" if such a plan was not in the Kansas City office by then.

Tuesday night Morris said he is confident that deadlines would continue to be extended by HEW as long as its officials were convinced the district is making progress toward adopting such a plan.

Morris said HEW officials most often use 20 percent as a guideline for how much the racial minority enrollment of each school may vary from the district average percentage.

In the Topeka district more than 19 per cent of the students belong to a racial minority which under the 20 per cent guideline would allow individual schools to vary from no minorities to 40 per cent minority.

Presently Parkdale Elementary is 87 per cent minority, four other elementary schools (out of 34) are above 40 percent: Monroe, 80.8; Belvoir, 68.1; Lafayette, 63.3; and Lowman Hill, 46.8.

Two of the 12 junior high schools are above 40 percent: East Topeka, 63.3; and Crane, 50.8.

All three high schools are below 40 percent: Topeka High, 29.2; Highland Park, 20.6; and Topeka West, 1.3.

Morris continued to downplay the possibility of busing as part of the plan to bring the schools into balance. He sticks by the original list of five alternatives adopted in a board resolution on Feb. 8. That list includes remodeling of old schools and construction of new schools, but made no mention of busing.

In other action, the board Tuesday night heard a plea from Sam Hurd, chairman of the Citizens Advisory Committee to the board, for consideration of a cost of living increase for teachers salaries. Hurd noted that the National Education Assn.-Topeka has made such pleas at each of the last two board meetings and that the board continued to make no commitment.

"A cost of living increase would tell our teachers, 'we care,'" Hurd said.

Dr. Gordon Summers, a board member, responded, "We have this under study at the present time."

[From the Topeka Daily Capital, May 1, 1974]

#### LONG TRIPS FOR PUPILS WEIGHED IN NEW PLAN (By Mike Hall)

A tentative plan to close seven of Topeka's public schools would have some elementary children traveling 1 3/4 miles to school in one attendance area, according to Jim Spence, director of public relations for the district.

Spence said that was an approximation. However, the plan announced by the Board Tuesday morning is so preliminary that no detailed plan has been designed for how the children will get to the schools.

Harry Craig Jr., acting president of the

board, said Tuesday afternoon that some intra-attendance area busing is a possibility but the board still believes crosstown busing won't be necessary.

In a special board meeting Tuesday morning, the board voted to request another 30-day extension from the Kansas City regional office of the U.S. Dept. of Health, Education and Welfare for submitting the final plan for improving racial balance in the schools.

The plan unveiled by the board would close Rice, Belvoir, Clay, Monroe and Parkdale Elementary Schools and Crane and Highland Park Junior High Schools. Students in those attendance areas would be transferred to an adjacent attendance area.

Topeka school officials say HEW officials from the Kansas City office never have given strict numerical limits to how high or low the racial percentage of each school may go. However, the Topeka administrators say the federal district court for the District of Columbia has ruled in the case of Adams vs. Richardson that no school in a district should vary more than 20 per cent from the average racial makeup of the entire district.

In the Topeka district 19.3 per cent of the students are racial minority members. That would allow any school to have between no minority students and 39.3 per cent minority students.

Two schools would be above 40 per cent in the proposed plan, but the board said Tuesday it feels the plan will be acceptable to HEW. The plan would have the schools ranging from a low of .19 per cent at McEachron to a high of 49.69 at Lafayette.

The present range is from no minority students at McClure to a high of 87 per cent at Parkdale.

The 1 1/4 miles Spence based his estimate on is for a child in the Rice district who would be transferred to the Lafayette attendance area. Maps and complete information on the proposed boundary lines are available at each school in the district and at the administration building, 415 W. 8th.

Administrators and board members point out there are many aspects of the plan that need to be studied before final approval or alteration can be made.

"We're not sure that this is the number that will be eventually closed," Craig said.

Other uncertainties include what to do with the school buildings when they are no longer used as schools. Craig said there has been no discussion of razing any of the buildings and that the suggestions for their use include centers for Head Start, Follow Through, schools for gifted students, special education, career education, alternative education, expanded programs of art and music and community activities.

Spence noted at least one of the suggestions had come in a letter from a member of the community and that this is one area where the community is especially urged to make suggestions.

Craig said he is markedly concerned about the distances to school for youngsters in kindergarten through third grade. He said the buildings might be used for K-3 classes as a way to reduce the distance the children would have to go to school.

Another uncertainty is the amount of expansion that will be needed for the facilities that will grow in enrollment. The Lafayette attendance area would nearly double in size. This year there are 361 students in the attendance area. The proposed attendance area would have 646 students. The school was designed to hold 603 students.

Craig said one possibility this fall would be placing mobile classroom units at those schools for immediate needs, with further expansion of the buildings to follow in later years. Neither he nor Spence foresees any need for a tax increase to improve school buildings to meet the HEW requirements.

Spence and Craig emphasized the inten-

tion of the board is to maintain the present size teaching staff under the new plan. Craig said the board wants to keep the low pupil-teacher ratio and the small class size the minority students now have. He said to do that, the district will need the same number of teachers, assuming that enrollments district-wide do not drop.

Jim Nelson, Executive director of the National Education Assn.-Topeka, said after Tuesday's meeting he hopes the teachers organization also can be involved in the planning, because the teachers will be directly affected by whatever changes are made in the system.

How soon the plan would be in effect also is uncertain. The board asked for the 30-day extension from HEW so it could study details of these uncertain areas and to get reaction from the community to such a plan. Assuming that this plan or a modification was adopted by the board before June 1, and assuming it received the blessing of HEW, Craig said the new boundaries could be in effect for next fall.

The community involvement in the plan will be in part a series of meetings at individual schools to explain the plan to parents in that attendance area. The first one will be at 8:30 p.m. Wednesday at Hudson Elementary School.

At the request of the Parents Concerned for Justice in Education, the board Tuesday morning agreed to set up a committee of one parent from each school in the district and representatives of other segments of the community. That committee would be directly involved in shaping the final plan, Craig said during the meeting.

No board action was taken to establish the committee, but Bill Simons, head of the parents group, was instructed to contact Supt. Merle Bolton about setting up meeting.

[From the Kansas City Times, May 2, 1974]  
TOPEKA PLANS INTEGRATION WITHOUT BUSSING PUPILS

The school board has revealed a plan to meet a federal mandate issued in January to end de facto segregation in Topeka public schools. The plan would involve closing two junior high schools and five elementary schools and rearranging school boundaries to absorb students in other existing schools. There would be no plan to build any new schools.

The board's plan, unveiled at a special school board meeting, was described as tentative by Harry Craig, board vice-president. He said the plan is "not engraved in stone," and may be changed.

It calls for closing Highland Park and Crane Junior High Schools and Monroe, Parkdale, Rice, Belvoir and Clay Elementary Schools.

The U.S. Health, Education and Welfare Department ordered the board last January to develop a plan for bringing about better minority balance among public schools, which now range from zero to 87 percent minority enrollments.

The board is seeking a second extension until June 1 for finalizing a plan acceptable to HEW. Asked what other alternative to closing some schools and rearranging student enrollments was available to the board, Craig replied:

"About the only alternative that is open . . . would be that of busing of students." Craig said bussing remains unacceptable to the Topeka board. Craig said a 1-way bussing system is totally unacceptable to the board, and if bussing is the only way acceptable to HEW, then 2-way bussing might be considered as a last resort.

Representatives of a new organization, called Concerned Parents for Justice in Education, appeared at the board meeting, demanding that local school officials "immediately stop any steps that you are now in-

involved in to finalize a plan for U.S.D. 501, and that you take immediate steps to involve parent representatives . . . in the step-by-step development of a plan."

[From the Wichita Eagle and Beacon]  
LOTTERY TO PICK PUPILS FOR POSSIBLE BUSSING

Next fall's lottery for elementary school integration has been released by the Wichita Board of Education.

Murray Harris, director of communications for the school district, said actual number to be assigned for bussing will be determined by the number of children volunteered for bussing by their parents.

Students must be cross-bused to continue the board's integration plan.

"The school system prefers voluntary participation, since voluntary participation creates the most beneficial school circumstance for both children and their families," Harris said. Each elementary school has sent letters to its patrons, providing information about the integration plan and encouraging volunteers. Parents were asked to indicate their preferences to their schools by April 30.

Harris said it appears there are slightly fewer volunteers for 1974-75 than there were for 1973-74, which means some pupils will have to be randomly selected for reassignment according to the birthdate list.

The lottery plan ranks all pupils in the system from 1 to 306, according to birth dates. In the selection process, the numbers 1 through 306 were matched in sequential order with the calendar dates Jan. 1 through Dec. 31. These numbers were then run through a computer and randomly assigned to priority numbers.

Depending upon how many students of each race are needed to complete the pupil population at each of the three elementary schools in the Assigned Attendance Area—Ingalls, L'Ouverture and Mueller—pupils whose birth dates appear at the top of the list will be reassigned to these three schools.

It probably will be necessary for about 500 students to be taken from the lottery list for reassignment, Harris said.

The school system's data processing and pupil accounting division is working on the random selection process, and Harris said after specific assignment dates are known this information will be communicated to all elementary schools.

After the schools receive the information, Harris said, parents may contact their respective schools for information about operation of the plan in that school.

All volunteered pupils and selected pupils will receive an assignment card for 1974-75 before the end of the current school year, Harris said.

Parents should not consider reassignment definite until they have received a letter from the school system, Harris stressed.

The PRESIDING OFFICER. Who yields time?

Mr. JAVITS. Mr. President, I yield myself 5 minutes in opposition to the Gurney amendment.

The PRESIDING OFFICER. The Senator from New York is recognized for 5 minutes.

Mr. JAVITS. Mr. President, first, I will say a word about the Ervin amendment which we had before and which the Senate rejected before. It concerns the freedom of choice of a school system. There are two critical cases that I would like to have on record in that matter.

There is the classic case, the New Kent County case, decided in 1968, in which the court said as bluntly as anyone could say that the New Kent School Board freedom of choice plan could not be ac-

cepted as a sufficient step to effectuate integration, and the court then proceeded to strike it down.

Then we have the other case, the old case of *United States v. Klein*, 80 U.S. 128 (1872), which held that it is unconstitutional for Congress to require a rule of decision in the guise of withholding jurisdiction to order particular remedies.

Mr. President, I point out that that is precisely what the freedom of choice plan does, and I hope it will be rejected.

Now as to the Gurney amendment: It is anomalous to me that on the 20th anniversary of Brown, and after the hard work at compromise, which seems to be working in respect to public school desegregation, and busing as an incident to it, that we should now upset the appletart and endanger in a very serious way, at a very bad time, race relations and social relations in our country; and beyond that, which is serious indeed, portentous in terms of our whole land, there is a proposal that most of the people who are concerned about busing have cases that are in midcareer at this time, and the tailoring of individual cases, in my judgment, has worked out to be the best way, and certainly, to me, has appeared to be in the highest interest of the country and the best plan for the future of the country as well. That is the way we are trying to stratify ourselves in this amendment.

In addition, we put ourselves in danger of a confrontation with the court and the many sections of the country, which could be very harmful on a procedural point.

There will be, whenever the Senate wishes it—and that will be next Monday or Tuesday—an opportunity to take the entire House bill which contains that part. It is a total package and involves this amendment. It does seem to me to be somewhat improvident to take out this part of the package and try to legislate it.

Also it is very, very serious in respect of the matter we are discussing here. A tremendous structure has been built up in the country.

Let us remember that as one of the devices in this amendment, there is a tremendous tranquillity that has been built up in many areas of the country where this system has worked out satisfactorily. Now, in pursuit of a single bill, we are expected to throw that into the discard.

I could not think of anything more improvident in the interest of America, and a more highly volatile subject, than to throw into the discard everything that people have worked hard for, and geared themselves up for in terms of equality. That is strictly upon the application of one plaintiff. It seems to me to be the height of improvidence. I hope very much that the Senator does not do it.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. JAVITS. Mr. President, I yield myself 30 additional seconds in opposition to the amendment.

I think, in view of the things that I have said, I shall, at the appropriate time, move to table the Gurney amendment.

Mr. BARTLETT. Mr. President, will the Senator from Florida yield me 3 minutes?

Mr. GURNEY. Mr. President, I yield 3 minutes to the Senator from Oklahoma.

The PRESIDING OFFICER. The Senator from Oklahoma is recognized for 3 minutes.

Mr. BARTLETT. Mr. President, in 1969 while I was Governor of Oklahoma, forced crosstown busing first came to my attention as a serious problem facing our educational institutions.

Like many others, I deliberated some time over the arguments concerning forced busing before making my own mind up and before publicly stating my position.

The stated goal of those favoring forced busing for racial balance was a good goal; namely, to provide quality education for black children.

However, I came to the conclusion that, in effect, busing was an exercise—an unproductive and awkward one at that—to require this generation of children to purge society by sacrificing for the wrongs and inequities generated by parents, grandparents, and great grandparents.

I publicly said then that—

Discrimination to end discrimination is indefensible and is a cure as sick as the disease itself.

Five years have passed and forced crosstown busing continues. My opinion has not changed but has been buttressed by what we have learned in the interim.

Busing has been promoted on the basis that the end justifies the means; but even ignoring the philosophical problems with that argument, the results which have been achieved have not been worthy.

Forced crosstown busing does not accomplish the goals of either quality education or social integration of the races. To the contrary, forced busing has further polarized the races and has often resulted in the general deterioration of educational opportunities of both the black and white children being bused.

Contrary to many social changes, such as that accomplished by Brown against Board of Education in 1954 which ushered in the era of civil rights, there has been no public acceptance after the rather prolonged trial period of forced busing. Public opinion polls still reflect that the vast majority of Americans, black and white, continue to oppose forced busing. After 6 years busing remains a rather unimaginative, expensive, and counterproductive means of achieving the goal most Americans desire—quality education for all our young people.

There are alternative, realistic methods of doing what forced busing was supposed to achieve.

For instance, in my hometown of Tulsa, we are having excellent success with a voluntary busing program. A previous voluntary program had failed because it did not produce an enhancement of the educational opportunity and its only inducement was the challenge of an integrated school. Many of the students and faculty who were attracted proved to be nonconformist in a necessarily structured educational environ-

ment. Their nonconformity soon led to the demise of the program.

However, Tulsa did not give up. They were willing to try other innovative alternatives, and they were successful. Tulsa has turned what were previously all-black schools into learning centers with the highest educational opportunities. The schools were purposely staffed with excellent personnel. The principals and teachers were some of the best available. As a result, the goal which forced busing was supposed to achieve yet failed to achieve, is being accomplished voluntarily. Whites are joining their black brothers and sisters for the best of reasons—they all want a good education, and they are getting it.

Mr. President, I am pleased to be a co-sponsor of Senator GURNEY's amendment to S. 1539. This amendment, overwhelmingly passed by the House, will hopefully bring an end to a dismal era in the educational process in our country. Hopefully the amendment will be the death knell of the forced busing system, whose goals were good but whose means were unfair, discriminatory, and contrary to the entire concept of social justice—and whose lofty goals were never achieved.

The amendment will hopefully mean the return of the neighborhood school system, a system which was successful because parents and children took pride in their local schools—a sense of pride and accomplishment and belonging which has been lost in the maze of crosstown busing plans.

As I interpret this amendment, voluntary programs such as that in Tulsa will be a primary means available to achieve the goals of quality education for all. I am confident, as proved in Tulsa, that voluntary programs, as worked out by local school systems, will not only be more just but in the end will be more likely to achieve that elusive goal of quality education for every young American.

Mr. President, we are supposed to be a representative democracy. And the people have spoken and are continuing to speak in favor of the substance of this amendment. The people do not want forced busing of their schoolchildren. The decision of this body should be quite easy and, as in the House, overwhelming.

Mr. GURNEY. Mr. President, what is the time situation?

The PRESIDING OFFICER. The Chair is advised that 12 minutes remain. However, both sides may have more than 12 minutes if they desire to use the time on the bill.

Mr. PELL. Mr. President, I yield to the Senator from Indiana for a unanimous-consent request.

Mr. BAYH. Mr. President, I ask for the yeas and nays on my amendment, which I understand will be voted on at 5 o'clock.

The yeas and nays were ordered.

Mr. ERVIN. Mr. President, will the Senator from Rhode Island yield to me so that I may get the yeas and nays on my amendment?

Mr. PELL. I yield.

The PRESIDING OFFICER. The Senator from North Carolina will have to have unanimous consent in order to do that.

Mr. ERVIN. Mr. President, I ask

unanimous consent at this time that I may have the yeas and nays on my amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ERVIN. Mr. President, I now ask for the yeas and nays on my amendment.

The yeas and nays were ordered.

Mr. JAVITS. Mr. President, will the Senator yield to me for the same purpose?

Mr. PELL. Mr. President, I yield to the Senator from New York.

Mr. JAVITS. Mr. President, I ask unanimous consent that it may be in order to ask for the yeas and nays at this time on the motion to table the Gurney amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JAVITS. Mr. President, I now ask for the yeas and nays on a motion which I propose to make to table the Gurney amendment.

The yeas and nays were ordered.

Mr. PELL. Mr. President, I have had the opportunity to listen to the debate all day on this subject, and have been studying it and thinking about it over the last few evenings. I think what the effect of the Gurney amendment would be: it would be like to try to unscramble an omelet which some may wish had not been scrambled; but it has been scrambled; and schools are moving ahead in the right direction.

What this amendment would do, if passed, to my mind, would be to move backward and undermine a great deal of the benefit that has accrued over these years.

Desegregated schools have come to be accepted to a great extent across the length and breadth of our land, and we would be going 180 degrees in the wrong direction, in my opinion, if we passed the Gurney amendment. For that reason I would urge my colleagues to vote against this amendment.

Mr. GURNEY. Mr. President, I yield 2 minutes to the Senator from Colorado.

Mr. DOMINICK. Mr. President, I take this time to try to outline for my colleagues what has happened in the Denver case.

I have voted, as I think the Senator from New York and the Senator from Michigan know, for every single civil rights bill since I have been a Member of Congress.

We passed a fair housing bill in Colorado, as a consequence of which the blacks moved to a new area. The school in that area became about 80 percent black. At that point, the school district said this was a segregated area, even though it was de facto segregation. The matter was appealed to the Supreme Court, and the Supreme Court said they wanted the trial judge to determine whether this was segregation.

He found that it was segregation, and instead of doing something about that one particular school, he then said the whole city of Denver had to be bused.

What has this busing order done? Already, before it goes into effect, which it does in September, one of our high schools, under previous orders, has been closed three times, once for 2 weeks, on account of the violence that went on with the kids who were bused in.

Second, I know of parents right now, in fact, one of them called me at midnight last night, wanting to know whom he could telephone or telegraph to urge support of the Gurney amendment, and I tried to tell him.

They are not only busing students across town to keep them away from the neighborhood schools, schoolchildren are going to attend two schools at once, one school in the morning and another in the afternoon, which means they are neither fish nor fowl; they are not in either school.

This busing is going to tear the whole public education system apart in our city, and if the Supreme Court, which God forbid, should go ahead and assert the Detroit decision across district lines, we are liable to have a revolution in our own State against the school boards and the court system.

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

Mr. DOMINICK. I yield.

Mr. GRIFFIN. I wonder if there is any reason to assume that if the Supreme Court buses across county lines and city lines, they would not also order busing across State lines.

Mr. DOMINICK. The Senator is totally correct. There is no variance in the logic at all. They could easily do that. I could see half the people in Colorado, on this basis, being bused to Wyoming all of a sudden.

I urge the support of the Gurney amendment.

The PRESIDING OFFICER. The Senator's time has expired. Who yields time?

Mr. GURNEY. I yield 3 minutes to the Senator from Alabama.

Mr. ALLEN. Mr. President, having joined in cosponsoring the Student Freedom of Choice Act with the distinguished Senator from North Carolina (Mr. ERVIN) and other Senators, I strongly support the Ervin amendment. I am convinced that the Student Freedom of Choice Act is a proposal before the Senate which offers realistic relief from abuses of judicial powers stemming from the exercise of unlimited discretionary powers in formulating remedies in desegregation cases.

From the standpoint of relief I will take it in any shape, form, or fashion, in any amount—and wherever it can be found. This accounts for my support of different approaches to the problem. In short, I am willing to buy the fleas with the dog if there is no preferable alternative. However, I am convinced that the Student Freedom of Choice Act which amends the Civil Rights Act of 1964 offers an excellent alternative to other approaches to the problem and that it is preferable for many compelling reasons.

For example, most antibusing proposals imply an acceptance by Congress of the premise that U.S. district court judges have the power to classify students by race for the purpose of assigning and transporting them to schools. Proposals of this type seek only to limit the exercise of that implied power. The Student Freedom of Choice Act, which will be the Ervin amendment, to be voted on following the Gurney amendment, rejects the premise that classifications by

race for the purpose of student assignments is or can ever be a valid part of a judicial remedy in desegregation cases. The Ervin amendment insists that the Constitution is color blind—that a citizen—is a citizen, and it supports the proposition established by the Brown I decision that the Constitution denies to States and to Congress the power to classify students by race for the purpose of school assignments.

Mr. President, I maintain that any system of school assignments which is free of State-imposed racial classifications must necessarily be based on assignments from within geographically compact, reasonably drawn school attendance boundaries, coupled with a freedom of choice plan described in the definitions provided by act.

Mr. President, let me read the definition:

(g) "Freedom of choice system" means a system for the assignment of students to public schools and within public schools maintained by a school board operating a system of public schools in which the public schools and the classes it operates are open to students of all races and in which the students are granted the freedom to attend public schools and classes chosen by their respective parents from among the public schools and classes available for the instruction of students of their ages and educational standings.

Mr. President, it is unreasonable to contend that a school system operating under a plan as thus defined is unconstitutional. It is worthy of note that the definition accurately describes what the U.S. Supreme Court refers to as a unitary school system. There is certainly no possibility under such a system for racial discrimination within schools or classes within such schools. Yet, all sorts of objections will be raised to the proposal based primarily on social theories rather than on law.

Mr. President, it will be said that a unitary school system operated under the freedom of choice plan would not require racial balance in schools. That is certainly true but it is also true that the U.S. Supreme Court has never said that racial balance in enrollments of public schools is constitutionally required.

It will be said that the freedom of choice plan does not permit the Federal judges to impose the magic "viable racial mix" formula governing school enrollments by race as so many sociologists insist upon and, as do some U.S. Federal judges. True, but neither does the U.S. Supreme Court contend that the Constitution requires a "viable racial mix" or any other degree of racial mix in public schools.

It will be contended that the freedom of choice proposals would deny U.S. district courts jurisdiction to hear desegregation cases. Such a contention is totally without merit. In fact, the freedom of choice proposal simply amends the Civil Rights Act of 1964, which vests jurisdiction in U.S. district courts in desegregation cases. U.S. district courts retain that jurisdiction. The Freedom of Choice Act merely clarifies the present intention of Congress concerning the formulation of judicial remedies in de facto or de jure segregation cases, but only to the extent necessary to curb the discretionary

power in U.S. district court judges to classify students by race for the purpose of making school assignments or for the purpose of allocating school funds or for the purpose of conditioning the grant of Federal school funds on such unconstitutional racial classifications.

Neither does a freedom of choice school plan preclude busing. It merely denies the U.S. district court judges the jurisdiction and, therefore, the power to enter orders which require either the assignment or transportation of students and teachers, based on unconstitutional racial classifications.

Mr. President, it will be contended that Congress does not have the power to limit U.S. district court judges in the exercise of discretionary powers in vindication of a right protected by the equal protection clause of the 14th amendment. In answer, I can only point out that the Civil Rights Act of 1964, which the Student Freedom of Choice Act amends, does precisely that. It denies U.S. district court judges jurisdiction and power to enter orders requiring busing to eliminate racial isolation in schools attributable to de facto segregation, thereby entirely excluding from protection of the equal protection clause a comprehensive system of segregation in areas outside of the South. The Student Freedom of Choice Act is not nearly so drastic; it merely precludes U.S. district court judges from making unconstitutional racial classifications and entering orders based on such classifications.

I must add in this connection that anything which the U.S. Supreme Court may have said in regard to State laws on this subject is entirely irrelevant since States do not have the power which was vested in Congress by the 14th amendment to enact legislation to delineate and vindicate rights protected by the amendment.

What the Court has said, which is relevant to this proposal, is that, "Absent from a constitutional violation there would be no basis for judicially ordering assignments of students on a racial basis." This observation was made in the context of the discretionary equity power of U.S. district court judges to classify and assign students to school on a racial basis. What the Court did not say and seems to have forgotten is that the constitutional violation condemned by Brown I was the power to make racial classification of students in the area of public school education.

Mr. President, once the Supreme Court chose to overlook the constitutional prohibition against racial classifications, it has been racing up and down blind alleys. It is now in an embarrassing and untenable position.

For example, we find the Court saying on the one hand that racial classifications for the purpose of making student assignments is unconstitutional and on the other hand that unconstitutional racial classifications may be used as a means of guaranteeing the right of students not to be classified by race for the purpose of school assignments.

As a consequence of this muddled judicial reasoning the U.S. Supreme Court has acknowledged that freedom of choice

plans are not unconstitutional, while maintaining that such plans are not constitutionally permissible unless accompanied by coerced school assignments based on unconstitutional racial classifications.

Mr. President, the crowning contradiction in present rulings by the Supreme Court is found in the admission that the Constitution does not require any particular degree of racial mix in schools but that the Constitution imposes an "affirmative duty" on local school officials to adopt the unconstitutional means of classifying students by race and assigning such students by race and transporting them by race to achieve the maximum feasible degree of racial mix in the schools. Thus, by the process of this Alice in Wonderland reasoning we are asked to believe that the Constitution requires the maximum feasible degree of racial mix in schools but it does not require a lesser degree of racial mix.

Mr. President, in each of these instances, the Court is in the untenable position of affirming rather than denying the validity of a proposition of constitutional law which contradicts its original proposition. It stands to reason that the foundation of a government of limited powers is destroyed if acts prohibited by the Constitution can be legitimized by acts allowed by the Constitution. That is the situation today and it is reasonable to ask how these contradictions came about.

Under the U.S. Supreme Court Plessy decision, racial classifications were permitted. Such classifications were justified by invoking the largely fictional separate but equal doctrine. In the Brown decision, some 84 years later, the Supreme Court reversed and denied the power to States and to Congress to make racial classifications in the area of public school education. The decision was justified on psychological and sociological grounds which later proved to be as fictional as was the separate but equal rationale.

The present Supreme Court has, for all practical purposes, reversed the Brown decision. It now justifies racial classifications on an equally fictional and dangerous theory that the Constitution imposes an "affirmative duty" on local school boards to make racial classifications and to assign students to schools on the basis of race. Thus, acts prohibited by the Constitution are made to impose an equal obligation with acts permitted by the Constitution. The effect is that the Constitution is made to read so as to require one generation of schoolchildren to pay the penalty of correcting undesirable consequences of previous U.S. Supreme Court decisions.

Mr. President, the danger in this "affirmative duty" doctrine becomes apparent when we consider the vague and indefinite meanings of the term "equal protection of the laws" and when we consider the potential scope of its application, including all phases and aspects of our daily laws. It is not difficult to see how this "affirmative duty" doctrine conflicts with constitutional limitations on the powers of government. The notion that the U.S. Constitution imposes an affirmative duty on public officials, including a duty to use constitutionally

prohibited powers, to reach a particular end prescribed by judges is a meaningful measurement of the influence of the positivist theory of law on the present members of the U.S. Supreme Court.

Under the positivist theory of law, a Constitution may be recognized as the law which governs government, but a select body of men, a central committee, a political party, or a nonelected judicial body has the power to say what the Constitution means. Therefore, any command that these men may give and have the power to enforce may become the law of the land. The power of the U.S. Supreme Court judges and inferior court judges to enforce their decrees lies in the power to punish private citizens and public officials for contempt of court and to impose confiscatory fines and imprisonment without benefit of trial by jury. We all know that the positivist theory of law is the handmaiden of totalitarianism governments and that the primary goal of such governments is to subject its citizens to complete domination and control by the state. So, not only does the "affirmative duty" doctrine leave our Constitution in a shambles but it also leads to human bondage to the state.

The late Supreme Court Justice, Robert H. Jackson, in commenting on the positivist influence in shaping racial and ethnic laws in Nazi Germany, said:

The so-called positivist took over, and any command that some authority had physical power to enforce became law. Since the Nuremberg postmortem—few will believe that these positivist doctrines are weapons in the struggle to preserve liberty.

Mr. President, the "affirmative duty" doctrine is straight from positivist teachings. We recall that the Central Committee of the Communist Party of the Soviet Union once imposed an affirmative duty on scientists and school officials in the Soviet Union to adopt and teach the Lysenko theory of genetics—only to be embarrassed by subsequent proof that the theory was based not on facts but on sheer fabrications. This example of the "affirmative duty" concept of state power has meaning for us in the context of school cases. The U.S. Supreme Court has not yet subscribed to the Lysenko genetic theory or to any one of the several sociological theories advanced by Pettigrew, Jensen, Armore, Moynihan, or a host of other sociologists and political scientists who are actively competing for recognition of their theories by the Supreme Court. Neither has the U.S. Supreme Court yet prescribed the magic "viable racial mix" formula to govern public school enrollments. But the important point to remember is that the Court has established the doctrinal basis for asserting the power to do so.

For the moment the Court seems content to use its "affirmative duty" doctrine to compel a maximum feasible degree of racial mix in public schools in order to leave room for experimentation with lesser degrees of racial mix pending the outcome of experimentation with this generation of children.

Mr. President, the positivist theory of law is utterly repugnant to the U.S. Constitution. The idea that elected representatives of the people of our Nation are helpless to prevent the U.S. Supreme

Court from writing positivist doctrines into our Constitution is unthinkable. I am as much distressed by the attitude of some that Congress can do nothing to combat judicial tyranny as I am by the shocking experimentation with our children which the U.S. Supreme Court has authorized.

In conclusion, let me repeat—the constitutional issue addressed by the Brown I decision was the question of the power in States to classify schoolchildren by race for the purpose of providing public school education. This decision was that such classifications were prohibited by the Constitution. The duty imposed on U.S. district courts was to see that States stopped classifying students by race in providing public school education. For more than a decade, freedom of choice plans were recognized as constitutional, good faith compliance with that decision.

Aberrations in current Supreme Court decisions result from the exercise of the discretionary powers of courts to formulate decrees in cases properly before them. The discretionary equity power of judges is indeed broad but there are traditional limits on that power. Equity cannot compel an action which the Constitution prohibits.

Mr. President, unless and until the present Supreme Court specifically overrules the Brown I decision which prohibits racial classification in the administration of public schools, it is not within the discretionary equity power of judges to make such classifications. Limitations on the power of States and Congress cannot be set aside in the discretion of judges. The point is, the Supreme Court has not overruled Brown I. Instead, in its preoccupation with discretionary remedies the Court has authorized racial classifications as a part of an equitable remedy. Yet, equity follows the law and the law remains that "racial classifications" are unconstitutional. Since the aberrations concern remedies for denial of constitutionally protected rights, Congress has the power and the duty to take corrective actions.

The Constitution vests in Congress the specific power to delineate rights to be protected by the 14th amendment and also the power to prescribe both remedies and penalties for denial of those protected rights. Congress exercised that power in enacting the Civil Rights Act of 1964. It has the power to take such action as it may deem proper at this time to further protect students from unconstitutional racial classifications by way of amending the Civil Rights Act of 1964.

Mr. President, the Student Freedom of Choice Act now before us is completely free of the taint of racial classifications. It protects all citizens from racial discrimination which is inherent in "racial classifications." That was the objective of the Brown I decision—that is the objective of this amendment. I urge that every Senator search his heart and conscience before voting. I ask that he consider whether or not he can conscientiously vote to repudiate the Brown I decision and for classification of students by race for the purpose of school assignments and subsequent busing.

A vote for the amendment will put you

solidly against forced busing to implement a nationwide social experiment.

A vote against the amendment will put you on record as favoring "racial classifications" and in favor of school assignments and busing of students on the sole basis of their race.

Mr. President, I want to call attention to the fact that the two speakers just before I was allotted time are from areas from without the South. This same problem, Mr. President, is going to come to other areas from without the South, if some provision such as the Gurney amendment is not adopted by Congress.

I do hope, in the order that the proposals will come up, that the Bayh amendment, which is meaningless and offers no relief from forced busing as the Senator from Alabama sees it, will be defeated; then the motion of the Senator from New York (Mr. JAVITS) to lay on the table the Gurney amendment should be voted down; the Gurney amendment should be adopted; and then the Ervin amendment, which is not inconsistent with the Gurney amendment, should be adopted also.

I hope the Senate will follow that course.

By unanimous consent Senator THURMOND was added as a cosponsor of the Ervin amendment No. 1239; also, Senators THURMOND and BARTLETT were added as cosponsors to Gurney amendment No. 1144.

Mr. GURNEY. Mr. President, to wrap up the debate here in the next 2 minutes available to me, we have been arguing, of course, this busing business since 9 o'clock this morning. All the arguments pro and con have been made. The most and the least I can say about it is that we have tried busing for years in many States in this country.

In my own State of Florida it has not worked. It has been a miserable failure. It has done nothing to improve education; as a matter of fact it has hurt education. It has done nothing to improve race relations; as a matter of fact it has hurt race relations. It has cost all kinds of money for school buses and the cost of maintaining them which could have been put into the school system, either to pay teachers' salaries, to buy books or for capital improvements.

Poll after poll has been taken, and people have rejected this system of busing overwhelmingly—in the last poll by a margin of 95 percent.

Let me also summarize what we have before us.

The first vote will be on a substitute for my amendment, the Bayh substitute. What it does is wipe out my amendment completely, and also has some mealy-mouthed language in it which will not do anything to stop busing.

If we are going to do anything about busing in this session of Congress, we must vote for the Gurney amendment, which is the identical language which appears in the House education bill. If we vote for this, when the bills go to conference, we will have done something about busing. If we do not do it, we are not going to do anything about busing.

The next vote, of course, after the Bayh vote, which I hope the Senate votes down, will be the tabling motion to be offered by the Senator from New

York (Mr. JAVITS). We should vote against that. Next comes the vote on my amendment, and I hope the Senate will approve that. Then comes, of course, the vote on the Ervin amendment which I support as strongly as I do my own.

I should like this amendment to have been a little stronger but I know that we will not get any busing legislation through this Congress unless we use the language in the House bill. So I would hope that the Senate would face up to its responsibilities remembering that it is representative of the people of the United States and the people of the United States want busing stopped. They have said so again and again and again. It has nothing whatsoever to do with racial segregation at all. The safeguards are in the amendment. The Brown case and others are preserved.

I hope that the Senate will support my amendment.

Mr. FANNIN. Mr. President, I have listened very carefully to the arguments for and against the amendment of the distinguished Senator from Florida. I am quite aware of the fact that what we do here in respect to busing will have profound consequences for the constitutional and legal issues which affect the whole policy of desegregation. Having listened, I am convinced that the amendment offered by the Senator from Florida will redress a serious grievance and focus attention once again on quality education for all Americans.

We have been told by the opponents of the Gurney amendment that the amendment would upset the progress we are making in regard to school desegregation—progress which has been characterized as calm, reasonable, and rational. Yet, if over 250 letters in the past 2 weeks from the residents of Tucson in my State is any indication, the situation is far from being calm, reasonable, and certainly not rational. Tucson District No. 1 has been negotiating with the Department of Health, Education, and Welfare over the racial composition of its schools, and hanging like a pall over these negotiations has been the possibility of busing. These many parents have expressed deep and sincere concern for the welfare of their children and their educational progress. What these letters really represent is a concern that educational programs, in Tucson, will be determined, not by the community, not by the elected members of the school board, but by Federal dictates. These many letters have asked my support of legislative measures which will prevent even the possibility of busing.

The Gurney amendment would eliminate busing as a possibility in Tucson.

Without the threat of busing calm and reasonableness will emerge and a community solution will, I am sure, develop to meet the Tucson challenges. For this reason, and my own conviction that busing remedies are unwarranted in the pursuit of achieving school desegregation, I support the Gurney amendment.

Mr. TAFT. Mr. President, I oppose the transportation of students abnormal distances to create immediate integration and racial balance. Consistent with this position, however, I feel that the courts have an obligation constitutionally to assure that transportation pat-

terns are not used to perpetuate or promote de facto or de jure segregation.

In cases where segregation has occurred, greater emphasis must be placed on the repeal of restrictive zoning laws, the creation of equal opportunity housing programs, and the construction of educational institutions geographically situated to insure equal educational opportunities. Where unequal and discriminatory conditions have developed or develop in the future as a result of failure of a locality to correct and improve such socioeconomic living patterns and standards, judicial intervention may in limited cases also be necessary and desirable.

Since the decision of the Supreme Court in *Brown v. Board of Education*, 347 U.S. 483 (1954) holding racially segregated educational facilities were inherently unequal and the subsequent review of *Brown v. Board of Education* again in 1955 at 349 U.S. 249 stating that district courts should implement desegregation rulings "with all deliberate speed," extensive national debate has ensued as to the positive and negative aspects of using transportation patterns to alleviate discrimination. Unfortunately, quite often the national debate has turned into emotional responses from either side, sometimes, with confrontation and violence occurring. Indeed, the sensitivity of this issue to the electorate explains in large part the reoccurring nature of this problem before the Senate, particularly in election years.

I am sympathetic with my colleagues who feel that the scope of court-ordered abnormal transportation is wrong and not in the best interests of the student or society in general. Undoubtedly, there have been incorrect decisions by administrative and judicial officials in implementing busing transportation plans. Each one of us in this body, however, cannot be blind to the requirements of equal protection under law contained in the Constitution—neither can elected and appointed officials in the executive branches. Each branch of Government has a duty and responsibility to uphold the Constitution and not permit emotionalism in any given issue to supersede the established constitutional principles of our democratic form of government. This body cannot ignore the fact that non-Caucasians have been and are denied equal educational opportunities on a wide basis. This body cannot close its eyes to the fact that deliberate actions have resulted in providing second-class educational facilities and opportunities to economically disadvantaged citizens, especially black Americans. As much as I personally disdain court-imposed abnormal transportation as an answer to these problems, it may sometimes be the only method in certain cases by which practices of racial discrimination can be corrected. Economic facts of life and long-standing socioeconomic practices will in certain communities require transportation of students to correct such abuses. It should not and cannot be the sole remedy, however. Nor can it be applied without bounds and limitations. As the Supreme Court held in *Swann* against Charlotte-Mecklenburg Board of Education, 402 U.S. 1 (1971), limits are ap-

plicable to such transportation procedures so as to not pose a health or educational risk to students, and the Congress has set such a limitation.

The Elementary and Secondary Education Act adopted by the House, H.R. 69, would in essence resolve this question by stressing the neighborhood school concept and prohibit abnormal transportation for desegregation to any but the next closest school to a student's home, and permit this approach only in the most limited of situations. Further, the House bill would establish among other procedures a reopener provision, section 218 of H.R. 69, permitting a review of existing court orders back to the *Brown* decision with application of the neighborhood school concept contained in the legislation. Amendment No. 1144 offered by Senator GURNEY and amendment No. 1097 introduced by Senator DOLE would substitute such an approach for title VIII of S. 1539.

I am sympathetic with the problem addressed by the authors of these amendments to limit the use of orders for abnormal transportation. Cases such as *Bradley v. The School Board of the City of Richmond, Virginia et al.*, 338 F. Supp. 67 (E.D. Va., 1972), reversed, 472 F. 2d 318 (4th Cir. 1972) would be of concern if upheld. Only in the most pressing situations should municipal and county boundary lines be crossed or ignored on a large scale with regard to such judicially imposed busing.

I question, however, the macro policy that would be established by the Gurney-Dole approach as I do not believe it to be sound practically or constitutionally. At the outset, I am troubled as to what precisely is the definition of a neighborhood. Section 802(a)(2) of the amendments states:

The neighborhood is the appropriate basis for determining public school assignments.

Nowhere in the amendment is the term "neighborhood" defined. Practically this term could have a great number of meanings depending on the particular locality involved. Further, I am not convinced that a neighborhood school is always the best educational institution for a child to attend as special individual needs or abilities of a student may merit attendance at an institution in another geographic area.

Subsections 805(a)(4) and (5) refer to transportation of students disrupting the educational process and creating risks and harms to children in the first six grades. I am not convinced the facts support such findings and would submit that use of a bus may be in many cases safer than other means of transport to school. Further as I previously stated, excessive busing that would pose a health or educational risk is already prohibited by the *Swann* decision and in section 802(a) of S. 1539.

Section 812 of the amendment presents potential problems in that it would permit a prevailing party other than the United States to recover reasonable attorney fees with the Federal Government liable to the same extent as a private person. The practical effect of this provision would be to restrict litigation of close cases and would deter and intimidate many poor minority parents from

asserting the constitutional rights of their children. It would threaten the very existence of private organizations that seek to protect the rights of minority citizens. No standards are included whatsoever to apply such a restriction to cases brought for harassment or abuse of service of process. The intent of such an amendment can be interpreted no other way than to preclude access of citizens to remedies available in the judicial branch. If such a provision is found necessary by the Senate, I would suggest consideration of the provision recently included by the conference committee in the legal services corporation bill.

Sections 814 and 815 of the amendment stating the restrictions that busing could only be used as a last resort, and then only to the next closest school, pose very difficult constitutional problems. The 14th amendment requires that equal educational opportunities be available to all individuals. In many cases, particularly de facto cases, transportation is the only effective means to achieve this goal. By limiting, if not prohibiting transportation, the Gurney amendment will prevent Federal courts and school authorities from implementing the constitutional regulations established by *Brown* against the Board of Education and subsequent decisions. Those who support this amendment state that this approach merely is directed at the remedy, that is, transportation and not the right—equal educational opportunity. This right would be nullified if there is no effective remedy to vindicate it, which certainly would be the situation in certain cases.

Section 815(c) of the amendment would prohibit subsequent review by any court or agency if a prior determination has been made that a school system is a unitary system. While this provision is couched in terms of population shifts, the practical effect may be much broader and realistically prohibit elimination of certain de jure discrimination.

Notwithstanding these practical and constitutional difficulties, the amendment would permit the reopening of every administrative and court ordered desegregation plan since the *Brown* decision. While this may be possible constitutionally, it would cause chaos in the courts and in the 1,500 school districts which have desegregated under court order or HEW plan since 1954. Bitterness and confrontation would be rekindled in communities throughout the Nation. This provision potentially could be one of the most regressive steps that could be taken in the area on providing basic equal educational opportunity to all Americans.

S. 1539 does contain restrictions on abnormal transportation patterns in sections 801, 802, and 803. These sections restrict the assignment or transportation of students or teachers in order to overcome racial imbalance. Further, these sections prohibit Federal funds from being spent in any way on pupil transportation for desegregation purposes, unless requested in writing by local school officials. A provision is also contained for the stay of any transportation order until appeals are exhausted through June 30, 1978.

These restrictions combined with the recent fifth circuit decision in *Northcross v. Memphis* (Sup. Ct. Docket No. 73-1338—cert. denied, April 22, 1974) in which the most radical busing plan for Memphis was rejected, certainly provide restraints in this area. Further statutory restrictions might be necessary in the future. The issues raised in the DeFunis case, related indirectly to the equal opportunity questions before the Senate today, must be addressed and considered. Undoubtedly, they will remain of utmost concern to many Americans.

Another factor points out the undesirability of the Gurney-Esch amendment at this time. There has already been presented and argued in the U.S. Supreme Court, the Detroit case. A ruling may come down any day which would resolve many of the real or anticipated problems with court orders dealing with school transportation. The sound course would surely be to wait for further elucidation by the Court.

In summary, I cannot in good conscience support an approach to this difficult problem that seems to me to be patently unconstitutional and destined to create much confusion and no solution. Let the record reflect, then, that the U.S. Senate acted in a rational and intelligent manner and not in derogation of the basic constitutional principles upon which this country is founded. I shall vote against amendment No. 1144 and any similar amendments.

I yield the floor.

Mr. STENNIS. Mr. President, I rise in support of the so-called Ervin amendment to S. 1539.

Mr. President, the title of S. 1539 dealing with the busing of public school students contains artfully drawn language which gives the appearance of prohibiting such activity but which, in reality, gives the courts and the Department of Health, Education, and Welfare an "out." If we are ever going to lay to rest this asinine activity we must pass strong and meaningful legislation that will prevent the abuse of discretion so often found in the decisions made by the Department of Health, Education, and Welfare and the Federal courts.

The people of America are "crying out" to us here in the Congress to do something about busing. The evidence is overwhelming that busing is not desirable. Only some 5 percent of the American people favor busing. People from coast to coast are against it—not just the people of the South. It has finally come home to the other areas of our country—and they do not like it.

The U.S. Supreme Court presently has a case before it which, if affirmed, would allow the busing of children from the city of Detroit to the suburbs—from one school district to another. This plan, unbelievable as it seems, "invades" the borders of three counties and 52 school districts. Local control is, therefore, totally lost. The importance of local control was recognized by the U.S. Supreme Court in *Wright v. Council of the City of Emporia*, 407 U.S. 451. It has always been important.

For years and years, people with children have moved to an area of a city which contained quality schools. Often these schools were near enough for the

children to walk to schools. Parents belonged to the school PTA. They took pride in their schools and worked to improve them. Then suddenly, their children were forced to get up earlier and ride buses many miles to strange schools. They arrived home late in the afternoon. Interest in the schools waned and often their grades suffered. Parents are taking their children out of the public schools at a fast pace, not because they oppose integration, but because they do not want their children exposed to the dangers and uncertainties of busing. Busing, without a doubt, is ruining the public schools of America. It is not improving education.

Mr. President, in addition we are spending entirely too many tax dollars budgeted for education on transportation costs. Not only are buses expensive, but the maintenance costs including fuel are astronomical. Here we are in the midst of an energy crisis and spending hundreds of thousands of dollars for fuel—fuel we could use for many important things. It just does not make sense, Mr. President.

This busing activity can only be effectively curtailed if we return to the concept of neighborhood schools. Parents are tired of their children being subjected to someone else's theory of what is right for them. Every concerned parent in America wants what is best for his or her child. The Government is not charged with the duty of rearing the children of America—their parents are. The parents of America are saying, "Give us back our neighborhood schools and the control thereof."

Mr. President, the best way to accomplish this is to adopt the Ervin amendment. Allow students to attend whatever school their parents wish them to attend. We have abolished the dual school system—at least we have in the South. This is the way to guarantee equal protection of the laws. This, after all, ends discrimination in public schools and does what the Brown case decided 20 years ago to do.

The Congress has the constitutional power to limit the authority of the Federal Courts to order busing for the purpose of creating a certain racial balance in individual schools. Of course, the Congress cannot, under the Constitution, enact legislation which would prohibit a child, solely because of his race, from attending a particular school chosen by his parents. This amendment recognizes that right when a school board has in operation a freedom of choice plan covering the schools under its jurisdiction.

As a matter of fact, racial balance in the public schools has nothing in common with the 14th amendment to the Constitution unless that balance has been created due to racial discrimination. Only when a student is denied access to a school of his parents' choice, solely by reason of his race, does he have the protection of the 14th amendment.

In fact, in all too many cases now, a child is denied his constitutional rights when he is required to be bused to a school not selected by his parents beyond his own neighborhood, solely for the purpose of changing the racial composition of the two schools involved. While the Constitution gives a student the constitutional right to attend a public school

without regard to his race, the action of the Department of Health, Education, and Welfare and the courts, in all too many instances, have just the opposite result. Instead of the race of the student not being a factor, it is made the key factor. Until we curtail the power of the courts to order busing solely for the purpose of creating a racial balance or altering the racial composition of a student body, public education will suffer immensely.

If we can stop this senseless busing, we will have available millions of dollars to spend for books, buildings, laboratories, teachers' salaries, and scores of other items and programs to better educate the children of America. Once again, school boards and superintendents can concentrate on planning budgets, buildings, and curriculums and not have to worry about where the money is coming from to purchase new buses and about the Department of Health, Education, and Welfare's latest plan for desegregation.

This amendment does not affect public schools which do not have freedom of choice plans. The courts are free to take whatever steps are necessary or desirable in cases coming before them against schools where no freedom of choice plan is in effect. All this amendment does is open the schools to all races in accordance with Brown and the Constitution and puts an end to an unworkable experiment; namely, busing.

Mr. President, we have the power and duty to pass this legislation. We will do a great service to every child in this Nation if we do.

Mr. President, I urge adoption of this very important amendment.

Mr. MUSKIE. Mr. President, it has been 20 years since the historic decision in Brown against Board of Education—20 years since the Supreme Court gave the promise of equal educational opportunity for all Americans.

And in 20 years, that promise has still not been fulfilled. Our courts have struggled to give it life. The struggle has brought slow progress, and deep pain, to America. But it is a struggle mandated by our commitment to the ideals of liberty and equality rooted in the Constitution.

The measure before the Senate today—the so-called antibusing amendment—represents a denial of that commitment, a denial of the 20-year-old promise of equal educational opportunity.

In 1972, Mr. President, the Senate debated, and rejected, a similar proposal. At that time, I argued that to interfere with the enforcement of equal educational opportunity through our judicial system would be a "dangerous violation of the constitutional separation of powers and an attempt to reverse the process of our Government and ourselves."

That assessment continues to be valid. Once again, we are faced with the challenge of resisting political pressures which seem to call on us to dilute constitutional rights and the ability of our court system to guarantee them to American citizens. We must not abdicate our responsibility to safeguard those rights, and our commitment to fulfilling the promise of equal educational opportunity.

I believe the conclusion I reached in

the debate 2 years ago on this issue bears repeating today:

We have made progress since 1954. This bill would repeal it.

We have offered hope. This bill would strangle it.

We have moved toward an open and equal society. This bill would call us to retreat.

I say instead, we must advance, advance in the hope that we can find better answers, advance in the fields of housing, jobs, urban transportation and all the other areas that can make our society whole and just. But if we refuse equal access to quality education for all children—as this legislation would—then we assure the failure of all our efforts. . . .

I ask the Senate today not to fall short of its principles. I ask for the defeat of this measure and for a renewal of the movement of responsible Americans going forward together. There is no other way.

Mr. President, I ask unanimous consent that a series of articles on the issues raised today, evaluating our progress toward fulfilling our commitment to equal educational opportunity in the years since the Brown decision, be printed in the RECORD.

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

[From the Washington Post, May 15, 1974]

#### RACE, SCHOOLS AND THE SENATE

In March of 1972, when Watergate was still a gleam in Gordon Liddy's eye and the Board of Directors (as we now know) had yet to give final approval to his plans, Mr. Nixon unveiled his preposterous "anti-busing" plan. Mr. Ehrlichman, now busy with other matters, did the best a lawyer could do to justify and explain its patent illegalities to the press. And Richard Kleindienst, then Acting Attorney General and nothing if not blunt, happily explained to a committee of Congress that the proposed legislation would authorize the reopening of every school case—North and South—that had been settled since the Supreme Court's original school desegregation decision in 1954.

Since that time we have acquired, for our sins, a much richer context of administration law-breaking and contempt for the commands of the constitution into which to fit this particular exercise in defiance and contempt—from the court-blocked adventures in impoundment of congressionally appropriated funds to the Watergate crimes and improprieties to the sloven procedures for obtaining wiretaps, which has just compelled the Burger Court unanimously to render a decision that will free some 600 persons accused and/or convicted of violating federal criminal statutes. So it is hardly surprising that the administration's proposed monument in the field of desegregation law turned out itself to be a monumental challenge to due process, to the Constitution and to the rule of law. What is surprising and—to put it mildly—distressing, is that two years later the U.S. Senate is considering commemorating the 20th anniversary of the Supreme Court's 1954 decision by passing this proposal. Today the Senate is scheduled to vote on a House-passed variation of the Nixon administration bill which has been introduced by Senator Edward J. Gurney of Florida as an amendment to an extension of the federal school aid act. And the vote, according to most accounts, is likely to be close.

Everybody, as it seems, is against skull-duggery and for the rule of law—except when it is either inconvenient or inexpedient to explain. Thus, legislators who in a non-political year would acknowledge themselves horrified by the reckless sweep of this proposal and acutely aware of the cynicism from which it springs, are counted among those

who, for "political" reasons are likely to go over the side and vote with Mr. Gurney. We refer to the cynicism underlying the effort because for all the chaos and disruption it could bring to settled school systems North and South, the proposal itself would almost undoubtedly be overturned in many of its key parts by the Court, meanwhile creating new and burdensome problems for numerous of those communities whose burdens it purports to relieve.

Consider the bill's provisions. Its list of mandatory remedies that must be invoked before busing can be ordered could cost tax-ridden communities a fortune in the demolition and construction of schools. It is a rich man's bill, in effect providing that any busing which occurs will spare the affluent suburbs and be contained within geographical limits that are likely to result only in sending poor blacks from their own inferior schools to the inferior schools of neighboring poor white children—to communities where racial hostilities and insecurities are keenest. And, above all, it says to black children—to black people generally in this country—that even where a finding has been made of unconstitutional discrimination against them by the state, there will be no remedy in many cases. It is a tribute of sorts to the monstrosity of this concept, in a nation of laws, that back in 1972 even Mr. Ehrlichman had trouble explaining it when pressed.

In the 20 years that have passed since the Supreme Court rendered its original decision in Brown, and in the 10 years that have passed since the Civil Rights Act of 1964 gave that decision heightened impact and authority, there have been some lower court decisions and administrative interpretations that, to our mind, have skewed and distorted the meaning of the law and imposed senseless burdens on communities around the country, so that both blacks and whites have suffered. There have been, in other words, some bad busing decisions and some unreasonable and unsound bureaucratic regulations rendered. It could hardly be otherwise, given both the complexity of the cases and the familiar resistance to reasonable and desirable change that preceded and, in effect, brought on the compulsory programs to which so many now object. But it has been clear for some time now that the Supreme Court was moving carefully and deliberately to refine its position in consonance with the constitutional command that is the bedrock of *Brown* so as to take account of changed circumstances that underlie so many school cases 20 years later. This is as it should be. The question is whether the Senate will wait. The alternative before it today was admirably summed up by William McCulloch, who was ranking Republican member of the House Judiciary Committee, when the Nixon bill first came up two years ago, accompanied by a proposal for a temporary freeze on busing orders:

"It is with the deepest regret that I sit here today to listen to a spokesman for the administration asking the Congress to prostitute the courts by obligating them to suspend the equal protection clause so that Congress may debate the merits of further slowing down and perhaps even rolling back desegregation in public schools—What message are we sending to our black people? Is this any way to govern a country?"

[From the Washington Post, May 12, 1974]

#### THE BROWN DECISION: 20 YEARS LATER

(By Robert C. Maynard)

All they knew for sure then was that it was wrong. The black parents of the children in Topeka, Kan., and Summerton, S.C., meeting in secret with out-of-town lawyers, signed those legal complaints against their segregated school districts because they were looking for a better break for their youngsters.

All they really wanted was a better education for their children than they had received.

They had no way of knowing that one day it could be said that they had set off one of the most profound social revolutions any modern society had experienced. Their complaints went all the way to the U.S. Supreme Court, and when the justices decided unanimously in their favor, it is unclear now just how much even those nine men realized what would happen in the next generation. Only one thing is certain as we approach the 20th anniversary of *Brown v. Board of Education*: The decision delivered on May 17, 1954, had to do with far more than the desegregation of the public schools of this country.

Today, when the experts assess the impact of the *Brown* decision, they are prone to count black noses and white noses in school districts of the North and South and conclude that the desegregation of the American public school is a long way from completion. Many of the experts—and many parents—now question how important "integration" is for education. But if they look at the schools alone, they will have missed the point of what *Brown* did to the American political landscape.

Look, for example, at the state of Mississippi. Don't just count the desegregated school districts, but count also the number of blacks elected to state and local office; 152. That's 13 less than Michigan has. And 152 more than Mississippi had in 1954.

Look at the number of suits brought in the fields of housing, employment and recreation, all relying on the same interpretation of the equal protection clause of the 14th Amendment that the court reached in *Brown*.

Chalk it all up to *Brown*. That and much more. From the simple aspirations that moved those black parents in the last 1940s to sue for the right to send their children to a better school in the Summertons and the Topekas flowed a series of events that would overturn more than a half century of black quietude and lead to a movement that would shake the very foundations of American society. Its methods would be duplicated by the foes of an unpopular war, by advocates of equal rights for women and by activists in the causes of homosexuals and the elderly.

For *Brown* is a symbol of the start of the era of liberation movements in the United States. Its concept of the 14th Amendment was destined to affect virtually every aspect of the relationship of Americans with each other.

And it was to give to blacks the first sense of the possibilities of equal citizenship that they had dared to have in nearly 60 years. Black Americans had been living in a twilight of deprivation called "separate but equal" for all the 20th century until the court acted in *Brown*. The joke among blacks had been that if the United States were nearly as "equal" as it was separate, "we would be in pretty good shape."

*Brown* has not changed all that. Far from it. The United States is still a deeply divided society. Race enmity still poisons the well of its social relations and mars its image as a democratic society. What *Brown* has done is two things: It threw the weight of the law to the other side, to the side of equality. And it made blacks aware that they could struggle and dare to win a social revolution whose goal is absolute equality before the law and in the eyes of their fellow man. What began as a simple plea for the right to attend the same schools with whites has become a complex of goals that includes the demand to share in the decisions that affect the very manner in which the society is governed and how its institutions function.

In the years since the decision, much blood and energy has gone into that social revolution and more will undoubtedly follow before the day comes when blacks can believe they have achieved their goals. Indeed, not all blacks agree on what those goals are. Since

*Brown*, many have disdained the very notion of "integration" with white society. Yet, even in that expression of disdain, we see again the impact of *Brown*. To arrive at that conclusion suggests a sense of choice, of options. No such choice seemed real to most blacks just 20 years ago. A whole generation has been born, grown up and gone to college without ever having seen a restroom door marked "white" and "colored."

A black sophomore today might only learn through a black history course of a time in the 1940s when a black youth won admission through court order to the University of Oklahoma Law School, only to discover that his classrooms had a rope across two seats marked, "reserved for colored."

It was not until the Supreme Court took up the cases we now know as *Brown* that all those changes and many more began to occur. *Brown* simply enunciated forcefully a principle that blacks had known must come one day. It was not in itself a great surprise. Blacks had lined the curbs outside the Supreme Court in the winter of 1953 in the hope of getting a seat to hear an NAACP lawyer named Thurgood Marshall argue the law and the principle they knew the court would adopt.

The social climate in which *Brown* occurred was one of increasing determination to break down the barriers that had existed for the 50 years since the Supreme Court had ruled in the case of *Plessy v. Ferguson*. To understand the importance of what *Brown* did, and thus to understand the events that followed *Brown*, it is necessary to go back a moment in history to the *Plessy* case.

When the Civil War ended, the era known as Black Reconstruction began in the South under the aegis of a Republican administration and a Republican Congress. Federal troops were used to support the Reconstruction governments of the states of the Old Confederacy. Blacks, most of them former slaves, began a process of self-government that would put more than a dozen in Congress and result in a handful holding governorships and other high offices throughout the South.

That arrangement lasted from the end of the Civil War until the presidential election of 1876. It was then that the dreams of blacks were brutally dashed.

Republican Rutherford B. Hayes and Democratic candidate Samuel B. Tilden ended the election campaign of 1876 with neither a clear electoral vote winner, although Tilden had won a popular majority. The Democrats of the South struck a deal with Hayes. If he would agree to remove the federal troops from the South, they would support him over the candidate of their own party. Blacks were left at the mercy of planters and workers who considered them inferior, fit only for manual labor.

Alan Barth, in his new book, "Prophets with Honor," describes the legal situation in which blacks in the South found themselves over the next two decades:

"North Carolina and Virginia . . . found it wise to pass laws that forbade all fraternal organizations that permitted members of different races to address each other as 'brother.' Alabama saw fit to adopt a law prohibiting white female nurses from attending black male patients. A New Orleans ordinance segregated white and colored prostitutes in separate districts. A Birmingham ordinance made it unlawful for a black person and a white person to play together . . . at dominoes or checkers. Oklahoma banned any companionship between the races while boating or fishing. Thus did the dominant race demonstrate its 'superiority.'"

Homer Adolph Plessy was an octoroon. An octoroon is a person with one-eighth black blood, the rest white. By the standards of Louisiana law of the last century—and indeed until this day an octoroon is considered black. The streetcars of Louisiana in 1895 were separated so that blacks were forced to ride in the rear. Homer Plessy bought a

ticket, tried to sit up front, was arrested and found guilty by a local judge, John Ferguson. Thus began the case of *Plessy v. Ferguson*.

All but one justice of the Supreme Court upheld Judge Ferguson. The majority concluded that the rear of the streetcar was as good as the front, that the courts could not force people to sit beside each other, and furthermore, said Justice Henry Billings Brown for the majority:

"If the civil and political rights of both races be equal, one cannot be inferior to the other civilly or politically. If one race be inferior to the other socially, the Constitution of the United States cannot put them upon the same plane."

The lone dissenter, Justice John Marshall Harlan, argued to no avail with his brethren that "Our Constitution is color blind, and neither knows nor tolerates classes among citizens . . . The humblest is the peer of the most powerful." Then, in language that would not be equaled in the Supreme Court for a half century, he declared:

"We boast of the freedom enjoyed by our people above all other peoples. But it is difficult to reconcile that boast with a state of the law which, practically, puts the brand of servitude and degradation upon a large class of our fellow citizen, our equals before the law. The thin disguise of 'equal' accommodations for passengers in the railroad coaches will not mislead anyone, or atone for the wrong this day done."

As a New England orator had occasion to put it at another time, "rivers of blood and years of darkness" separated the days of *Plessy* from the time of *Brown*.

The reign of terror that swept across the black communities of the South was like nothing that occurred in American history before or since. Lynchings reached as high as the hundreds in some of the years between the turn of the century and the end of the 1920s. Blacks streamed out of the farmlands of the Deep South, often fleeing for their lives with no more than the clothing on their backs. They jammed into the cities in search of refuge, jobs, education and health care. They found the cities indifferent to their plight and they knew few if any of the urban skills.

Only the great migrations of the middle 19th Century from the cities of Europe to the cities of America matched the mass movement of black Americans from the rural South in the aftermath of *Plessy*.

Depression, New Deal and World War II all were instrumental in bringing alive the hopes of black Americans that the Constitution might one day apply to them. By the end of the war, the black men who fought oppression and fascism in Europe were in no mood for oppression at home. It was the children of this generation of black veterans who would become the plaintiffs in the cases known collectively as *Brown*.

By the time of *Brown*, the black communities were simmering with discontent and determination. The contradictions of racism had become too poignant. The Cold War was in high gear and this nation was denouncing oppression in Eastern Europe while black children and white children were being kept apart in school districts across the land. Moreover, the African and Asian nations were emerging from a century of European colonialism and were looking to the West with a questioning eye and scrutinizing the moral leadership of the most powerful of Western post-war nations.

*Brown* and its implications were on every black person's mind in August of 1955 when a grisly event occurred that might well have rivaled *Brown* in its impact on the political awakening of black America. In the little hamlet of Money, Miss., hard by the Tallahatchie River, Emmett Louis Till was lynched one night. The child, retarded and slightly built, lived with his mother in Chicago. She sent him back "home" to Money for the summer vacation of his 14th year.

It is unclear whether Emmett Till ever realized his "crime." He allegedly had whistled at a white woman on the streets of Money. She went home and told her husband she had been "assaulted" by a black youth. The husband and his half-brother were later to admit that they took the child from his uncle's home at 2 o'clock on the morning of Aug. 28 and carried him to the banks of the Tallahatchie. There they brutalized and mutilated him, shot him through the head, tied a heavy weight to his body with barbed wire and dumped it into the Tallahatchie.

Late that September, with the eyes of the world—and especially those of black America—fixed on the shabby little courthouse at Sumner, Miss., the two men were tried for murder. The all-white jury deliberated for a little less than two hours before acquitting them.

The reaction of many Northern whites was outrage. The reaction of blacks, North and South, was a grim realization that much remained to be done to make the doctrine of *Brown* apply to every aspect of life in the United States.

Rosa Parks had never heard of Homer Plessy. That early evening of Dec. 1, 1955, she boarded the Cleveland Avenue bus in Montgomery, Ala., with social protest the furthest thought from her mind. She took a seat and the bus made its way to Court Square. It was then that the driver ordered Rosa Parks to move to the rear of the bus to make room up front for a white passenger. Rosa Parks, 43, said, "No." She was a weary seamstress who simply didn't have the energy to move and saw no reason she should have to. She was arrested and the next phase of the social revolution was under way.

The Rev. Dr. Martin Luther King Jr. was new to Montgomery. The son of a prominent Atlanta pastor, young King had come to Montgomery's Dexter Avenue Baptist Church, not far from the state capitol. When Rosa Parks was arrested, the blacks of Montgomery were ready for protest and the city's black clergy asked King to lead the way. A boycott was organized and not a black was to ride the municipal buses of Montgomery for 381 days. The Supreme Court struck down the city ordinance that had mandated the segregation of the seating of buses in Montgomery and across the South. It was a victory for Rosa Parks and the end of the boycott, but it was only the beginning of Martin Luther King's journey into history.

The methods that King enunciated for the Montgomery protest were borrowed from his understanding of the teachings of two towering figures, Gandhi and Thoreau. He called it "creative nonviolence," and ordained that no matter how much he was abused by his enemies, he would respond in a spirit of love.

There had never been a protest style like that in black America, but it caught on and in the next several years it swept across the Southland. Blacks challenged every form of discrimination that they could figure a way of testing with their bodies and with King's new philosophy.

It had no ready application to the desegregation of the public schools, so it took the decision of President Eisenhower in 1957 to federalize the Arkansas National Guard before nine black children could get into the Central High School in Little Rock. That decision, however, added buoyancy and determination to the new nonviolent protest struggle. Blacks believed for the first time that they might actually break the back of segregation.

When the black students of Greensboro, N.C., sat in at a dime store lunch counter in 1960, they employed the tactics taught by Dr. King and allowed themselves to be abused without fighting back. When that news was spread across the country by television, thousands of students, black and white, began to challenge the segregated

lunch counters and another barrier to equality, symbolic as it was, fell before the onslaught of nonviolent protest.

What the Supreme Court had lacked the power to accomplish in the schools was being accomplished by King's shock troops in the restaurants and hotels, the public beaches and the bus stations.

It was 1961 before it became apparent that the movement for black equality was splitting into two-strains, and that the disdain for integration—not taken seriously before—would one day prove to be a powerful force in black America.

The Freedom Riders swept down on the South, with blacks and whites riding buses from town to town, getting off here and there to test the segregated waiting rooms and rest rooms with their "white" and "colored" signs. At Anniston, Ala., one afternoon in the spring of 1961, a white mob attacked the bus, set it afire and slashed its tires. The photograph of the mob's handiwork went around the world. In New York City, that photograph showed up as a pamphlet with a caption asking:

"Do you really want to integrate this burning bus?"

A different version of social revolution was starting to capture the imagination of Northern urban youth who had neither the patience nor background for King's form of love for his enemies.

There was Robert F. Williams, a North Carolina NAACP leader who led a group of armed blacks to chase some Klansmen out of town. Within months, Williams was run out of the country, to Cuba and China, but the notion of stiff resistance was to have another leader in Minister Malcolm X of the Nation of Islam, or Black Muslims.

A former convict who had found the teachings of Islam while in prison, Malcolm X preached a hard line against integration on the street corners of Harlem and soon had a massive following among young Northerners, slum dwellers and collegians alike, who questioned King's posture of nonviolence in the face of attack.

The crucial test came in Birmingham in the spring and summer of 1963. King led the civil rights movement into full battle against the resistance of Public Safety Director "Bull" Connor.

Connor turned fire hoses and police dogs on King's unresisting marches one day in the full view of television cameras. With the powerful impact of that scene on world opinion and with the support of such patriarchal figures of the civil rights movement as A. Philip Randolph and Roy Wilkins, King organized a march on Washington to demonstrate the sentiment of "all decent Americans" in favor of a civil rights law that would carry out the sentiments expressed by the Supreme Court nine years before in *Brown*.

Nearly a quarter of a million Americans came to march. They heard one of the most eloquent speeches of its kind: "I have a dream," said King, and the Mall went wild with cheers. It was perhaps the high point of King's career as a spiritual and moral leader, and the high point, too, of the non-violent movement.

Less than a month later, at the 16th Street Baptist Church in Birmingham, a bomb went off during Sunday school and four little girls were killed. In an era in which brutality against blacks had been commonplace, and in which many black churches had been destroyed by bombs, that sickening Sunday stood out in many minds as a psychological turning point against the non-violent movement.

By the time the first decade of *Brown* had ended, there was deep disillusionment in black America. The noble language of the court had not translated into tangible change. What had seemed so simple had turned out to be profoundly complicated.

*Brown* had exposed the deep hypocrisy

of racism and demonstrated that attitudes and behavior were far more difficult to change than most blacks had ever imagined.

Rather than share their schools with the blacks who had been denied access, many whites fled the cities for the suburbs, leaving those cities in a state of decline. The harder blacks tried to strive forward, the stiffer the resistance seemed to become. The major civil rights legislation of 1964 and the Voting Rights Act of 1965 showed some early promise, but the enduring legacy of racism was not to be so easily overturned by court rulings and laws.

Only a few days after passage of the Voting Rights Act, the Los Angeles community of Watts exploded with a new form of urban racial violence.

From the ashes of Watts, a new awareness emerged in black America. Malcolm X, who had been assassinated that February, became larger in death than he had been in life. His warning that blacks and whites could never become one nation seemed to have sunk in. Nothing was changing for the black man in the job market, in education or in housing. So Watts set the stage for the urban rebellion—an expression of anger that swept across the cities, an uncontrollable wild fire, for the next five years. At each turn, it became clearer that blacks were determined to choose a different course, a course of their own. Black nationalism among the young became more popular than at any time since the movement of Marcus Garvey in the 1920s.

By 1967, the goal of integration that had so strongly attracted so many blacks was all but forgotten. "Black Power" was the new slogan, replacing "We Shall Overcome."

Instead of integrated schools, the intention of those who brought the suits in *Brown*, community schools became the goal. And it was not just schools, but the whole social structure. Many blacks no longer wanted what the white man had. They wanted a world of their own.

And young angry voices arose declaring they were ready to fight for it, to die for it. They were called Panthers and Liberators, cultural nationalists and political nationalists. They called on their brothers and sisters to look toward Africa, to think of themselves as part of the Third World, merely trapped in the belly of the American whale. Even those older blacks who considered themselves middle class could not resist the emotional tug of the new ideology so far away from the language of *Brown*.

Even as the country's attention was focused on those dramatic changes, less dramatic changes were occurring elsewhere. Throughout the South and the North, blacks were trying to get their hands on some of the power that resided within the system. From a half dozen blacks in the Congress at the time of *Brown*, the number inched up to 12, then 16, enough to have a caucus of their own and be taken seriously. In Mississippi and Alabama, Georgia and Tennessee, blacks in increasing numbers were getting elected to state office. At the time of *Brown*, you could count all the black elected officials on your fingers. Now there are nearly 3,000, many of them in the Old Confederacy.

It is not progress with a capital P, but neither have blacks been standing still. What *Brown* has done is to expose a series of contradictions in American society!

Thurgood Marshall, the man who argued *Brown*, is now an associate justice of the Supreme Court. Harry Briggs, one of the fathers for whom he argued, was forced to leave Clarendon County, S.C., for the Bronx, N.Y. More blacks than ever are earning over \$15,000 a year, but more blacks than ever are living at the poverty line.

The black faces flash across the television screens, giving the news or acting in a commercial, but less than 3 per cent of television news professionals are black.

The antagonists of racial equality rail

against the "liberal" press for its advocacy of equal rights. Yet, only seven-tenths of one per cent of all the newsroom professionals in the United States today are not white.

And so it goes, a little progress here, stubborn resistance there; a bright spot, a dark spot, hope, despair.

It is impossible now to predict what will be reasonable to say on the 25th or the 40th anniversary of *Brown*. Only this is certain: Hardly anyone guessed how much America would change, for good or ill, in the 20 years since that muggy May Monday when the Supreme Court pronounced that separate but equal was not good enough.

A COURT THAT DARED THE UNKNOWN  
[From the Washington Post, May 12, 1974]  
(By John P. MacKenzie)

"Somewhere, sometime to every principle comes a moment of repose when it has been so often announced, so confidently relied upon, so long continued, that it passes the limits of judicial discretion and disturbance."

So said John W. Davis, lawyer for a South Carolina school district and courtroom spokesman for the status quo in Southern race relations. He was telling the Supreme Court that whatever it might think the 14th Amendment meant in 1953 and 1954, the justices should be guided by the pronouncements of 1896 and subsequent years approving "separate but equal" as a constitutional doctrine.

When the Supreme Court handed down its famous and unanimous desegregation decision of May 17, 1954, there were more causes won and lost than Davis' or that of his opponent, Thurgood Marshall. Seen across two decades, the decision appears to have been the breakthrough for an entirely new judicial approach, a major restructuring of American government. The judicial branch has not been in "repose" since then.

In the longer view, the rule of *Brown v. Board of Education*, coming on the heels of decisions opening up state-financed college and professional education to blacks, was an evolutionary, logical next step and nothing radical. The major new element was that the court had lost its fear of the unknown.

Fear of breaking the 1896 precedent of *Plessy v. Ferguson* was partly rooted in respect for the past and partly in fear for the future. What social upheavals would desegregation cause, what violent reactions, what administrative nightmares would the judiciary be calling down upon itself?

#### OTHER BATTLES

Once engaged in the battles over racial justice, the Warren Court looked upon other battlefields with less awe. The "political thicket" appeared more manageable and the justice saw legislative apportionment not as a "political question" but as a denial by politicians of the political rights of Americans. Looking under the rocks of the criminal justice system, the court found violations of the constitutional rights of individuals and hastened to outlaw them.

To the John Davises and others the court had slipped its moorings and was so "activist" that a judicial dictatorship seemed imminent. But to a host of other Americans, the court was opening a new avenue of redress for disadvantaged and forgotten citizens.

Richard M. Nixon, who as vice president had hailed *Brown* as the work of "our great Republican Chief Justice," was anxious as President to call a halt to the activism and restore what he called "strict construction" of the Constitution. But three of his four appointees ended up voting to uphold federal court judgments against state antiabortion laws. And Chief Justice Warren E. Burger led a charge into the religious arena, proclaiming that the only "entanglement" to be feared was government aid entangling the state and religion.

## WARNING SIGNALS

To be sure, Burger's principal aim has been in the opposite direction, to disengage the judiciary from some of the old conflicts and try to avoid new ones. He stated his perspective clearly shortly before his elevation to the highest court. Complaining about the inexorable development of Fifth Amendment law in case after case, he argued that it was "all too much of a good thing, this criminal law trend." The higher courts, in their concern for the individual, started down a road in which each step is a logical extension of the step immediately preceding it, "but when you get to the end of that road and look back, often you find you have arrived at a place you hadn't intended to go at all."

The court under Chief Justice Earl Warren did indeed seem to start things without being sure where they would end, confident that if one case led to another, it would still be sitting and capable of handling the next case justly. It approached the *Brown* case that way over Davis' warnings of a future with overtones of racial "quotas" and white flight.

If Clarendon, S.C., School District No. 1 desegregated perfectly and uniformly, he told the court, "if it is done on a mathematical basis, with 30 children as a maximum . . . you would have 27 negro children and 3 whites in one school room. Would that make the children any happier? Would they learn any more quickly? . . . Would the terrible psychological disaster being wrought, according to some of those witnesses, to the colored child be removed if he had three white children sitting somewhere in the same school room? . . . You say that is racism. Well, it is not racism . . ."

Justice Felix Frankfurter raised similar warning signals, questioning whether the racial isolation of the urban ghetto would not frustrate effective remedies. But he, like the other eight justices, came down hard on the threshold question—was there a violation of constitutional rights?—and answered that question first. Implementation plans could be tackled in another round of argument. In 1955, he announced "all deliberate speed" enforcement formula amounted to another postponement for much of the Deep South.

Justice Hugo L. Black disclosed shortly before his death that he favored instant system-wide enforcement in every district where segregation was under legal attack. Retired Justice Tom C. Clark said recently that he regretted the courts' collective lack of foresight in failing to decree grade-a-year compliance starting with kindergarten. The justices must have explored these routes and many others before settling on postponement. But if they had taken on the whole problem at once, would they have made the initial constitutional judgment about segregation?

## HOW MUCH EQUALITY

Similarly, the court began its reapportionment adventure by declaring that the courts were open to challenges by citizens underrepresented in their legislatures. The precise standards could come later. When they came and they amounted to "one man, one vote," critics complained that the courts should not apply rigid mathematical formula but instead should permit deviations based on how judges measured political factors such as geography, population distribution and even competing "interest groups." The irony was that such a measurement would carry judges even deeper into the political thicket.

Criminal law, as Burger observed, developed in similar fashion. In 1964 the court threw out a confession obtained from Danny Escobedo when police cut him off from his lawyer. This opened up yet another question: What about equal justice for the arrested suspect to poor to hire his own counsel, a question settled in favor of the defendant in the even

more controversial 1966 *Miranda v Arizona* decision.

Equality, the most sought-after constitutional principle of the Warren Court from *Brown* forward, was a hard idea to contain. Paul A. Freund told his Harvard law students it was like a boy who said he knew how to spell "banana" but didn't know where to stop. In racial matters it met with massive resistance but the idea marched on so relentlessly that miscegenation laws, long a symbol of deep-seated racism, died a quiet and almost natural death in 1967 again with no justice dissenting.

The 9-to-0 voting pattern that held firm through Little Rock in 1958 and even the intransigence of school officials in Prince Edward County, Va., in 1964, remained intact through 1968 when the court, tired of a case-by-case desegregation process that was not working, gave full force to the principle that only effective remedies would be approved. Segregation was to be eliminated "root and branch," in Justice Black's phrase, and the South must produce not white or black schools but "just schools."

Only after President Nixon had appointed four justices was there a full-throated dissent on school desegregation and even then, in 1973, the vote to extend key principles of equal protection to Northern school systems was 8 to 1. Also by then, the nature of the problem was changing and new civil rights claims, such as that of "reverse discrimination" through racial quotas, were becoming more insistent.

## A PARTIAL HALT

Now a new majority has moved to cut down the growth of new ideas of equality. The court has refused to extend constitutional protections against discrimination in housing beyond race into the field of bias against the poor. It has declared itself helpless and disinclined to intervene where states parcel out school money unequally among districts. Blacks and urban whites trying to recapture whites who have fled to suburban Detroit schools will be lucky to survive the current round in the high court.

But the effort to wind down the judiciary's "activism" does not appear likely to succeed completely. One reason is that the newly constituted court has maintained much of its commitment to racial equality and displayed a willingness to enforce that commitment. Another reason is that legislatures, some of them energized by reapportionment, are creating and safeguarding new rights and remedies which the courts must enforce.

Furthermore, there are increasing signs of public acceptance of a full partnership in government for the judiciary. Last fall many Americans were saying it was the high court's "duty" to decide the question of subpoenas for White House tape recordings. Suggestions of a role long undreamed of for the courts—judicial review of a congressional impeachment verdict—have been raised by a lawyer for "strict constructionists" John Ehrlichman and H. R. Haldeman. The very fact that the Supreme Court has never flatly ruled on the question is an invitation to more judicial business and only the Supreme Court can say the review power doesn't exist.

[From the Washington Post, May 12, 1974]

TOPEKA TREADMILL: LINDA BROWN'S CITY FACES A NEW BATTLE

(By Austin Scott)

TOPEKA, KANS.—In the wonderland of Topeka, home of both Brown and the board of education members who ran all the way up to the Supreme Court in 1954, there is indeed a sense of having huffed and puffed and ended up close to where you started out 20 years before.

The High Court's landmark desegregation order certainly didn't move the young plaintiff, Linda Brown, very far. A 1st grader when her father first filed the suit in 1951, Linda

had gone through one all-black elementary school and on to a second all-black school by the time of the decision. And though Topeka repealed its segregation law a year before the Supreme Court order, the city didn't move very swiftly to rectify matters once the decision was handed down: Nine black children were placed in previously all-white schools the first year, and a few more the second year.

In fact, public controversy over school segregation had just about died out over the past 20 years—until last September, when a new suit was filed charging that Topeka schools are still "systematically" segregated. Topeka is thus facing the possibility of another painful integration fight 20 years later, but this time with the battle lines drawn quite differently and with enough ironies to bewilder even Lewis Carroll's Red Queen.

In 1951, when *Brown v Board of Education* was first filed in Kansas courts, for example, one underlying issue was that legal segregation prohibited some black children from attending their neighborhood schools. But the new suit charges that Topeka schools are still segregated in part because children attend neighborhood schools, that school segregation is an extension of the city's de facto segregated housing patterns.

Similarly, Charles Scott, the black attorney who filed the original *Brown* case, signed his name several years ago to another suit which tried, in his words, to "establish a school system in several cities which would give black boards of education in black neighborhoods control over all-black schools, and comparable set-ups for whites." Integration is no longer a priority issue in black Topeka, Scott says. "It's peculiar what 20 years of disillusionment can do to you."

And Topeka's black citizens, whatever their private feelings, have not publicly supported the latest suit, filed in U.S. District Court last Sept. 10 on behalf of a 10-year-old black girl by the Rev. Fred W. Phelps, a white Baptist minister who has 13 children and a congregation totaling 63.

Linda Brown, who gave her name to the historic 1954 decision, is among the many blacks who have been quiet about the new suit. Now 31, she has been married and divorced.

Her two children started their education in the same black school that her father sued to get her out of. And she seems to be taking the latest legal battle with a calm fatalism. She has not paid much attention to it, she says. But then she believes the real problem is housing, not schools.

"I think if they don't find an answer to that, we are still going to have segregation," she remarks. "Topeka today is more segregated in housing than 20 years ago . . . It seems more crowded now, more concentrated than it was."

If Topeka is more segregated than it used to be—and the dividing line between black and white neighborhoods is as easy to spot as in the rigidly segregated housing market of Chicago—then Linda Brown is one of the exceptions.

Her son Charles, now in 5th grade, and her daughter Kimberly, a 4th grader, both started their kindergarten education in Monroe, the school their mother was attending in 1951. It was all black when she went there, and she says it was 98 percent black when they started.

Then she moved, and the children spent three years in a public elementary school that was only 20 percent black. She moved again, and the children spent less than a year in a suburban public school that was 98 percent white. She moved a third time, and for the past five months the children have been attending Hudson, which is about 35 percent black and only a block from the middle-income integrated apartment complex where they live.

As a child, Linda Brown had to travel 30 blocks to school, passing several all-white

schools along the way. "Sometimes the weather was so cold it was unbearable for a small child," she recalls. "I'd start crying in the middle of the walk, turn around, and come back."

"Am I happier with Chuckie in the school he's in now? Yes, I am, because it's more like the world that he's going to grow up in, relating with people of all races. This helps him adjust to the world around him."

The notion of an integrated "real world" threads constantly through Ms. Brown's talk about her own past and her children's future. She works from 4 p.m. to midnight as a key punch operator at the Goodyear plant. Her sister, Terry Ickard, whom she lives with, takes care of Charles, Kimberly, and her own Michelle, in the evenings.

"I think the education my children are getting today makes for a better adjusted person," she remarks. "I feel today it would have really benefited me if I had gone through an integrated neighborhood school throughout my education, starting with elementary level, because to me in an integrated school it seems your rate of progress is faster. I notice this in my children. The times and the integrated setting both have a lot to do with it. You have more of a drive to meet competition."

#### GRUMBLING ABOUT PHELPS

Even though Ms. Brown has paid little attention to Phelps' suit, her notion of why an integrated education is a good thing does not seem to conflict with his.

Mentioning Phelps' name in some areas of black Topeka, brings grumbling sounds, however, sounds that indicate some very vocal blacks don't like what he's doing. They use words like "opportunist" and speculate about why a white like Phelps "is taking on the responsibility for a black problem."

At 43, Phelps is an intense, freewheeling legal activist who became a lawyer to help support his growing family, and is well aware that many Topekans—black and white—are put off by his style.

Those familiar with the months of careful preparation that went into the original *Brown* case, the long and difficult task of mobilizing black community support first, of persuading 20 parents to let their children be named as plaintiffs, say Phelps is an unlikely attorney for the second time around. Phelps, for example, is proud of winning a large damage award for a black woman whose television set was wrongly repossessed. Blacks have criticized the argument he says he used—that she had developed an unnatural psychological dependence on the set and that its withdrawal caused her serious emotional and physical problems.

Born and raised in Mississippi, Phelps, describes himself as an independent, Calvinistic Baptist, believing in predestination, a literal interpretation of the Bible, eternal retribution, and "thunderous, hellfire preaching . . . There isn't any doubt in our minds about Judgment Day . . . The Lord God is my contact."

He says he had never considered a desegregation suit until last summer when he was sitting in a Harvard Law School seminar. He hurried home to file it.

"How are we gonna get these black kids integrated with these white children so they can gain the advantages—that's the problem now," he says.

#### "A LITTLE BIT OF EDGE"

One of the major charges in Phelps' suit, in fact, is that the Parkdale Grade School, which is 90 per cent black and attended by plaintiff Evelyn Rene Johnson, denies "the intangible qualities of advantageous social intercourse and opportunity to study with, engage in discussions with, and exchange ideas with white children who are providentially favored economically and socially . . ."

"They don't have the ability to be making friends with the future white judges," says Phelps. "You can talk all you want to, if

you went to school with that white judge, you get a little bit of edge."

That kind of talk tends to send advocates of black pride and black excellence into fits of rage.

The suit also charges Topeka with providing better facilities at mostly white schools. That, it contends, generates ". . . in plaintiff and her class feelings of inferiority as to their status in the community, thus affecting their motivation to learn and generally affecting their hearts and minds in a way unlikely ever to be undone . . ."

Although Phelps borrowed the "hearts and minds" language from a Supreme Court decision, blacks who disagree with it argue that social changes have made such thinking obsolete. Federal Judge Constance Baker Motley, once one of the NAACP attorneys active in the *Brown* case, for example, remarked in a recent speech at Notre Dame University that "it appears that it may be meaningless to talk about feelings of inferiority to a black youth in the central city where blacks no longer consider themselves inferior to whites and no longer believe that any institution which is all white is necessarily good and ought to be integrated."

Back in 1950 and 1951, those laying the legal groundwork for *Brown* were trying to avoid a decision that might have ordered separate schools to be made equal.

"We made the legal presumption that the white schools and the black schools were in fact equal, that the teachers, the books, the classrooms equal," recalls attorney Scott. "We wanted the case to rest purely on the argument that despite all the apparently equal physical facilities, segregated schools inherently provided black children and maybe even white children with an incomplete education."

The Coordinating Council of the Black Community, a black umbrella group formed after the violence of 1968, has taken "no position" on the Phelps suit, according to CCBC director, Eva Lou Martin. It has joined the NAACP in telling the board of education that all parts of the community should be involved in seeking a solution to the schools problem.

#### THE HEW INQUIRY

Not until after Phelps filed his suit did the Department of Health, Education and Welfare investigate the state of desegregation in Topeka schools. It then notified the city in January that a "substantial" number of schools were not as desegregated as they should be; that student transfers were increasing segregation; that "most minority junior high school students . . . attend schools which are generally inferior in facilities . . ." and that elementary schools with a high minority enrollment tend to have inadequate kindergartens and smaller libraries.

" . . . You are, of course, aware that as a formerly officially segregated school district, your district has been under obligation to fully desegregate its schools," HEW said. "In order to achieve full compliance with the law, it will be necessary for you to develop and implement a plan which eliminates the violations set forth above."

Phelps' suit and the resulting HEW orders generated a flurry of back and forth activity by Topeka's all-white school board. The board first voted, 5 to 2, to draw up a desegregation plan and implement it by the 1974-'75 school year "if possible."

According to a local newspaper account of that meeting, "Dr. Gordon Sumners, one of the two board members, voting against the resolution, said an act comparable to the Boston Tea Party might be an appropriate response to federal intervention."

But just last week the board reversed its stand and voted to tell HEW it is impossible to meet federal integration guidelines of no more than 40 per cent blacks in any school. Instead, board members said, they will conduct a study to see if major upgrading is needed at the black-dominated schools.

The desegregation plan they voted down—involving seven school closings and 22 boundary changes, would cause undue hardship and jeopardize quality education, the board said.

The 20 years since the Supreme Court's integration decision have produced a Topeka school system where, according to figures from the system itself, the two oldest black elementary schools contain more than 95 per cent minority students while the three newest junior high schools have only 2 to 3 per cent minority students.

A student at Topeka's Washburn Law School, using the system's figures, recently calculated that in 1972-'73, 14.1 per cent of the city's 12,614 elementary students were black, but 90 per cent of the black elementary students attended 44 per cent of the schools. Two schools were listed as all white, five were more than half black, and eight were more than 35 per cent black.

#### "SO MANY BROKEN HOMES"

There's a circular component to the whole problem that worries Linda Brown. To some extent, she says, she thinks neighborhood segregation results from school segregation.

"You get this almost ghetto situation and the black child does not have a chance to mingle with the people he will be with when he grows up. This is not the world that kids are going to enter . . . I think you'll find the older black adult is still afraid to venture out. This will change with younger generations. The younger kids here, they go apply for these job places that the older ones wouldn't."

But for all the importance she attaches to integration, she has some fears: "Before our black children are ready to go into a more integrated setting, our black parents are going to have to get these children in hand as far as discipline is concerned. My younger sister teaches at Monroe, 6th grade. She says their discipline problem is getting out of hand. I have seen that over where my kids go. The teacher tells the kids something to do and he just talks right back . . . we have so many broken homes now, so many mothers working. It's happening in white homes too."

Would it make any difference in Topeka if she were to get involved in the latest suit, speak out strongly, perhaps? "I don't think so. There is going to have to be a solution to people living where they are living before the problem can be alleviated."

What about busing? "I am not for it at all. To me this is a reversion to what we were getting before *Brown*. It might just be me, but I had to walk all this distance to catch a school bus and be bused across town. If this is what it comes to here in Topeka, I will conform to it, but . . . if there is another solution that would give us our neighborhood schools and still give us an integrated school system, I would rather see that."

[From the New York Law Journal,  
May 1, 1974]

#### WHERE HAS "BROWN" LED US IN 20 YEARS? (By Constance Baker Motley)

In this article, Judge Constance Baker Motley of the U.S. District Court for the Southern District of New York sets forth her personal recollections of the Supreme Court's landmark ruling on school desegregation, *Brown v. Board of Education*, twenty years after it was handed down, and comments on its impact and implementation. Judge Motley, as a counsel on the staff of the N.A.A.C.P. Legal Education and Defense Fund, participated in the major school desegregation cases in the 1950's and 1960's. Between 1961 and 1964 she argued ten civil rights cases before the U.S. Supreme Court and won nine of them. This article constitutes the text of her recent lecture at the Center for Civil Rights at the University of Notre Dame.

When the Supreme Court announced its

decision in 1954 barring state-enforced racial segregation in education that was only one part of its historic decision. The more difficult second part was yet to come. In that May 17, 1954, decision the Court directed counsel for both sides to submit new briefs in answer to Questions 4 and 5. These questions dealt with the type of relief to which petitioners would be entitled.

The five cases were also set down for further arguments as to these questions.<sup>4</sup> As far as counsel for petitioners were concerned that directive fell on a stunned, physically and mentally exhausted crew of so-called civil rights lawyers.

#### HISTORY OF "BROWN"

The five cases, which have been collectively referred to herein as *Brown*, were first argued before the Supreme Court in December, 1952. On June 8, 1953, after initial arguments, the Court had set the cases down for reargument. In an order issued at that time the Court propounded to counsel five multipart questions. Three of the questions dealt with substantive constitutional issues and two dealt with the type of relief to be afforded should the petitioners prevail.<sup>5</sup> We all had the feeling then that we were about to embark upon momentous times.

Following the June 8, 1953, order, NAACP Legal Defense Fund (LDF) lawyers had been on a seven-day work-week schedule. Months of research, conferences, and debate involving historians, sociologists, legal scholars and lawyers culminated in the memorable 235-page brief and appendix filed in September, 1953. We, therefore, found the 1954 order for further briefs and arguments after two prior briefs and arguments incredible.

#### NO JOY IN SELMA

I left the victory party in our New York City offices on the evening of May 17, 1954, to fill a speaking engagement a day or so later in Selma, Ala. Walter White, then executive secretary of the NAACP, had become ill and was unable to keep the scheduled speaking engagement in Selma. He asked me to go in his place. Upon arrival in Selma, I was shocked to find no rejoicing there, not even discussion. The center of Negro intellectual life in that black-belt county was a small Negro college struggling for existence in the midst of what I had come to know as rural southern poverty. I have no present recollection of what I said to the overflow crowd in that little church that Sunday afternoon. I do have the feeling, however, that whatever I said must have fallen on deaf ears. The march from Selma to Montgomery to enforce the long recognized right of blacks to vote came a decade later.

When I returned to New York, work had already begun on the new mandate. Up to this historical juncture we never really had to confront the harsh realities of a post-*Brown* era. We could no longer be ambivalent about the crucial question whether we wanted the court to simply order the immediate admission of the named petitioners or whether we wanted broader class relief. We had, of course, discussed these questions at great length, but the post-*Brown* era was now here.

#### EARLY SUCCESSES

We had previously succeeded in gaining the admission in 1950 of a few black students to the University of Texas and Oklahoma on the graduate and professional school level after four years of effort.<sup>6</sup> This took place without disruption or violence, despite predictions to the contrary. As a result, we and the nation had had no real experience with large scale desegregation efforts in the field of education.

In the 235-page brief on the first reargument of *Brown* in December, 1953, in answer to Questions 4 and 5, we had argued that the Fourteenth Amendment requires that a de-

creed be entered directing that petitioners be admitted *forthwith* to public schools as the court had ruled in the Texas and Oklahoma cases. The court's rationale there was that constitutional rights are personal and present and therefore could not be postponed in the interest of permitting the state time to make necessary adjustments.

Manifestly, those cases were distinguishable in an equity context. At the graduate and professional school level southern states had not set up a dual network of graduate and professional facilities for blacks. The number of blacks seeking advanced degrees was minimal. The out-of-state scholarship program, held unconstitutional the *Gaines* case in 1938, had been devised to circumvent the state's obligation in this respect.<sup>7</sup> Citation of these graduate and professional school cases, therefore, did not help the court in its perplexing task.

#### COURT'S REACTION

Moreover, the court must have found our "forthwith" argument ambiguous in view of the caption which preceded it. There, we said: "After careful consideration of all of the factors involved in transition from segregated school systems to unsegregated school systems, appellants know of no reasons or considerations which would warrant postponement of the enforcement of appellants' rights by this court in the exercise of its equity powers."<sup>8</sup>

In other words, on the one hand, we talked of the "transition" from "segregated school systems" to "unsegregated school systems" in the caption and, on the other hand, we argued thereunder that the relief sought was the immediate admission of appellants. The immediate admission of appellants alone would not have resulted in the suggested transition. The dual school system would have remained intact.

Question No. 4 which the court wanted answered again read as follows:

"Assuming it is decided that segregation in public schools violates the Fourteenth Amendment—

"(a) Would a decree necessarily follow providing that, within the limits set by normal geographic school districting, Negro children should forthwith be admitted to schools of their choice? or

"(b) May this court, in the exercise of its equity powers, permit effective gradual adjustment to be brought about from existing segregated systems to a system not based on color distinctions?"

#### REPLY TO QUESTION NO. 4

This time, in answer to Question No. 4, we said in essence, that the school authorities must still admit petitioners forthwith but could be given until September, 1955, to complete "prerequisite administrative and mechanical procedures" necessary to admit "the complaining children and others similarly situated."<sup>9</sup> We did not emphasize normal geographic districting because even then we were haunted by the specter of housing segregation in the cities. We were essentially idealists. We had visions most of the time of a few black children scattered among many white pupils in each classroom, the way those of us who were reared in New England remembered it.

Question No. 5, which the court wanted us to answer anew, read:

"On the assumption on which questions 4(a) and (b) are based, and assuming further that this Court will exercise its equity powers to the end described in Question 4(b).

"(a) Should this Court formulate detailed decrees in these cases?

"(b) If so, what specific issues should the decrees reach?

"(c) Should this court appoint a special master to hear evidence with a view to recommending specific terms for such decrees?

"(d) Should this court remand to the

courts of first instance with directions to frame decrees in these cases, and if so, what general directions should the decrees of this Court include and what procedures should the courts of first instance follow in arriving at the specific terms of more detailed decrees?"

#### SEPT. 1 LIMIT URGED

In answer to Question No. 5, we argued that if the Court should allow an "effective gradual adjustment" from segregated school systems to systems not based on color distinctions, it should not formulate detailed decrees but should remand the cases to the courts of first instance with specific directions to complete desegregation by a day certain.<sup>10</sup>

We also suggested an outside limit of Sept. 1, 1965, in answer to Question 5.<sup>11</sup> This would have set an outside limit of more than two years after the May 17, 1964 decision. We further urged that a decision granting the school authorities before the Court time "should be so framed that no other state maintaining such a system is lulled into a period of inaction and induced to merely await suit on the assumption that it will then be granted the same period of time after such suit is instituted."<sup>12</sup>

Here we appeared to be reaching, in effect, for relief in suits not yet instituted, but the constitutional limitations of due process were readily apparent. What we really wanted was some statement from the Court to the effect that it hoped the rest of the South would accept its decision as the law of the land and avoid a multiplicity of similar suits.

#### BRIEF OF CLASS-ACTION

Much to our surprise, on the second reargument in the fall of 1954 the court requested us to file still another brief solely on the class-action aspect of these cases, i.e., the extent of the class and the effect of a decree on members of the class not before the Court. We, of course, argued that members of the class not before the Court were entitled to the same relief as the named petitioners.

This additional brief was required because the respondent school authorities had argued that in so-called spurious federal class actions of the type brought in the *Brown* cases relief could be afforded only to those petitioners actually before the Court. In so-called true class actions in the federal courts all members of the class were bound by the judgment and therefore entitled to relief whether present or not. This was a transparent attempt to limit the impact of *Brown* to the few remaining named petitioners. The cases had been pending so long that some of the petitioners had already finished school. We defined the class in that particular brief as all those attending and qualified to attend schools in the particular school system before the Court.<sup>13</sup> The Court agreed.

On the surface this class relief argument again appeared inconsistent with our original forthwith stance as to the named petitioners, but this was not necessarily so. The Court could have ordered the named petitioners admitted forthwith and ordered unnamed members of the class admitted within the outer time limit of September, 1956, which we had suggested. This would be Circuit Judge Potter Stewart's solution in 1956 in a similar case in Hillsboro, Ohio.<sup>14</sup> However, I cannot recall whether this was argued in the *Brown* case.

#### 1953 TOPEKA DECISION

Although we vigorously denounced the policy of gradualism in the briefs we submitted, we privately feared that that path was inevitable as far as implementation of *Brown* was concerned. In September, 1953, before the Court's 1954 decision, the Topeka, Kan., school board had adopted a resolution to the effect that its schools would be desegregated as rapidly as practicable. At the

Footnotes at end of article.

time of the second reargument, only 15 per cent of the 700 Negro elementary school children out of a total elementary school population of 8,500 had been admitted to white schools in Topeka. There segregation had not even been compelled by the state; it was simply permitted in the elementary schools and, in addition, only in city school districts.

Topeka was at the opposite end of the spectrum with relation to communities like Clarendon County, South Carolina, and Prince Edward County, Virginia, where segregation was compulsory and black pupils greatly outnumbered white pupils in the public school population.

#### NEW NAME FOR GRADUALISM

The phrase—"with all deliberate speed"—was indeed unfamiliar but, at the same time, its *déjà vu* quality was inescapable. It required no crystal ball to discern that gradualism had a new name and the South had a license for delay.

That then unfamiliar phrase ushered in the era of tokenism. Pupil assignment and grade-a-year plans suggested by the federal government in its *amicus curiae* brief on the first reargument were devices by which tokenism was effected. Gradually, and with agonizing frustration, a few more black students were admitted to all-white schools. It soon became apparent that we would have to force a broader implementation of *Brown*.

We then became "disestablishmentarians."<sup>23</sup> We commenced framing complaints in school desegregation cases in which we requested in our prayers for relief the "disestablishment" of the dual school systems and the merging of these separate entities into a unitary system. We argued that *Brown* imposed on school officials operating dual school systems an affirmative duty to take action to merge the two systems; and that *Brown* was not simply a prohibition against denying a black student who might apply for admission to a white school. This argument fell on some other deaf ears.

Most southerners had undoubtedly come to believe in 1959, when we first advocated "disestablishmentarianism," that the worst result one could expect from the Supreme Court's decision was some blacks in school with whites. And the majority of the white population in the rest of the country probably hoped we would accept this new compromise of constitutional rights, especially after federal troops had to be sent into Little Rock to enforce the right of a few black children to enter the high school there.

This narrow view of the impact of *Brown* had also settled upon a large part of the black community which found the price of desegregation too high. For example, schools in Little Rock had been closed for a time; the University of Georgia had also been temporarily closed in a back-breaking effort to secure the admission of two students; all schools in Prince Edward County had been closed and remained closed for a decade; the best black teachers were being assigned to white schools; the best black students were being admitted to white colleges; and the best black pupils were being assigned under pupil assignment to white schools. This more restricted view of *Brown* thus became a major roadblock to wider implementation.

Our best-laid plans for speeding desegregation were derailed, however, not only by the unfamiliar phrase with which we had to deal but by the confluence of many other unforeseen and unforeseen events. As blacks began marching to the beat of a different drummer, the South could not believe its ears. It retaliated with massive resistance to school desegregation as promised. We had

been forewarned of massive resistance in the Deep South, but we did not know when or where it would strike or what form it would take.

We did not realize, for example, that by pushing for desegregation on the college level in Alabama and by supporting the Montgomery bus boycott in 1956 we would bring on retaliatory action from state authorities which would have the effect of barring the NAACP from operating in Alabama for years. Alabama invoked its foreign corporations law and demanded the membership list. Other states instituted legislative investigations of NAACP and LDF.

Antiquated legal concepts such as barratry, champerty and maintenance were resurrected and reenacted into law in Virginia in an attempt to castrate the legal effort which culminated in the *Brown* decision and to prevent its implementation and expansion into other areas of the public life. These terms, aimed at controlling the conduct of lawyers as well as laymen, embodied prohibitions against stirring up litigation, financing of law suits, and "ambulance chasing."

Plaintiffs and prospective plaintiffs in school desegregation cases were visited with economic reprisals. Others were frightened off by the mere prospect of such reprisals. Negro teachers and principals, an important segment of the economic life line of the black communities, were threatened with retrenchment.

We had not anticipated that the black community in Montgomery, Ala., would spontaneously strike out on its own desegregation program in 1956 and spark the anti-segregation revolution in the black community for which *Brown* had provided the momentum. We had anticipated bringing suits in the Deep South after *Brown* to desegregate other public facilities but our sainted Rosa Parks "jumped the gun." The suit for admission of two Negro women to the University of Alabama filed in 1955 had been proceeding peacefully until then. Suddenly, massive resistance emerged with some more unfamiliar phrases—"nullification and interposition"—as well as threats of violence and official outbursts of defiance of the courts.

#### GOVERNMENT INACTION

The lack of strong support for the *Brown* decision in 1954 and the years immediately thereafter on the part of the Executive Branch of the national government not only fed ambivalence about the correctness of the decision, but it emboldened Southern governors and state legislators. An avalanche of anti-*Brown* statutes had to be declared unconstitutional. Our caseload was mounting. Big money was hard to come by.

The Internal Revenue Service was persuaded in 1956 that the NAACP should divest itself of the formidable tax-exempt Legal Defense Fund lest that tax exemption be taken away. This was a highly sophisticated body blow to the organization and its legal arm, inflicted by the national government. It frightened the leadership, led to internal organizational strife which greatly weakened both organizations, wrecked all plans for building black and white community support and for an orderly, coordinated progression of school desegregation lawsuits and lawsuits in other areas.

#### ROLE OF LAWYERS

One of the things we had learned by 1965, when these Northern school cases got under way, was that we lawyers could not control the course of history. Our role was simply to represent those who demanded action by the state. Moreover there were many school situations in the North resulting from school board action, and the action of other public officials, which were clearly within the contemplation of *Brown*.

The "freedom riders" ignited the flames of massive resistance in Mississippi. That official

resistance collided head on with our efforts to gain the admission of a single Negro to the University of Mississippi. Although we had been preparing the suit for months, when I walked into friendly Judge Mize's courtroom in the federal District Court in Jackson a few days after the freedom riders had arrived, he remarked to me that we had picked the wrong time to file any such suit. He had remembered me from 1949 when Judge Robert L. Carter and I filed suit to equalize Negro teachers' salaries in Jackson, the first black lawyers Mississippi had seen in court since, perhaps, Reconstruction.

The admission of James Meredith to the University of Mississippi cost the federal government millions of dollars. When I received an invitation a year or so ago from the black law students at the university to speak at the law school, although I could not go to see for myself how the university had changed, I had long since concluded that the price of Meredith's admission was right.

#### A NEW FIGHT

When the freedom riders and sit-inners moved to center stage in 1960, all school desegregation suits in the South were virtually abandoned by our small, overworked LDF staff to take on a new and equally difficult legal battle. *Plessy v. Ferguson*,<sup>24</sup> the case which upheld separate but equal railroad cars, had to be overruled. The *Civil Rights Cases* of 1883,<sup>25</sup> which held the Civil Rights Act of 1875 unconstitutional, had to be reargued. The 1875 act had been designed to secure the rights of blacks in privately-owned places of public accommodation. Injunctions against Martin Luther King from Albany, Ga., in 1962 to Selma, Ala., in 1965 had to be vacated. The hundreds of jailed freedom riders and sit-inners also had to be defended against local prosecutions.

#### DEATH OF MEDGAR EVERS

When Medgar Evers was killed in Jackson that summer, I gave Mississippi up "for dead." I had been there twenty-two times on the University of Mississippi case alone and so I figured my nine lives had run out. I shall never forget that trip from Jackson to the federal courthouse in Meridian during the Meredith case.

We were on our way to the courthouse to file a contempt of court action against the Governor of Mississippi who had called for massive resistance on the part of every Mississippi official. Medgar was driving, as he had done so often. I sat beside him in the front seat. My secretary and James Meredith sat on the back. When he came to a familiar stretch of road running through a deserted wooded area Medgar said, "Don't turn around now, but we are being followed by a state trooper." James Meredith's admission to the University of Mississippi cost the black community Medgar Evers' life.

By the time we got back to more than 100 pending school desegregation cases in 1965, the *Brown* decision was well on its way to being effectively overruled by the immigration of blacks to the decaying central cities and the out-migration of whites to new suburban communities. When we filed suit to desegregate the public schools in Atlanta, Ga., in 1958, for example, the school population was about 40 per cent black and 60 per cent white. Today, the school population in Atlanta is about 80 per cent black. Atlanta now has a black superintendent of schools and a black mayor. Thus, while everything else in the public life of Atlanta is desegregated twenty years after *Brown*, the schools are not. In New York City, whites are now considered a minority in the school system.

#### NO SEGREGATION PLAN

In the Deep South no school board came forward with a plan of its own to desegregate its schools. A law suit had to be brought in virtually every instance if any movement toward desegregation was to be expected.

Footnotes at end of article.

Most black parents remained fearful for the safety and emotional well being of their children and black teachers continued to see only job losses for their ranks. Relief from the impossible task of trying to carry a nationwide load of school desegregation suits came for the hard pressed LDF lawyers in the form of Congressional authorization for school desegregation suits by the Civil Rights Act of 1964. Of course, executive action with respect to the bringing of lawsuits is wholly dependent on the domestic policy of the then current administration but this monumental piece of legislation meant that the national congress had once again assumed its responsibility to enact legislation to enforce the Fourteenth Amendment.

The years have indeed gone by. It is now twenty years after the Supreme Court said segregation of Negro children in the public schools generates "a feeling of inferiority" in them "as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone." In the massive *de facto* segregated school systems in urban America today, children of the "black-is-beautiful" era view pictures in their black studies classes of black members sitting on the Supreme Court, in the halls of Congress, in the President's cabinet, and at posts in all levels of federal, state, and local governments. The status of blacks in the national community since *Brown* has changed visibly.

#### IMPACT OF "BROWN"

To the extent that opportunities for blacks to move into the mainstream increase, *Brown* is implemented. Moreover, television which seems to have as much impact as elementary schools on the minds of young children, now portrays blacks as people who use the same toothpaste as their white counterparts, eat the same cereals, and buy the same patent medicines.

It seems that today *Brown* has little practical relevance to central city blacks. Its psychological and legal relevance have already had their effect. Central city blacks seem more concerned now with the political and economic power accruing from the new black concentration than they do with busing to effect school desegregation. The Dilemma for these blacks is real. It is diversified, but there is now a new national black community with pride in itself and its accomplishments.

In addition, it appears that it may be meaningless to talk about feelings of inferiority to a black youth in the central city where blacks no longer consider themselves inferior to whites and no longer believe that any institution which is all white is necessarily good and ought to be integrated.

*Brown* has been a second "Emancipation Proclamation" in that it has freed blacks from their own feelings of inferiority and absolved the white leadership class of its feelings of guilt. Thus, the rationale for *Brown* may have slipped away. It may need a new rationale that goes something like this: Segregation is bad because the only way blacks can get an equal education is to go where the money is.

#### A CONCESSION

We conceded in the *Brown* cases that the facilities provided black children were equal to those provided white children. We did this because we sought to eliminate any possibility for another decision based upon separate but equal. We wanted the Court to rule squarely on the issue of segregation itself. There had been enough cases like the Texas and Oklahoma cases based upon a finding that equal facilities had not been provided for blacks. We also had the feeling (as a result of this series of cases which began in

1936 with the admission of Donald Murray to the law school of the University of Maryland pursuant to an order of the highest court of that state)<sup>19</sup> that the time had come for black Americans to claim Charles Sumner's legacy.<sup>20</sup> Our concession has been construed, it seems, as a prohibition against looking anew at the physical equity issue in all black central city schools.

Consequently, as for the future, it appears there are two very difficult legal problems ahead stemming from *Brown*. One is that posed by the quality of education afforded the black poor in segregated inner city schools. The other is that presented by the presence of a new black middle class seeking "reparations" when it comes to admissions to higher educational facilities and when it comes to job opportunities in the school system's upper echelons.

In retrospect, it is difficult now to say whether desegregation of the public schools would have progressed more rapidly if the Supreme Court had adopted petitioner's view of the type of relief to which they were entitled and had never invoked the phrase "with all deliberate speed." What can be said with some certainty is that without *Brown* there would not have been a civil rights revolution.

#### FOOTNOTES

<sup>1</sup> *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954). The court said:

"Because these are class actions, because of the wide applicability of this decision, and because of the great variety of local conditions, the formulation of decrees in these cases presents problems of considerable complexity. On reargument, the consideration of appropriate relief was necessarily subordinated to the primary question—the constitutionality of segregation in public education. We have now announced that such segregation is a denial of the protection of the laws. In order that we may have the full assistance of the parties in formulating decrees, the cases will be restored to the docket, and the parties are requested to present further argument on Questions 4 and 5 previously propounded by the Court for the reargument this Term. The Attorney General of the United States is again invited to participate. The Attorneys General of the states requiring or permitting segregation in public education will also be permitted to appear as amici curiae upon request to do so by September 15, 1954, and submission of briefs by October 1, 1954."

<sup>2</sup> *Brown v. Board of Education of Topeka*, 347 U.S. 972 (1953). The five questions read as follows:

"Each of these cases is ordered restored to the docket and is assigned for reargument on Monday, October 12, next. In their briefs and on oral argument counsel are requested to discuss particularly the following questions insofar as they are relevant to the respective cases:

1. What evidence is there that the Congress which submitted and the State legislatures and conventions which ratified the Fourteenth Amendment contemplated or did not contemplate, understand or did not understand, that it would abolish segregation in public schools?

<sup>2</sup> If neither the Congress in submitting nor the States in ratifying the Fourteenth Amendment understood that compliance with it would require the immediate abolition of segregation in public schools, was it nevertheless—the understanding of the framers of the Amendment:

(a) that future Congresses might in the exercise of their power under section 5 of the Amendment, abolish such segregation, or

(b) that it would be within the political power, in light of future conditions, to con-

strue the Amendment as abolishing such segregation of its own force?

<sup>3</sup> On the assumption that the answers to questions 2 (a) and (b) do not dispose of the issue, is it within the judicial power, in construing the Amendment, to abolish segregation in public schools?

<sup>4</sup> Assuming it is decided that segregation in public schools violates the Fourteenth Amendment:

(a) would a decree necessarily follow providing that within the limits set by normal geographic school districting, Negro children should forthwith be admitted to schools of their choice, or

(b) may this Court in the exercise of the equity powers, permit an effective gradual adjustment to be brought about from existing segregated systems to a system not based on color distinctions?

<sup>5</sup> On the assumption on which questions 4 (a) and (b) are based, and assuming further that this Court will exercise its equity powers to the end described in question 4(b).

(a) should this Court formulate detailed decrees in these cases;

(b) if so what specific issues should the decrees reach;

(c) should this Court appoint a special master to hear evidence with a view to recommending specific terms for such decrees;

(d) should this Court remand to the courts of first instance with directions to frame decrees in these cases, and if so, what general directions should the decrees of this Court include and what procedures should the courts of first instance follow in arriving at the specific terms of more detailed decrees?

The Attorney General of the United States is invited to take part in the oral argument and to file an additional brief if he so desires."

(3) *Sweat v. University of Texas*, 339 U.S. 629 (1950); *McLaurin v. University of Oklahoma*, 339 U.S. 637 (1950); *Sipuel v. University of Oklahoma*, 332 U.S. 631 (1968).

(4) *Missouri ex rel. Gaines v. Canada*, 305 U.S. 337 (1938).

<sup>6</sup> At page 190.

<sup>7</sup> At page 10.

<sup>8</sup> At page 24.

<sup>9</sup> At page 29.

<sup>10</sup> At page 2.

<sup>11</sup> At page 4.

<sup>12</sup> *Clemons v. Board of Education of Hillsboro*, 288 F. 2d 853 (6th Cir.) cert. den. 350 U.S. 1006 (1956).

<sup>13</sup> *Dove v. Farham*, 282 F. 2d 256, 259 (8th Cir., 1966).

<sup>14</sup> It appears that the first time a court used the word "disestablish" with reference to the requirements of *Brown* was in *Farham v. Dove*, 271 F. 2d 132, 138 (8th Cir., 1959). There the court said:

"The lack of any affirmative plan or action to disestablish the segregation status which had unconstitutionally been set up in the District, other than as the Board might be called upon to deal under the provisions of the 1956 or the 1959 Act with some individual application for assignment to another school, would perhaps not measure up to the legal and moral responsibility resting on a Board under the expression and holding of the *Brown* cases."

<sup>15</sup> U.S. 537 (1896).

<sup>16</sup> U.S. 3 (1883).

<sup>17</sup> *Pearson et al. v. Murray*, 182 A. 590 (Court of Appeals, Md., 1936).

<sup>18</sup> Charles Sumner argued the case of *Roberts v. City of Boston*, 5 Cush. (Mass) 193 (1849), in which he sought to secure the admission of black pupils in Boston's public school system to white schools long before the adoption of the Fourteenth Amendment. He was later a Massachusetts Senator and the leader in the Congress with respect to post-Civil War Amendments and civil rights legislation designed to enforce those amendments.

## THE RIGHT TO EQUAL EDUCATIONAL OPPORTUNITY

Mr. HUMPHREY. Mr. President, today we are considering an amendment to S. 1539, Education Amendments of 1974, which is called an equal educational opportunities amendment, but which violates constitutional due process and equal protection of the laws, undermines the progress our country has made toward equality of opportunity during the last 20 years.

Amendment No. 1144 is presented to us as an amendment to end busing, to prevent harm to the health and welfare of American children through the enforced traveling of long distances to and from their schools, or through enforced attendance at inferior schools. In fact, this amendment does something quite different. Only 3 percent of the children who ride buses to school do so for purposes of ending school segregation. Most children ride buses to school because it is the only way possible to get them to schools where they can be provided with a quality education. Beyond that, there has already been a decision of the Supreme Court that busing cannot be so extensive as to pose a threat to the health or welfare of the children—specifically, that the time or distance of travel shall not be so great as to risk the health of the student or significantly impinge on his or her educational process—and this restriction is reiterated in S. 1539.

Busing is not the subject of this amendment. This amendment is an attempt to reverse the movement toward desegregation in our schools. Not only does it effectively prohibit further action to desegregate school systems which are found by the courts to be not in compliance with statutory law requirements for equality of educational opportunity, but it encourages efforts by local educational agencies to take legal action to resegregate areas where desegregation has already occurred. It provides a mechanism for creating strife in localities where millions of law-abiding citizens have participated in the peaceful desegregation of their communities.

While the amendment is put forward by its sponsors as an effort to end busing for purposes of redressing racial imbalance, this is not the only mechanism by which it subverts efforts to achieve racial equality. It establishes a system of priorities requiring that even the simple device of altering school district lines be forbidden until a number of other alternatives have been attempted, and that even this minimal action cannot be taken unless it can be proved that the lines were drawn with the specific intent of creating a segregated school system. Further, if there is a shift of housing patterns, so that a once-integrated school becomes segregated, no action may be taken to redress this situation if—on the basis of the previous situation—a court had once ruled that racial balance had been achieved.

These preposterous restrictions make a mockery of the title of the amendment. Beyond that, they make a mockery of the basic constitutional provisions intended to protect equality of opportunity in this

country. Section 5 of the 14th amendment gives Congress no power to reduce the 14th amendment's protections of equal opportunity. In fact, the 14th amendment was specifically designed to provide protection to those who had historically been denied equality of rights—it was an effort to expand and extend those rights in a way which would not be subject to capricious curtailment by simple legislative action in the future.

Many of the supporters of this amendment are represented as strict constructionists of the Constitution. I challenge them to prove their enthusiasm for the Constitution by rejecting this amendment, since its requirements are a clear violation of the 14th amendment.

What we have here is a challenge—a clear threat—to the integrity and independence of our judicial system, and to the balance of power between the judicial and legislative branches of Government. We have seen enough harm done to the political fabric of our country in the last few years by efforts of the executive branch to impinge on the powers of Congress. We need not create further turmoil and distortion by extending this conflict to include a struggle by the Congress to usurp judiciary powers.

Mr. President, this country has made immense strides toward the achievement of equal opportunity for all its citizens. Much of what has been done has occurred in the very short space of 20 years since the original Supreme Court decision on school desegregation. When I consider the monumental changes which have occurred during this period—not just in legally defined rights, but in the attitudes of the people, and especially the young, of this country—what most impresses me is the active support, the peacefulness, and the widespread extent of the cooperation which have made possible such a revolution of justice. I have been proud to be one of the leaders in the congressional actions which have aided in this movement. One of the most important steps was the Civil Rights Act of 1964, of which I had the privilege of being the floor manager. I find it difficult to understand why, 10 years after the Civil Rights Act and 20 years after the initial Supreme Court decision, some people should now wish to undo all we have accomplished, to roll back the clock to a time when our country made only minimal efforts to make real for all of its citizens the guarantees and hopes embodied in the Constitution.

I am aware that the Constitution is a document subject to changing interpretations. And I understand that there are times when it is necessary to compromise in order to achieve at least a part of what we feel needs to be done. But this amendment is in clear violation of the Constitution. And it is in clear conflict not only with what we look forward to achieving in the future, but with the spirit of what we have accomplished in the past. There is no room for compromise on this measure. This is an effort to rob our minorities of hopes which had gained substance, to push them once again away from full participation in our society.

Just as busing is not the problem actually addressed by this amendment, busing is not the problem which is at the center of quality education in America today. Where it is used to achieve school desegregation, it can provide only a partial and temporary answer to the critical needs of educating all of America's children. Wherever possible, we should make full use of other methods to overcome the educational disabilities of children isolated in the urban and rural ghettos of poverty in America. These can include carefully planned school district rezoning and new school construction to benefit all children in the local area, as well as selective assignment of children from poor schools to classes in surrounding schools offering a better learning environment.

Busing is no substitute for open neighborhoods, or for enabling families to earn a better income or know a better quality of life in a neighborhood. At best it is a temporary measure until better educational resources are provided for all children. We need the best schools in areas where people have the least, and the most competent teachers where children have educational problems. We must no longer permit the quality of a child's education to be determined by the wealth or poverty of his community.

The issues we should be addressing are the urgent problems of educational disabilities of children. These are the problems on which we can have a constructive impact in the consideration of this education bill. But the amendment presently before us would forbid us to focus on the possibilities before us, and rivets our attention instead on the errors of the past. This amendment represents an unfortunate aberration from the remarkable social progress of our country during the last 20 years, and should be defeated.

An excellent editorial bearing on the issue of school desegregation and busing appeared in the Washington Post of today. I ask unanimous consent that the editorial entitled "Race, Schools, and the Senate" be printed at this point in the RECORD.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

## RACE, SCHOOLS, AND THE SENATE

In March of 1972, when Watergate was still a gleam in Gordon Liddy's eye and the Board of Directors (as we now know) had yet to give final approval to his plans, Mr. Nixon unveiled his preposterous "anti-busing" plan. Mr. Ehrlichman, now busy with other matters, did the best a lawyer could do to justify and explain its patent illegalities to the press. And Richard Kleindienst, then Acting Attorney General and nothing if not blunt, happily explained to a committee of Congress that the proposed legislation would authorize the reopening of every school case—North and South—that had been settled since the Supreme Court's original school desegregation decision in 1954.

Since that time we have acquired, for our sins, a much richer context of administration law-breaking and contempt for the commands of the constitution into which to fit this particular exercise in defiance and contempt—from the court-blocked adven-

tures in impoundment of congressionally appropriated funds to the Watergate crimes and improprieties to the sloven procedures for obtaining wiretaps, which has just compelled the Burger Court unanimously to render a decision that will free some 600 persons accused and/or convicted of violating federal criminal statutes. So it is hardly surprising that the administration's proposed monument in the field of desegregation law turned out itself to be a monumental challenge to due process, to the Constitution and to the rule of law. What is surprising and—to put it mildly—distressing, is that two years later the U.S. Senate is considering commemorating the 20th anniversary of the Supreme Court's 1954 decision by passing this proposal. Today the Senate is scheduled to vote on a House-passed variation of the Nixon administration bill which has been introduced by Senator Edward J. Gurney of Florida as an amendment to an extension of the federal school aid act. And the vote, according to most accounts, is likely to be close.

Everybody, as it seems, is against skulduggery and for the rule of law—except when it is either inconvenient or inexpedient to explain. Thus, legislators who in a non-political year would acknowledge themselves horrified by the reckless sweep of this proposal and acutely aware of the cynicism from which it springs, are counted among those who, for "political" reasons are likely to go over the side and vote with Mr. Gurney. We refer to the cynicism underlying the effort because for all the chaos and disruption it could bring to settled school systems North and South, the proposal itself would almost undoubtedly be overturned in many of its key parts by the Court, meanwhile creating new and burdensome problems for numerous of those communities whose burdens it purports to relieve.

Consider the bill's provisions. Its list of mandatory remedies that must be invoked before busing can be ordered could cost tax-ridden communities a fortune in the demolition and construction of schools. It is a rich man's bill, in effect providing that any busing which occurs will spare the affluent suburbs and be contained within geographical limits that are likely to result only in sending poor blacks from their own inferior schools to the inferior schools of neighboring poor white children—to communities where racial hostilities and insecurities are keenest. And, above all, it says to black children—to black people generally in this country—that even where a finding has been made of unconstitutional discrimination against them by the state, there will be no remedy in many cases. It is a tribute of sorts to the monstrosity of this concept, in a nation of laws, that back in 1972 even Mr. Ehrlichman had trouble explaining it when pressed.

In the 20 years that have passed since the Supreme Court rendered its original decision in *Brown*, and in the 10 years that have passed since the Civil Rights Act of 1964 gave that decision heightened impact and authority, there have been some lower court decisions and administrative interpretations that, to our mind, have skewed and distorted the meaning of the law and imposed senseless burdens on communities around the country, so that both blacks and whites have suffered. There have been, in other words, some bad busing decisions and some unreasonable and unsound bureaucratic regulations rendered. It could hardly be otherwise, given both the complexity of the cases and the familiar resistance to reasonable and desirable change that preceded and, in effect, brought on the compulsory programs to which so many now object. But it has been clear for some time now that the Supreme Court was moving carefully and deliberately to refine its position in consonance with the

constitutional command that is the bedrock of *Brown* so as to take account of changed circumstances that underlie so many school cases 20 years later. This is as it should be. The question is whether the Senate will wait. The alternative before it today was admirably summed up by William McCulloch, who was ranking Republican member of the House Judiciary Committee, when the Nixon bill first came up two years ago, accompanied by a proposal for a temporary freeze on busing orders:

"It is with the deepest regret that I sit here today to listen to a spokesman for the administration asking the Congress to prostitute the courts by obligating them to suspend the equal protection clause so that Congress may debate the merits of further slowing down and perhaps even rolling back desegregation in public schools—What message are we sending to our black people? Is this any way to govern a country?"

Mr. TOWER. Mr. President, as cosponsor of the amendment being offered by my good friend, the Senator from Florida, I would like to take this opportunity once again to add my voice to the call for reason on the issue of forced busing of schoolchildren.

For too long the Senate of the United States has stood in direct conflict not only with the voice of the people, but also with the voice of constitutional wisdom, sound educational policy, and the objective findings of every study made of the effect of forced busing to achieve educational objectives. The time has come for us to listen to the voices all around us which are saying "Busing is ineffective in achieving social goals for which it was promoted; busing is endangering the lives of young children; and busing is wrong."

Mr. President, in every poll taken on the question of forced busing, the American people have rejected this tool of the social planners as a means of guaranteeing equal educational opportunity. Less than 2 months ago, the Members of the House of Representatives adopted the language we are considering here by an overwhelming majority of almost 3 to 1. Our responsibility to the people we represent should be clear.

The amendment of the distinguished Senator from Florida does not represent an effort to deny equal educational opportunity to anyone, as some of our colleagues would have us believe. On the contrary, the amendment specifically states that "all children enrolled in public schools are entitled to equal educational opportunity without regard to race, color, sex, or national origin." What this amendment proposes to do is "to specify appropriate remedies for the orderly removal of the vestiges of the dual school system."

Earlier congressional efforts to provide statutory limitations on the discretionary equity jurisdiction of U.S. district court judges have foundered on questions of constitutionality. Today, however, we have before us an amendment which seeks only to limit the remedies available to U.S. district court judges in exercising their equity power jurisdiction. The Supreme Court, itself has urged the Congress to provide direction in this critical area.

Mr. President, this amendment would

simply limit busing for the purpose of achieving racial balance to the appropriate school closest to a student's residence. Furthermore, the amendment remedy may be effected only after seven other remedies, or combinations of remedies, have been tried and proven ineffective, and only if it would not endanger the health of the student or impinge on the educational process.

Another important provision of this amendment states that "failure of an educational agency to attain a balance, on the basis of race, color, sex, or national origin, of students among its schools shall not", in it itself, "constitute a denial of equal educational opportunity or equal protection of the laws". This important provision should help clear up the controversy which has ensued since the Swann decision over the use of numerical goals and quotas in determining whether or not a school is providing equal educational opportunity.

Section 804 specifically prohibits practices which deny equal educational opportunity, such as deliberate segregation, discrimination in the employment and assignment of faculty, and failure to take action to overcome language barriers.

On the other hand, section 806 adds the important clarification that assignment of a student to the appropriate school nearest his home is not a denial of equal educational opportunity or of equal protection of the laws, unless such an assignment is made for the purpose of segregating students, or the school to which he is assigned was located for the purpose of segregation. This provision would enable students to attend their neighborhood schools, unless there is some showing of segregatory intent.

The court is instructed to respect school district lines in formulating its remedies unless it is established that they have been drawn for the purpose, and had the effect of segregating children.

Once a school system is desegregated, the amendment provides that no subsequent population shift shall constitute a cause for civil action for a new desegregation plan, and provides for reopening of existing court order cases, so that they may be modified to comply with this measure.

Finally, court orders shall be terminated if a court finds that a unitary school system exists.

Mr. President, this amendment is an eminently fair and reasonable solution to the critical problems in education today which result from the transportation of students. My support for this amendment is based on the conviction that the laws of this Nation must not confer either favor or penalty upon any individual simply because of the color of his skin. Indeed, our laws must be enforced without regard to race, sex, or national origin. There is simply no acceptable justification for denying this color-blind protection, even to achieve goals which we feel are themselves consistent with constitutional principles.

Mr. President, I commend the Senator from Florida for his sponsorship of this amendment, and urge its adoption.

IN SUPPORT OF THE GURNEY AMENDMENT TO  
S. 1539

Mr. ROTH. Mr. President, I have supported the neighborhood school concept ever since I have been in Congress. For that reason, I am supporting the amendment offered by Senator GURNEY which clearly states a congressional policy requiring that no child be transported to any school other than the one which is "closest or next closest" to his home.

By attending his "neighborhood school" a child benefits in several ways. He can participate in after-school activities and thus develop a greater rapport with his peers, as well as developing friendships at home which can be strengthened while at school. His parents will be able to participate and take a greater personal interest in the child's day-to-day activities through meetings with teachers, other parents, the school board, and the children themselves. Moreover, because the neighborhood school often becomes a center for community education, adults, as well as children, can make use of the schools' facilities during evenings or on weekends.

Passage of the Gurney amendment will insure that a child is not assigned to a school far distant from his home. It explicitly prohibits any Federal court, department, or agency from ordering that students be transported to any school other than the one closest or next closest to his place of residence.

The Gurney amendment effectively restricts the power of the Federal Government to implement plans of forced busing. I am unalterably opposed to busing as a means of bringing about racial balance in our school system just as I have been opposed in the past to busing to maintain segregated schools.

Although a number of scholars have studied the effects of busing, there has never been any real evidence compiled to indicate that busing has improved educational quality. To the contrary, in some cases, busing has created bitterness and polarization throughout communities.

As an alternative to busing, I favor the development of first-rate, high-quality neighborhood schools for all students, regardless of race. Massive busing has cost taxpayers thousands of dollars and schoolchildren hours of time. I am convinced that this money could be spent more wisely if it were used to hire more and better teachers and additional learning materials for the classrooms of disadvantaged pupils.

Mr. President, the Senate is presented today with a significant opportunity. This body can go on record as clearly supporting an end to forced busing. Concurrently, it can reaffirm its support for the neighborhood concept of schools. Although this policy is implicit in the provisions of S. 1539, the present bill merely restates language contained in the Educational Act Amendments of 1972. The 1972 act failed to curb the use of forced busing as one means to desegregate our public schools. Only through acceptance of the Gurney amendment, can the harmful effects of massive busing be curtailed.

By passing this amendment, the Senate can join the House of Representatives in adopting a clear congressional policy in support of the neighborhood school concept. I urge my colleagues to join me in supporting its adoption.

Mr. CRANSTON. Mr. President, I wish to comment briefly on the busing amendment now before the Senate.

The current issue was first brought before the Senate and the country back in 1972 when John Ehrlichman and Richard Kleindienst decided to stir things up in the country by proposing an antibusing amendment. Those gentlemen have since left the executive branch because of Watergate. But once again we see this issue stirring. Two years ago, the Senate adopted an amendment offered by Senator MIKE MANSFIELD, the Democratic leader, and Senator HUGH SCOTT, the Republican leader in the Senate, which outlawed busing that went too far—that involved busing large numbers of children large distances and took too much time out of the day, interfering with the children's education.

The present amendment that stems from the Ehrlichman-Kleindienst days—offered this time by Senator GURNEY of Florida—would authorize the reopening of every school case—North, South, East, and West—that has already been settled over the 20 years since the Supreme Court's original school desegregation decision in 1954.

I find this situation especially saddening because so many communities across America—including California—have tried so hard to make these desegregation plans, including busing, work in the best interests of their children and in the interest of community cooperation and peace. It is appalling to me to think of disrupting the progress these good-spirited citizens have fought for and won.

This amendment poses a monumental challenge to due process of law. I know of no busing issues anywhere in California that aggravate or concern the people greatly at the present time. I see no reason to support an amendment that would prostitute the courts by obliging them to suspend the equal protection clause of the Constitution. So I am going to vote against the Gurney amendment.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that time on all rollcall votes today, back to back, that will follow the initial rollcall, be limited to 10 minutes, with the warning bell to be sounded after the first two and a half minutes.

The VICE PRESIDENT. Without objection, it is so ordered.

The question is on agreeing to the amendment of the Senator from Indiana (Mr. BAYH).

On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.  
Mr. MANSFIELD (after having voted in the affirmative). On this vote, I have a pair with the distinguished Senator from Arkansas (Mr. FULBRIGHT). If he were present and voting, he would vote "nay"; if I were at liberty to vote, I would vote "yea." I withdraw my vote.

Mr. ROBERT C. BYRD. I announce that the Senator from Arkansas (Mr. FULBRIGHT), the Senator from Alaska (Mr. GRAVEL), the Senator from Hawaii (Mr. INOUE), and the Senator from New Mexico (Mr. MONTOYA) are necessarily absent.

Mr. GRIFFIN. I announce that the Senator from Illinois (Mr. PERCY) is necessarily absent.

I also announce that the Senator from Arizona (Mr. GOLDWATER) is absent on official business.

I further announce that, if present and voting, the Senator from Illinois (Mr. PERCY) would vote "nay."

The result was announced—yeas 9, nays 84, as follows:

[No. 197 Leg.]

YEAS—9

Bayh	Hartke	Pastore
Biden	Mathias	Symington
Eagleton	Nelson	Taft

NAYS—84

Abourezk	Eastland	Metzenbaum
Alken	Ervin	Mondale
Allen	Fannin	Moss
Baker	Fong	Muskie
Bartlett	Griffin	Nunn
Beall	Gurney	Packwood
Bellmon	Hansen	Pearson
Bennett	Hart	Pell
Bentsen	Haskell	Proxmire
Bible	Hatfield	Randolph
Brock	Hathaway	Ribicoff
Brooke	Helms	Roth
Buckley	Hollings	Schweiker
Burdick	Hruska	Scott, Hugh
Byrd,	Huddleston	Scott,
Harry F., Jr.	Hughes	William L.
Byrd, Robert C.	Humphrey	Sparkman
Cannon	Jackson	Stafford
Case	Javits	Stennis
Chiles	Johnston	Stevens
Church	Kennedy	Stevenson
Clark	Long	Talmadge
Cook	Magnuson	Thurmond
Cotton	McClellan	Tower
Cranston	McClure	Tunney
Curtis	McGee	Welcker
Dole	McGovern	Williams
Domenici	McIntyre	Young
Dominick	Metcalf	

PRESENT AND GIVING A LIVE PAIR, AS  
PREVIOUSLY RECORDED—1

Mansfield, for

NOT VOTING—6

Fulbright	Gravel	Montoya
Goldwater	Inouye	Percy

So Mr. BAYH's amendment was rejected.

Mr. JAVITS. Mr. President, I wish to move to table the Gurney amendment, but Senator GURNEY has a parliamentary inquiry. I yield to him.

Mr. GURNEY. Mr. President, a parliamentary inquiry.

The VICE PRESIDENT. The Senator will state it.

Mr. GURNEY. Mr. President, it is my understanding that a "yea" vote—

Mr. ROBERT C. BYRD. Mr. President, may we have order in the Senate, so we can hear the Senators?

The VICE PRESIDENT. The Senator will proceed, but the Senate must be in order.

Mr. GURNEY. Mr. President, do I correctly understand that a "yea" vote on this motion will be a vote against the Gurney amendment, and a "nay" vote on this motion will be a vote for the Gurney amendment?

The VICE PRESIDENT. A vote to table is a vote against the Gurney amendment.

Mr. JAVITS. Mr. President, a parliamentary inquiry.

The VICE PRESIDENT. The Senator will state it.

Mr. JAVITS. Will the Gurney amendment be open to further amendment if the motion to table is rejected?

The VICE PRESIDENT. The Gurney amendment would be open to amendment, but there is no further time for debate.

Mr. JAVITS. Mr. President, I move to table the Gurney amendment.

The VICE PRESIDENT. The question is on the motion to table.

Mr. JAVITS. Mr. President, I believe the yeas and nays have been ordered.

The VICE PRESIDENT. The yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. MANSFIELD (when his name was called). On this vote I have a pair with the Senator from Arkansas (Mr. FULBRIGHT). If he were present and voting, he would vote "nay." If I were permitted to vote, I would vote "yea." Therefore, I withhold my vote.

Mr. ROBERT C. BYRD. I announce that the Senator from Arkansas (Mr. FULBRIGHT), the Senator from Alaska (Mr. GRAVEL), the Senator from Hawaii (Mr. INOUE), and the Senator from New Mexico (Mr. MONTOKA) are necessarily absent.

Mr. GRIFFIN. I announce that the Senator from Illinois (Mr. PERCY) is necessarily absent.

I also announce that the Senator from Arizona (Mr. GOLDWATER) is absent on official business.

I further announce that, if present and voting, the Senator from Illinois (Mr. PERCY) would vote "yea."

The result was announced—yeas 47, nays 46, as follows:

[No. 198 Leg.]

YEAS—47

Abourezk	Hughes	Packwood
Aiken	Humphrey	Pastore
Bayh	Jackson	Pearson
Bellmon	Javits	Pell
Biden	Kennedy	Randolph
Brooke	Magnuson	Ribicoff
Burdick	Mathias	Scott, Hugh
Case	McGee	Stafford
Church	McGovern	Stevens
Clark	McIntyre	Stevenson
Cranston	Metcaif	Symington
Eagleton	Metzenbaum	Taft
Hart	Mondale	Tunney
Hartke	Moss	Weicker
Hatfield	Muskie	Williams
Hathaway	Nelson	

NAYS—46

Allen	Curtis	Johnston
Baker	Dole	Long
Bartlett	Domenici	McClellan
Beall	Dominick	McClure
Bennett	Eastland	Nunn
Bentsen	Ervin	Proxmire
Bible	Fannin	Roth
Brock	Fong	Schweiker
Buckley	Griffin	Scott,
Byrd,	Gurney	William L.
Harry F., Jr.	Hansen	Sparkman
Byrd, Robert C.	Haskell	Stennis
Cannon	Helms	Talmadge
Chiles	Hollings	Thurmond
Cook	Hruska	Tower
Cotton	Huddleston	Young

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—1

Mansfield, for

NOT VOTING—6

Fulbright	Gravel	Montoya
Goldwater	Inouye	Percy

So Mr. JAVITS' motion to lay on the table Mr. GURNEY's amendment was agreed to.

The VICE PRESIDENT. The question recurs on the amendment of the Senator from North Carolina. The yeas and nays have been ordered.

Mr. ROBERT C. BYRD. Mr. President, may we have order in the Senate and in the galleries.

The VICE PRESIDENT. The Senate will be in order. The clerk will not call the roll until the Senate is in order.

The clerk may proceed.

The legislative clerk called the roll.

Mr. MANSFIELD (after having voted in the negative). Mr. President, on this vote I have a pair with the Senator from Arkansas (Mr. FULBRIGHT). If he were present and voting, he would vote "yea." If I were permitted to vote, I would vote "nay." Therefore I withdraw my vote.

Mr. ROBERT BYRD. I announce that the Senator from Arkansas (Mr. FULBRIGHT), the Senator from Alaska (Mr. GRAVEL), the Senator from Hawaii (Mr. INOUE), and the Senator from New Mexico (Mr. MONTOKA) are necessarily absent.

Mr. GRIFFIN. I announce that the Senator from Illinois (Mr. PERCY) is necessarily absent.

I also announce that the Senator from Arizona (Mr. GOLDWATER) is absent on official business.

I further announce that, if present and voting, the Senator from Illinois (Mr. PERCY) would vote "nay."

The result was announced—yeas 38, nays 55, as follows:

[No. 199 Leg.]

YEAS—38

Allen	Cotton	Long
Baker	Curtis	McClellan
Bartlett	Dole	McClure
Bennett	Eastland	Nunn
Bentsen	Ervin	Scott,
Bible	Fannin	William L.
Brock	Griffin	Sparkman
Buckley	Gurney	Stennis
Byrd,	Hansen	Talmadge
Harry F., Jr.	Helms	Thurmond
Byrd, Robert C.	Hollings	Tower
Cannon	Hruska	Young
Chiles	Huddleston	
Cook	Johnston	

NAYS—55

Abourezk	Hatfield	Pastore
Aiken	Hathaway	Pearson
Bayh	Hughes	Pell
Beall	Humphrey	Proxmire
Bellmon	Jackson	Randolph
Biden	Javits	Ribicoff
Brooke	Kennedy	Roth
Burdick	Magnuson	Schweiker
Case	Mathias	Scott, Hugh
Church	McGee	Stafford
Clark	McGovern	Stevens
Cranston	McIntyre	Stevenson
Domenici	Metcaif	Symington
Dominick	Metzenbaum	Taft
Eagleton	Mondale	Tunney
Fong	Moss	Weicker
Hart	Muskie	Williams
Hartke	Nelson	
Haskell	Packwood	

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—1

Mansfield, against

NOT VOTING—6

Fulbright	Gravel	Montoya
Goldwater	Inouye	Percy

So Mr. ERVIN's amendment was rejected.

Mr. JAVITS. Mr. President, I move that the Senate reconsider the vote by which the amendment was rejected.

Mr. PELL. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The VICE PRESIDENT. The bill is open to further amendment.

Mr. MANSFIELD. Mr. President, if I may have the attention of the Senate—

The VICE PRESIDENT. The Senate will be in order.

Mr. MANSFIELD. Are there any other busing amendments that are intended to be called up tonight? If not, that is it, then.

Mr. GRIFFIN. Mr. President, it should be made clear that amendments on that subject can be brought up tomorrow until the hour of 1 o'clock.

Mr. MANSFIELD. That is correct. The Senate will convene at 9 o'clock tomorrow morning. Are there any further amendments on busing tonight? All right; we have one.

Mr. BAYH. Mr. President, I ask that my amendment be stated.

The VICE PRESIDENT. The amendment will be stated.

The second assistant legislative clerk proceeded to read the amendment.

Mr. BAYH. Mr. President, I ask unanimous consent that the amendment be considered as having been read.

The VICE PRESIDENT. Without objection, it is so ordered.

The amendment is as follows:

On page 388, line 9, insert the following:

SECTION 807. (a) Notwithstanding any other provision of law, after June 30, 1974, no court of the United States shall order the implementation of any plan to remedy finding of de jure segregation which involves the transportation of students, unless the court first finds that all alternative remedies are inadequate.

(b) Before implementing any plan proposed by a local education agency to remedy a judicial determination of de jure segregation, the court shall find that such plan minimizes the transportation of students.

Sec. 808. In the formulation of remedies under this Title the lines drawn by a State subdividing its territory into separate school districts, shall not be ignored or altered except where it is established that the lines were drawn, or maintained or crossed for the purpose, and had the effect of segregating children among public schools on the basis of race, color, sex, or national origin, or where it is established that, as a result of discriminatory actions within the school districts, the lines have had the effect of segregating children among public schools on the basis of race, color, sex, or national origin.

Mr. BAYH. Mr. President, I should like to inform Senators that normally I would not call up an amendment at this hour. However, inasmuch as an amendment very similar to the amendment that was considered and voted down a moment ago, it seems to me that at that time a number of Senators wanted an up and down vote on the Gurney amendment. Now that the Gurney amendment has been tabled, for the

sake of minimizing the amount of time, I rise for the purpose of bringing this measure back as an amendment in the first degree in order to save the time of the Senate.

Basically, it does two things. It does limit cross-district busing. If a community has been found guilty of segregation and has been ordered by the court to remedy it, my amendment would prohibit a court order from bringing in an adjoining jurisdiction that had not been guilty of segregation.

It seems to me that while we should make one live up to the law, we should not say to the people in a neighboring jurisdiction: "You have to pay the price for desegregation."

The second thing it would do is to bring in the language of the Swann case as far as it requires that the judge and the school authorities look to see if any other alternatives are available before ordering busing.

We have in this bill the provisions contained in the Scott-Mansfield amendment. If Senators want me to remind them of what they are, I shall read them, since a large number of Senators are present. They read as follows:

No provision of this Act shall be construed to require the assignment or transportation of students or teachers in order to overcome racial imbalance.

No funds appropriated for the purpose of carrying out any applicable program may be used for the transportation of students or teachers (or for the purchase of equipment for such transportation) in order to overcome racial imbalance in any school or school system, or for the transportation of students or teachers (or for the purchase of equipment for such transportation) in order to carry out a plan of racial desegregation of any school or school system, except on the express written voluntary request of appropriate local school officials. No such funds shall be made available for transportation when the time or distance is so great as to risk the health of the children or significantly impinge on the educational process of such children, or where the educational opportunities available at the school to which it is proposed that any such student be transported will be substantially inferior to those opportunities offered at the school to which such student would otherwise be assigned under a nondiscriminatory system of school assignments based on geographic zones established without discrimination on account of race, religion, color, or national origin.

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

Mr. BAYH. Mr. President, I yield to the Senator from Wisconsin for a question.

Mr. NELSON. Mr. President, do I correctly understand that the Senator's proposal is, in fact, the language of the amendment which we voted on prior to the Gurney amendment plus the Scott-Mansfield amendment?

Mr. BAYH. That is accurate.

Mr. NELSON. We have adopted that amendment on previous occasions.

Mr. BAYH. That is accurate.

SEVERAL SENATORS. Vote. Vote.

Mr. JAVITS. Mr. President, I yield my-

self 3 minutes in opposition to the amendment.

The PRESIDING OFFICER. The Senator from New York is recognized for 3 minutes.

Mr. JAVITS. Mr. President, there are a considerable number of other busing amendments which are major moves in the busing field.

For myself, I would take it that the Senate has pretty well decided that question for tonight; that it wants to let this situation develop as it has developed now and see how it is being resolved, and whether that is satisfactory. There are so many pending cases in the body of law already made and so many cases that have laid down by the Senate itself and the country itself in regard to this matter which the Senator from Indiana properly referred to.

What he does add is a prohibition on the courts from making busing orders which cross educational district lines. That is, that we are going to try to dictate to the courts upon the general principles of the Scott-Mansfield compromise on busing orders it would make. I believe the Senate has generally determined, in respect of the major danger in the Gurney amendment, that this is not the way for us to go.

For that reason, this amendment at this time should be rejected.

Mr. ERVIN. Mr. President, will the Senator yield me 1 minute?

Mr. BAYH. Mr. President, I yield 1 minute to the Senator from North Carolina.

Mr. ERVIN. Mr. President, there are some very good features in this amendment that could alleviate some of the hardships in busing. For that reason, I urge every Senator who believes that something constructive should be done to bring some help to this field to vote for the Bayh amendment.

The PRESIDING OFFICER. Who yields time?

Mr. BAYH. Mr. President, I have nothing further to say. As Senators may know, I have made a rather lengthy statement explaining my position in opposition to the Gurney amendment. I feel that this is an crucially important area in which equity should prevail. We can do that without injuring the quality of equal education by adopting my amendment.

Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

The PRESIDING OFFICER. Does the Senator yield back his time?

Mr. BAYH. Mr. President, I yield back the remainder of my time.

Mr. PELL. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. All time has been yielded back. The question is on agreeing to the amendment of the Senator from Indiana. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. MUSKIE (after having voted in the negative). Mr. President, on this vote

I have a pair with the distinguished Senator from Arkansas (Mr. FULBRIGHT). If he were present and voting, he would vote "yea." If I were at liberty to vote, I would vote "nay." Therefore, I withdraw my vote.

Mr. ROBERT C. BYRD. I announce that the Senator from Arkansas (Mr. FULBRIGHT), the Senator from Alaska (Mr. GRAVEL), the Senator from Hawaii (Mr. INOUE), the Senator from Massachusetts (Mr. KENNEDY), and the Senator from New Mexico (Mr. MONTONA) are necessarily absent.

Mr. GRIFFIN. I announce that the Senator from Illinois (Mr. PERCY) is necessarily absent.

I also announce that the Senator from Arizona (Mr. GOLDWATER) is absent on official business.

On this vote, the Senator from Arizona (Mr. GOLDWATER) is paired with the Senator from Illinois (Mr. PERCY).

If present and voting, the Senator from Arizona would vote "yea" and the Senator from Illinois would vote "nay."

The result was announced—yeas 56, nays 36, as follows:

[No. 200 Leg.]

YEAS—56

Baker	Eastland	Nelson
Bartlett	Ervin	Nunn
Bayh	Fannin	Pastore
Beall	Griffin	Pearson
Bentsen	Gurney	Proxmire
Bible	Hansen	Randolph
Biden	Hartke	Roth
Buckley	Haskell	Schweiker
Burdick	Helms	Scott,
Byrd,	Hruska	William L.
Harry F., Jr.	Huddleston	Sparkman
Byrd, Robert C.	Johnston	Stennis
Cannon	Long	Symington
Chiles	Magnuson	Taft
Church	Mansfield	Talmadge
Cook	Mathias	Thurmond
Curtis	McClellan	Tower
Dole	McClure	Young
Dominick	McGee	
Eagleton	McGovern	

NAYS—36

Abourezk	Fong	Mondale
Aiken	Hart	Moss
Allen	Hatfield	Packwood
Bellmon	Hathaway	Pell
Bennett	Hollings	Ribicoff
Brock	Hughes	Scott, Hugh
Brooke	Humphrey	Stafford
Case	Jackson	Stevens
Clark	Javits	Stevenson
Cotton	McIntyre	Tunney
Cranston	Metcalf	Welcker
Domenici	Metzenbaum	Williams

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—1

Muskie, against

NOT VOTING—7

Fulbright	Inouye	Percy
Goldwater	Kennedy	
Gravel	Montoya	

So Mr. BAYH's amendment was agreed to.

Mr. BAYH. Mr. President, I move that the vote by which the amendment was agreed to be reconsidered.

Mr. EAGLETON. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1026

Mr. McGOVERN. Mr. President, I call up my amendment No. 1026 and ask that it be stated.

The PRESIDING OFFICER (Mr. HATHAWAY). The amendment will be stated.

The assistant legislative clerk read as follows:

On page 10, between lines 4 and 5, insert the following new section:

"ENTITLEMENT TO PAYMENTS WITH RESPECT TO HIGH CONCENTRATIONS OF CHILDREN WHO RESIDE ON OR WHOSE PARENTS ARE EMPLOYED ON FEDERAL PROPERTY

"SEC. 203. (a) Section 3 of the Act of September 30, 1950, (Public Law 874, Eighty-first Congress) is amended by adding at the end thereof the following new subsection:

"(f) Notwithstanding any other provision of this Act (including the provisions of section 5(c), a local educational agency with respect to which the number of children de-

termined for any fiscal year under subsection (a) amounts to at least 25 per centum of the total number of children who were in average daily attendance at the schools of such agency during such fiscal year and for whom such agency provided free public education, shall be entitled to 100 per centum of the amounts to which such agency would be otherwise entitled under this Act. The provisions of section 5(c) shall not apply to any local educational agency to which this subsection applies."

"(b) The amendment made by this section shall be effective on and after July 1, 1974."

On page 10, line 8, strike out "SEC. 203" and insert in lieu thereof "SEC. 204".

Mr. MCGOVERN. Mr. President, this amendment is cosponsored by Senators ABOUREZK, BURDICK, CURTIS, DOMENICI, GRAVEL, HRUSKA, HUMPHREY, MAGNUSON,

MANSFIELD, METCALF, MONTOYA, RIBICOFF, TUNNEY, and YOUNG.

It is an amendment that has been cleared on both sides of the aisle. I have discussed it with the distinguished manager of the bill, the Senator from Rhode Island (Mr. PELL), and with the distinguished Senator from New York (Mr. JAVITS). It merely provides that in those school agencies—

Mr. President, I ask unanimous consent that certain tables prepared by the Office of Education reflecting the effect of my amendment on 229 school districts in 34 States be printed at the conclusion of my remarks.

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

NUMBER OF SCHOOL DISTRICTS AT VARYING LEVELS OF CATEGORY A IMPACTION FISCAL YEAR 1973

State	Percent of impaction									Total number
	25 to 29	30 to 39	40 to 49	50 to 59	60 to 69	70 to 79	80 to 89	90 to 100		
Alaska	2	2	1			1				6
Arizona	4	2	2	6	1	3	3	17		38
Arkansas					1					1
California	3	5	1	2	2	4	1	3		21
Colorado		1	1	1						3
Connecticut		1								1
Idaho			1							1
Illinois	1	2		3						6
Indiana		1								1
Kansas			2					1		3
Maine			1			1				2
Massachusetts		1		1						2
Michigan			1		1	1				3
Minnesota								3		3
Missouri	1			1	1					3
Montana	1	6	6	2	4	7	2	3		31
Nebraska		1				2		1		4
Nevada			1							1
New Hampshire		1								1
New Jersey		1	2			1				5
New Mexico	2	1	3	2				2		10
New York	1		1						2	2
North Dakota	3	3	2	1	2	2			2	15
Ohio										2
Oklahoma	5	2	5	2	3	1				18
Oregon		4							1	5
Rhode Island	1	1								2
South Dakota	1	2			2	1			2	8
Texas	4								4	8
Utah		1	1							2
Virginia	1									1
Washington	2	6	1	1	2	1	3			16
Wisconsin			1							1
Wyoming							2	1		3
Total number	36	43	33	22	19	27	12	37		229

DATA ON DISTRICTS WITH 25 PERCENT OR MORE CATEGORY 3A IMPACTION, FISCAL YEAR 1973

State and school district	Total average daily attendance	Category 3A children	Category 3A children as percent of total	Total entitlement	State and school district	Total average daily attendance	Category 3A children	Category 3A children as percent of total	Total entitlement
Alaska Dept. of Ed.	21,119	16,617	78.68	\$24,727,591	Puerto E. S. D. No. 18 <sup>1</sup>	582	300	51.55	129,045
Hoonah Public Schools <sup>1</sup>	270	97	35.93	70,435	Young Sch. Dist. No. 5 <sup>1</sup>	289	223	77.16	95,923
King Cove City School Dist.	81	22	27.16	15,975	Rice S. D. No. 2 <sup>1</sup>	1,015	903	88.97	388,425
Bristol Bay Boro School Dist. <sup>1</sup>	264	69	26.14	15,103	Saco E. S. D. No. 18 <sup>1</sup>	802	762	95.01	327,774
Dillingham City School Dist. <sup>1</sup>	316	101	31.96	73,340	Apache Co. H. S. D. No. 9 <sup>1</sup>	767	200	26.08	86,030
Nome-Beltz Reg. High School	315	135	42.86	98,028	Fort Thomas Elem. S. D. No. 7 <sup>1</sup>	347	254	73.20	109,258
State total	22,365	17,041		25,035,474	Fort Thomas H. S. D. No. 7 <sup>1</sup>	117	79	67.52	33,981
ARIZONA					Alpine S. D. No. 7	39	11	28.21	4,731
Mariopa Co. Accommodation S. D.	515	515	100.00	221,527	Monument Valley H. S. D. No. 5 <sup>1</sup>	365	365	100.00	157,004
Indian Oasis S. D. No. 4 <sup>1</sup>	934	934	100.00	401,760	Navajo Compressor Stat. S. D. No. 5 <sup>1</sup>	29	29	100.00	12,474
Fort Huachuca Accommodation Schools <sup>1</sup>	1,847	1,847	100.00	794,487	Horse Mesa Accom. Sch. & Unor. Terr. <sup>1</sup>	20	7	35.00	3,011
Mt. Lemmon Accommodation S. D.	103	46	44.66	19,786	State total	26,161	19,864		8,544,499
Yuma Co. S. D. No. 27 <sup>1</sup>	1,143	622	54.42	267,553	ARKANSAS				
Litchfield S. D. No. 79	1,124	309	27.49	132,916	Gosnell S. D. No. 6	1,864	1,205	64.65	518,150
Northern Yuma H. S. D. <sup>1</sup>	556	184	33.09	79,147	CALIFORNIA				
Grand Canyon S. D. No. 4 and 3	178	127	71.35	54,629	Two Rock U.S.D. <sup>1</sup>	151	88	58.28	37,853
Tuba City E. S. D. No. 15 <sup>1</sup>	1,134	1,107	97.62	476,176	Reservation S.D. <sup>1</sup>	14	10	71.43	4,301
Grand Canyon H. S. D. <sup>1</sup>	76	65	85.53	27,959	Herlong S.D.	296	117	39.53	50,327
Tuba City H. S. D. <sup>1</sup>	371	361	97.30	155,284	Coffee Creek S.D.	26	10	38.46	4,301
Union E. S. D. No. 62 <sup>1</sup>	116	58	50.00	24,948	Alpine Co. Unif. S.D.	109	32	29.36	15,789
Peach Springs S. D. No. 8 <sup>1</sup>	115	105	91.30	45,165	Center Jt. S.D.	1,160	673	58.02	289,490
Valentine S. D. No. 22	35	18	51.43	7,742	Wheatland S.D.	2,542	2,151	84.62	925,252
Moccasin S. D. No. 1	20	10	50.00	4,301	Wheatland U.H.S.D.	862	591	68.56	423,912
Dysart S. D. No. 89 <sup>1</sup>	2,734	702	25.68	301,965	Travis Unif. S.D.	3,420	3,326	97.25	1,641,081
Chevelon Butte S. D. No. 5	20	20	100.00	8,603	Monterey Peninsula Unif. S.D.	17,799	5,166	29.02	2,548,956
Page High Sch. Dist. No. 8	563	281	49.91	120,872	Atwater S.D.	3,400	1,077	31.68	463,271
Page Elem. Sch. Dist. No. 8	1,446	835	57.75	359,175	Chawanakee E.S.D.	40	40	100.00	17,206
Window Rock S. D. No. 8 <sup>1</sup>	2,156	2,084	96.66	896,432	Big Creek Elementary S.D.	185	126	68.11	54,198
E.S.D. No. 2 <sup>1</sup>	988	987	99.90	424,558	Ocean View S.D.	2,142	660	30.81	283,899
Keams Canyon E.S.D. No. 25 <sup>1</sup>	361	361	100.00	155,284	Adelanto S.D.	1,864	1,452	77.90	624,577
McNary Elem. S. D. No. 23	101	87	86.14	37,423	China Lake Jt. S.D.	2,500	2,387	95.48	1,026,768
Alcheyas H.S.D. No. 2 <sup>1</sup>	242	240	99.17	103,236	Muroc Unif. S.D.	3,894	2,763	70.96	1,363,291
Ganado S. D. No. 19 <sup>1</sup>	1,294	1,209	93.43	520,051	Central U.S.D.	2,181	1,625	74.51	698,993
Kayenta E.S.D. No. 27 <sup>1</sup>	814	814	100.00	350,142	Seeley U.S.D.	483	205	42.44	88,180
Chino C.S.D. No. 24 <sup>1</sup>	2,803	2,803	100.00	1,205,710	San Pasqual Valley Unif. S.D. <sup>1</sup>	672	245	36.46	120,885

State and school district	Total average daily attendance	Category 3A children	Category 3A children as percentage of total	Total entitlement	State and school district	Total average daily attendance	Category 3A children	Category 3A children as percentage of total	Total entitlement
<i>Lompoc Unif. S.D.</i>	12,167	3,113	25.59	\$1,535,985	E. S. D. 17 H. <sup>1</sup>	1,091	333	30.52	\$149,510
State total	55,907	25,857		12,218,525	Blaine Co. S. D. No. 5 <sup>1</sup>	203	171	84.24	130,079
<b>COLORADO</b>					S. D. No. 2 <sup>1</sup>	136	62	45.59	29,750
El Paso Co. S. D. No. 8	3,196	1,876	58.70	806,961	Frazer H. S. D. No. 2 <sup>1</sup>	46	20	43.48	19,174
Ignacio United S. D. No. 11 H. <sup>1</sup>	918	443	48.26	190,556	Poplar Pub. Grade S. D. No. 9 <sup>1</sup>	593	304	51.26	151,601
Air Academy S. D. No. 2	4,466	1,700	38.07	789,123	Poplar H. S. D. No. 9 <sup>1</sup>	241	82	34.02	58,675
State total	8,580	4,019		1,786,640	S. D. No. 57	44	35	79.55	25,469
<b>CONNECTICUT</b>					Box Elder H. S. D. No. G <sup>1</sup>	86	66	76.74	71,677
Town of Groton Bd. of Ed.	8,722	2,769	31.75	1,710,632	H. S. D. No. 2 <sup>1</sup>	140	92	65.71	73,481
<b>IDAHO</b>					Brockton H. S. D. No. 55 <sup>1</sup>	31	21	67.74	20,852
S. D. No. 193	3,925	1,725	43.95	742,008	Edgar S. D. No. 4 <sup>1</sup>	55	25	45.45	25,100
<b>ILLINOIS</b>					Elem. S. D. No. 87	257	247	96.11	170,247
Highwood Highland Park S. D. No. 111	1,416	428	30.23	311,160	State total	8,636	4,580		2,792,432
North Chicago S. D. No. 64	3,451	1,965	56.94	975,249	<b>NEBRASKA</b>				
Community H. S. D. No. 123	1,304	392	30.06	419,612	Winnebago S. D. No. 17 <sup>1</sup>	307	231	75.24	149,119
Rantoul City S. D. No. 137	3,481	1,770	50.85	926,595	Macy S. D. No. 16 <sup>1</sup>	364	285	78.30	183,978
Rantoul Twp. H. S. D. No. 193	1,537	421	27.39	368,484	Santee S. D. C. 5 <sup>1</sup>	48	46	95.83	29,694
Mascoutah Comm. Unit. S. D. No. 19	3,511	1,905	54.26	945,470	S. D. of the City of Bellevue	10,170	3,932	38.66	2,538,263
State total	14,700	6,881		3,946,571	State total	10,889	4,494		2,901,056
<b>INDIANA</b>					<b>NEVADA</b>				
Maconaquah Sch. Corp.	3,788	1,375	36.30	658,460	Mineral Co. S. D.	1,674	697	41.64	299,814
<b>KANSAS</b>					<b>NEW HAMPSHIRE</b>				
Unif. S. D. No. 475	6,412	2,719	42.40	1,270,316	City of Portsmouth Bd. of Ed.	5,332	1,496	28.06	891,765
Unif. S. D. No. 437	3,127	1,397	44.68	652,678	<b>NEW JERSEY</b>				
Unif. S. D. No. 27	2,368	2,366	99.92	1,105,395	Boro. of Lakehurst Bd. of Ed.	791	259	32.74	206,047
State Total	11,907	6,482		3,028,390	Boro. of Eatontown Bd. of Ed.	2,346	1,119	47.70	739,558
<b>MAINE</b>					Bd. of Ed. N. Hanover Twp.	2,037	1,606	78.84	911,629
Limestone School Dept.	2,400	1,699	70.79	730,824	No. Burlington Co. Reg. S. D.	2,239	1,097	49.00	953,490
Town of Winter Harbor Sch. Comm.	193	93	48.19	40,003	Pemberton Twp. Bd. Ed.	7,277	2,041	28.05	1,623,717
State Total	2,593	1,792		770,828	State total	14,690	6,122		4,434,443
<b>MASSACHUSETTS</b>					<b>NEW MEXICO</b>				
Town of Ayer Sch. Committee	3,413	2,030	59.48	1,540,973	Dulce I. S. D. No. 21 <sup>1</sup>	595	527	88.57	226,689
Bourne Sch. Committee	3,230	1,169	36.19	1,046,839	Jemez Springs Mun. S. D. No. 31 <sup>1</sup>	612	265	43.30	113,989
State Total	6,643	3,199		2,587,812	Bernalillo Mun. S. D. No. 1 <sup>1</sup>	2,772	1,179	42.53	507,146
<b>MICHIGAN</b>					Cuba I. S. D. No. 2 <sup>1</sup>	1,080	519	48.06	223,247
Oscoda Area Schools	4,121	1,717	41.66	834,530	Alamogordo Mun. S. D. No. 1	8,875	2,334	26.30	1,003,970
Rudyard Twp. S. D. No. 11	2,221	1,593	71.72	774,261	Tularosa Municipal S. D. No. 4 <sup>1</sup>	1,484	464	31.27	199,589
Forsyth S. D. No. 7	3,314	2,130	64.27	1,035,265	I. S. D. No. 22 <sup>1</sup>	4,479	3,610	80.60	1,552,841
State Total	9,656	5,440		2,644,057	Gallup McKinley Co. Bd. of Ed. <sup>1</sup>	12,177	6,791	55.77	2,921,148
<b>MINNESOTA</b>					Bloomfield Mun. S. D. No. 6 <sup>1</sup>	1,909	567	29.70	243,895
Redlake I.S.D. No. 38 <sup>1</sup>	909	893	98.24	449,143	Magdalena Mun. S. D. No. 12 <sup>1</sup>	609	312	51.23	134,206
I.S.D. No. 77 <sup>1</sup>	135	135	100.00	67,899	State Total	34,592	16,568		7,126,725
Unorg Territory S.D. <sup>1</sup>	92	92	100.00	46,272	<b>NEW YORK</b>				
State total	1,136	1,120		563,315	U. F. S. D. No. 14, Town of Fire Island	78	23	29.49	50,487
<b>MISSOURI</b>					Central S. D. No. 1, Town of Peru	3,996	1,613	40.37	1,199,539
Knob Noster Redgr. S. D. R. 8	2,043	1,206	59.03	555,278	State Total	4,074	1,636		1,250,027
Belton S. D. No. 124	4,300	1,101	25.60	506,933	<b>NORTH DAKOTA</b>				
Waynesville Reorg. S. D. R. 6	4,902	3,030	61.81	1,395,102	Riverdale Pub. S. D. No. 89	268	160	59.70	84,465
State total	11,245	5,337		2,457,314	New Town Pub. S. D. No. 1	746	216	28.95	92,912
<b>MONTANA</b>					Lincoln S. D. No. 38	152	61	40.13	26,239
Jl. S. D. No. 8 <sup>1</sup>	358	109	30.45	46,886	Grand Forks Pub. S. D. No. 1	10,552	2,667	25.27	1,440,446
Browning E. S. D. No. 9 <sup>1</sup>	1,267	952	75.14	620,028	Minot Pub. S. D. No. 1	9,023	2,543	28.18	1,373,474
H. S. D. No. 9 <sup>1</sup>	378	236	62.43	198,320	Solen Pub. S. D. No. 3 <sup>1</sup>	346	213	61.56	119,757
Elmo E. S. D. No. 22 <sup>1</sup>	33	24	72.73	13,814	Ft. Totten S. D. No. 3 <sup>1</sup>	31	31	100.00	13,334
Babb S. D. No. 8 <sup>1</sup>	71	55	77.46	31,295	Ft. Yates Pub. S. D. No. 4 <sup>1</sup>	369	286	77.51	123,022
Heart Butte S. D. No. 1 <sup>1</sup>	160	160	100.00	105,044	Twin Buttes S. D. No. 37 <sup>1</sup>	79	62	78.48	26,669
Lakeside S. D. No. 3	109	32	29.36	13,764	Couture S. D. No. 27 <sup>1</sup>	835	269	32.22	155,710
Jt. H. S. D. No. 8 <sup>1</sup>	121	40	33.06	26,640	Ingebretson S. D. No. 28 <sup>1</sup>	115	74	64.35	31,831
Dixon S. D. No. 9 <sup>1</sup>	68	22	32.35	13,730	Mandaree Pub. S. D. No. 36 <sup>1</sup>	213	207	97.18	89,041
Gardiner S. D. No. 4 <sup>1</sup>	102	46	45.10	42,923	White Shield Pub. S. D. No. 85 <sup>1</sup>	197	77	39.09	33,121
S. D. No. 21	116	84	72.41	49,649	Nekoma School District No. 36	120	52	43.33	22,367
Lame Deer S. D. No. 6 <sup>1</sup>	304	258	84.87	125,496	Oberon SD No. 16	107	34	31.78	14,625
Glasgow E. S. D. No. 1	1,415	443	31.31	196,948	State total	23,153	6,952		3,607,019
Harlem E. S. D. No. 12 <sup>1</sup>	392	170	43.37	81,108	<b>OHIO</b>				
Harlem H. S. D. No. 12 <sup>1</sup>	183	76	41.53	59,461	Mad River Twp. Local S. D.	7,604	1,932	25.41	831,049
Brockton S. D. No. 55 <sup>1</sup>	139	103	74.10	79,821	Hamilton Local Bd. of Ed.	3,324	902	27.14	387,995
Box Elder E. S. D. No. 13 <sup>1</sup>	141	93	65.96	48,653	State total	10,928	2,834		1,219,045
S. D. No. 2 <sup>1</sup>	50	49	98.00	29,918	<b>OKLAHOMA</b>				
E. S. D. No. 27 <sup>1</sup>	306	170	55.56	83,303	Dahlongah D. S. D. No. 29 <sup>1</sup>	101	64	63.37	27,529
					Bell D.S. D. No. 33 <sup>1</sup>	223	125	56.05	53,768
					Lost City S. D. No. 17 <sup>1</sup>	197	97	49.25	41,724
					Ryal D. S. D. No. 3 <sup>1</sup>	66	45	68.18	19,356
					Skelly D. S. D. No. 1 <sup>1</sup>	110	45	40.91	19,356
					Rocky Mountain Dep. S. D. No. 24 <sup>1</sup>	100	30	30.00	12,904
					Maryetta D. S. D. No. 22 <sup>1</sup>	199	56	28.14	24,088
					Wickliffe D. S. D. No. 35 <sup>1</sup>	43	18	41.86	7,742

Footnote at end of table.

DATA ON DISTRICTS WITH 25 PERCENT OR MORE CATEGORY 3A IMPACTION, FISCAL YEAR 1973—Continued

State and school district	Total average daily attendance	Category 3A children	Category 3A children as percentage of total	Total entitlement	State and school district	Total average daily attendance	Category 3A children	Category 3A children as percentage of total	Total entitlement
<b>OKLAHOMA—Continued</b>									
Wolf D. S. D. No. 13	46	23	50.00	\$9,893	Randolph Field I. S. D.	1,344	1,288	95.83	\$1,097,221
Justice D. S. D. No. 54 <sup>1</sup>	72	48	66.67	20,647	Lackland I. S. D.	867	865	99.77	736,876
Vamoosa D. S. D. No. 8 <sup>1</sup>	115	46	40.00	19,786	United Cons. I. S. D.	2,171	596	27.45	256,369
Broxton I. S. D. No. 68 <sup>1</sup>	159	65	40.88	27,959	Ft. Sam Houston I.S.D.	1,521	1,421	93.43	1,210,521
Carnegie I. S. D. No. 33 <sup>1</sup>	827	207	25.03	89,047	State total	26,020	9,632		5,660,612
Boone D. S. D. No. 56 <sup>1</sup>	67	48	71.64	20,647	<b>UTAH</b>				
Little Axe D. S. D. No. 7 <sup>1</sup>	198	59	29.80	25,378	San Juan Co. S. D. <sup>1</sup>	2,494	1,176	47.15	505,856
Stony Point D. S. D. No. 124	62	16	25.81	7,232	Daggett S. D.	188	75	39.89	32,261
Canton I. S. D. No. 15	438	130	29.68	55,919	State total	2,682	1,251		538,117
Burns Flat I. S. D. No. 7	435	168	38.62	72,265	<b>VIRGINIA</b>				
State total	3,458	1,290		555,243	Co. Sch. Bd. of Prince George Co.	4,629	1,326	28.65	570,378
<b>OREGON</b>					<b>WASHINGTON</b>				
Hebo S. D. No. 13 J.	100	36	36.00	23,234	Oak Harbor S.D. No. 21	5,128	1,646	32.10	735,729
Petersburg S. D. No. 14 C	106	36	33.96	29,490	Diablo S.D. No. 15 <sup>1</sup>	40	12	30.00	5,363
Jefferson Co. S. D. 5 9 J.	2,082	632	30.36	451,658	Dupont Fort Lewis S.D. No. 7	1,150	998	86.78	446,086
Three Lynx S. D. No. 123	66	66	100.00	42,595	Cape Flattery S.D. No. 4	622	218	35.05	97,441
Bonneville S. D. No. 46	72	24	33.33	19,660	Anderson Island S.D. No. 24	43	36	83.72	16,091
State total	2,426	794		566,639	Taholah S.D. No. 77 <sup>1</sup>	145	105	72.41	46,932
<b>RHODE ISLAND</b>					<b>WISCONSIN</b>				
Town of Middletown Sch. Comm.	4,255	1,402	32.95	861,332	Queets Clearwater S.D. No. 2 <sup>1</sup>	79	30	37.97	13,409
Town of N. Kingstown Sch. Dept.	6,555	1,832	27.95	1,098,851	Mill A. S. D. No. 31	90	30	33.33	13,409
State total	10,810	3,234		1,960,184	Wt. Adams S. D. No. 2 9 <sup>1</sup>	878	427	48.63	190,860
<b>SOUTH DAKOTA</b>					<b>WYOMING</b>				
Todd Co. I. S. D. <sup>1</sup>	1,784	1,213	67.99	\$638,790	Medical Lake S. D. No. 326	2,334	1,416	60.67	652,923
Douglas I. S. D. No. 3	3,158	2,421	76.66	1,274,947	Inchelium S. D. No. 7 <sup>1</sup>	179	64	35.75	28,606
Shannon Co. I. S. D. No. 11	1,448	1,325	91.51	697,771	Nespelem S. D. No. 14 <sup>1</sup>	165	93	56.36	41,569
Eagle Butte I. S. D. No. 31	858	594	69.23	312,812	Walpait S. D. No. 49 <sup>1</sup>	177	154	87.01	68,834
White River I. S. D. No. 29 <sup>1</sup>	424	148	34.91	77,939	Keller S. D. No. 3 <sup>1</sup>	30	19	63.33	8,492
McLaughlin I. S. D. No. 21	619	169	27.30	88,998	Columbia S. D. No. 2 6	214	57	26.64	25,477
Smeo I. S. D. No. 4 <sup>1</sup>	189	171	90.48	90,052	Clover Park S. D. No. 4	13,153	3,364	25.58	1,503,640
C. S. D. No. 3 <sup>1</sup>	98	37	37.76	19,484	State total	24,427	8,669		3,881,103
State Total	8,578	6,078		3,200,796	<b>WISCONSIN</b>				
<b>TEXAS</b>					<b>WYOMING</b>				
Del Valle I. S. D. No. 91	3,916	1,001	25.56	430,580	S.D. No. 14 <sup>1</sup>	344	270	78.49	\$297,972
Killeen I. S. D.	13,215	3,703	28.02	1,592,845	Ft. Washakie C.S.D. No. 21 <sup>1</sup>	229	203	88.65	224,030
Flour Bluff I. S. D.	2,972	744	25.03	320,031	S.D. No. 38 <sup>1</sup>	311	238	76.53	251,466
San Vincente C. S. D. No. 2	14	14	100.00	16,166	State total	884	711		773,468
					<b>National totals</b>				
					Districts on this listing				
					387,443 182,651 109,549,761				

<sup>1</sup> American Indian school districts.

Mr. DOMINICK. Mr. President, would the distinguished Senator from South Dakota be nice enough to add my name as a cosponsor of his amendment?

Mr. MCGOVERN. I would be delighted to do so. Mr. President, I ask unanimous consent that the name of the Senator from Colorado (Mr. DOMINICK) be added as a cosponsor of the pending amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. YOUNG. Mr. President, I would also like to be added as a cosponsor of the amendment. It is similar to the provision we on the Appropriations Committee have been including in the Labor-HEW appropriation bill, for the past four years, to take care of the same problem.

Mr. MCGOVERN. The Senator is correct.

Mr. MANSFIELD. That is what it is based on, is it not?

Mr. MCGOVERN. Yes. The Senator is correct. I would advise the Senator from South Dakota that his name is already on the list of cosponsors.

Mr. YOUNG. I thank the Senator from South Dakota.

Mr. JAVITS. If the Senator from South Dakota will yield, nonetheless, I would hope that the Senator will give us an explanation, for the record.

Mr. MCGOVERN. Yes, I was planning to do that.

What the amendment does, in effect, is to provide in the case of those school agencies where 25 percent of the children in average daily attendance live on a Federal installation, that that agency would be entitled to 100 percent of the amount authorized under Public Law 874. It relates to the so-called class A section under Public Law 874 and is designed to take care of school districts in a high impact area where a high percentage of parents reside on Federal property or on a Federal installation.

Without this kind of measure, there are a number of schools, including an important one in my State which has 3,300 students in residence, which would have to close. This is a measure that the Senate adopted on a 1-year basis last year and I am very hopeful that the Senate will accept it this year as a provision in the pending bill.

I know of no real objection to the amendment. It does not add to the over-

all cost of the program in any way. It merely provides for a fair and more feasible allocation of funds.

Mr. YOUNG. Mr. President, by way of further explanation, we have two large military bases in North Dakota, at Minot and Grand Forks. The school districts operate the schools on the bases, each of them about 18 miles from the cities. These schools cannot operate at less than cost which is what they would be doing if they received less than 100 percent of entitlement. They have served notice on the base that unless they receive 100 percent of entitlement, they could no longer operate the school. This applies to both the Minot and Grand Forks military bases.

Mr. CHURCH. Mr. President, if the Senator from South Dakota will yield, after listening to an explanation of the amendment, I should like to be a cosponsor of the Senator's amendment.

Mr. MCGOVERN. I would be very glad to do so. Mr. President, I ask unanimous consent that the name of the Senator from Idaho (Mr. CHURCH) be added as a cosponsor of this amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. COTTON. Mr. President, will the Senator from South Dakota add my name as a cosponsor as well?

Mr. McGOVERN. I shall be happy to do so. Mr. President, I ask unanimous consent that the name of the Senator from New Hampshire (Mr. Cotton) be added as a cosponsor of this amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

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

Mr. McGOVERN. I yield.

Mr. DOLE. I think this amendment covers the problem that some of our States, including Kansas, North Dakota, and South Dakota, I believe, experienced last year. It was taken care of then, but only for this year.

Mr. McGOVERN. That is correct.

Mr. DOLE. This bill extends that authority, I think, and this amendment will further preclude the possibility of substantial reductions in aid to the heavily impacted areas. I support the amendment, therefore, and would be pleased to join as a cosponsor.

Mr. McGOVERN. Mr. President, I ask unanimous consent that the name of the Senator from Kansas be added as a cosponsor of the amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MANSFIELD. The same reasoning areas program was established in 1950. It would be a terrible burden on the school districts. I think it is a good amendment.

Mr. DOLE. I, too, have in mind at least two particular areas in Kansas—those of Fort Leavenworth and Junction City, both of which are greater than 25 percent impacted.

EXPLANATION OF THE REVISION OF THE IMPACTED AREAS PROGRAM IN S. 1539

Mr. PELL. Mr. President, title II of the bill contains amendments to Public Law 874, 81st Congress. These amendments reflect the view of the Committee on Labor and Public Welfare that some reform of the impacted areas program was desirable.

The basic concept of the impacted areas program was established in 1950. It was recognized that Federal activity in any school district can have an adverse effect on that area by first, removing valuable property from the tax rolls and, second, bringing people into the area who would not be there but for the Federal activity, thus putting a burden on the local schools, a burden that no taxes were being contributed to meet.

The youngsters who attended the school were broken down into categories, depending upon the type of Federal connection they had. Children who live with parents who both reside and work on Federal property are classified as "A" children under section 3(a) of the act.

Children whose parents live on Federal property but do not work there and those who work on Federal property but live somewhere else are classified as "B" children under section 3(b). (Thus the usage of "A" and "B" children).

With respect to "A" children, the Federal Government authorized payment of 100 percent of the local district's cost of that child's education. By that I

mean the portion of the cost of a youngster's education which is contributed by the local entity, as opposed to contribution at the State level. Schools have received payments for "B" children at 50 percent of the local contribution rate. This rather simplistic theory has worked quite well during the last 24 years and has not been altered substantially during the life of Public Law 874. However, during the last 6 years there has been less congressional support for the impact aid program, which has resulted in a smaller percentage of the entitlements being funded. For example, this year, payments with respect to "B" children are down to 63 percent of entitlement.

The last two administrations have approached the Congress urging the reform of the impact aid program. Legislation was introduced by this administration which was designed to reform the impact aid program; analysis of that legislation indicated that the administration was proposing to kill the impacted areas program rather than to reform it.

The committee also studied many of the reports made on impact aid over the past decade and came to the conclusion that the simplistic approach of having categories "A" and "B" children classified in the authorizing legislation and having an appropriation situation that varied from the terms of the authorizing legislation resulted in a situation which made funding levels completely unpredictable and caused local educational agencies to have continuous budgetary problems.

The committee recognized that children of military employees have a greater adverse impact on local school districts and their ability to finance themselves than do children of civilian Federal employees. Further, it was clear that if the Federal property on which parents are employed is outside the school district, the children's adverse financial impact on that school district is little different from the situation which would arise if the parents were employed on private property.

For these reasons the committee adopted amendments which made more precise distinctions about the Federal connection and designed a schedule of payments which is intended to establish a set of priorities for funding when appropriations are insufficient to fund fully all of the entitlements.

The amendments adopted by the committee would divide "A" children into two categories:

The first category would be military "A" children; that is, children living on military bases with a parent who is in the armed services. Under the bill the school districts providing a free public education to military "A" children would be entitled to a payment of 100 percent of the local contribution rate; in addition, all children residing on Indian lands would be treated the same as military "A's."

"A" children who are not the children of military personnel (that is, they live on Federal property with a parent who is employed on Federal property, but neither parent is a member of the armed

services) would be in a different category. Schools providing free public education to nonmilitary "A" children would be entitled to payments equaling 90 percent of the local contribution rate.

The committee distinguished between military and civilian "A" children because civilian Federal employees do contribute something to the economy of an area in the way of sales and transfer taxes, as well as licenses, and therefore have some financial benefit to the community in which they reside. Military personnel usually have access to military exchanges and pay almost no sales tax. It is almost impossible to discern any tax benefit to a community which would contribute to the education of military children.

The committee, looking at the "B" child, found four types of distinguishable Federal connection:

Military "B" children;

Civilian "B" children who live in the county in which the school district is located;

Civilian "B" children who live in the same State but in a different county from that in which the school district is located; and

Civilian "B" children who live in another State than the one in which the school district is located.

In examining the four distinguishable types of Federal connection, our rationale with respect to the financial contribution under the "A" category was made applicable to the "B" category. As a result, military "B" children entitle a school district to 50 percent of the local contribution rate, and civilian "B" children entitle a school district to 45 percent of the local contribution rate. These figures are precisely one-half of the equivalent "A" category entitlement rate.

The following chart graphically illustrates the entitlement rates:

ENTITLEMENTS UNDER PUBLIC LAW 874, 81ST CONG., AS PROPOSED TO BE AMENDED IN S. 1539, COMPARED WITH EXISTING LAW

Category of federally connected children	Percentage of local contribution rate	Local contribution rate under existing law
Districts with more than 25 percent "A" children	100	100
Military "A" children and children living on Indian lands	100	100
Civilian "A" children	90	100
Military "B" children	50	50
Civilian "B" children with parent working on property in county	45	50
Civilian "B" children with parent working on property out of the county, but in State	30	50
Civilian "B" children with parent working on property in another State	0	50

<sup>1</sup> Under appropriations acts the "A" category is limited to 90 percent of the local contribution rate.

<sup>2</sup> Under appropriations acts the "B" category is limited in such a manner as to result in 31.5 percent of the local contribution rate.

The committee also found that children who go to school in a school district of one county but who are the children of parents who work in another county have less adverse financial impact on that school district than those who live and reside in the same county as

the school district. Therefore, we recommend that the payment rate for children of persons who work on Federal property in a county other than that in which the school district is located be set at two-thirds the rate of civilian "B" children, with the result that the Federal Government entitles a school district to 30 percent of the local contribution rate for "B" children whose parents work outside the county in which they attend school.

With respect to children whose parents work on Federal property in a State other than the State where their youngsters attend school, the committee found that whether or not there was a Federal connection made no difference as to the ability of a school district to provide education for that child.

Therefore, we recommend that Federal property in another State not be the basis for determining Federal connection with respect to any school district. This approach, the committee realizes, will mean a loss of revenue to such counties as Montgomery County and Fairfax County. For many years we have been hearing the impacted areas program criticized because it makes substantial payments to Fairfax and Montgomery Counties. By requiring that the Federal property must be in the same State as the school district, we are able to reduce payments to wealthy suburban school districts which have been a vulnerable spot for the impacted areas program.

These changes, according to the best estimates available, reduce the total of the entitlements for the impacted areas program by about \$90 million. At the same time, these reductions are not unduly harsh on any one school district. We realize that the revision is not a perfect instrument but believe it is one which can serve for improved thinking about the impacted areas program in future years.

Another aspect of the impacted areas program never adequately dealt with in authorizing legislation is the schedule of payments which controls the allocation of impacted areas money when entitlements are insufficient to fully fund the program. Under existing law, if appropriations are insufficient to fund all entitlements, each local educational agency is to receive its pro rata share of the appropriation. In recent years this provision has been ignored in the appropriations process, and an unauthorized new schedule for allocating funds has been used in the appropriations bill.

Therefore, the committee decided to adopt a payment schedule which would be more realistic in the current situation than the old "pro rata reduction" approach in the authorizing legislation. The philosophy in the new payments section is as follows:

First. All school districts should receive at least some of the appropriations for each fiscal year;

Second. The payment rate should be greater with respect to "A" children than for "B" children;

Third. No school district should receive 100 percent of its entitlement unless all school districts receive 100 of their entitlements.

In order to carry out these policies, section 5(c) of Public Law 874 sets out a schedule of payments with three priority schedules. All of the sums appropriated for any fiscal year would be divided into three parts. Part I would be allocated in such a manner that each school district would receive 25 percent of its entitlement under Public Law 874. Part 2 would allocate 60 percent of each entitlement rate among school districts, depending upon the types of "A" children and "B" children in attendance at the schools of the local educational agency. These allocations would be in addition to the basic 25 percent allocated under part 1.

The third part of the allocation controls funds remaining after the second allocation; that is, after the allocations under part 1 and part 2 are finished, funds remaining are allocated by the third part in proportion to the unsatisfied entitlements of all eligible school districts—in other words, there is a pro rata allocation.

The following table shows this schedule of payments:

SCHEDULE OF PAYMENTS UNDER SEC. 5(c) OF PUBLIC LAW 874, 81ST CONG. AS PROPOSED TO BE AMENDED IN S. 1539, AS AMENDED BY THE BEALL AMENDMENT

Category of federally connected children	Percentage of entitlement distributed under allocation—		
	1st	2d	3d
Districts with more than 25-percent A children.....	25	60	(1)
Military A children and children living on Indian lands.....	25	60	(1)
Civilian A children.....	25	54	(1)
Military B children.....	25	32	(1)
Civilian B children with parent working on property in county.....	25	30	(1)
Civilian B children with parent working on property out of the county, but in State.....	25	28	(1)

<sup>1</sup> Percentage for which provision is made in the appropriations act.

I realize that the schedule of payments is much more complex than the existing authorizing legislation. However, if you consider legislation in recent appropriations acts which allocates impact aid payments, the proposed authorizing legislation is no more complex than existing law. As in cases with all reasonable compromises, the compromise is probably more complicated than the principles guiding the two opposing sides. On one hand we have those who would like to continue existing law without the limitations on the appropriations acts; on the other hand, we have the administration which has proposed to eliminate "B" children from the impact aid program. The arguments made by the administration in favor of the elimination of "B" children were valid in some instances, and, therefore, we are proposing, to the extent that the administration's arguments are valid, that they should be taken into consideration in the reform of the impact aid program. The way to reform lies in the schedule of payments.

Hopefully, the enactment of the revision of the impacted areas program will settle the question of the future of "B" children in that program. It is the intention of the committee that "B" children

shall not be phased out of the program, and, by revising the program as proposed by the committee, we hope to state that message clearly so that the administration and the school districts around the country understand precisely the position that the Congress has decided upon with respect to "B" children under the impacted areas program.

Mr. President, we have discussed this amendment. It has merit, but I think the Senate should know exactly what we are doing. We are taking the total impact funds and segregating one-sixth of those funds and giving priority to the areas where the greatest concentrations of section A's are located. This means that one-sixth of the money will be withdrawn and not be available to the States for the rest of the section A's and the section B's. Personally, I have some doubts about this approach, but it is obviously the will of the majority in the Senate, and for that reason I would be willing to accept the amendment.

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

Mr. PELL. I yield.

Mr. BEALL. Mr. President, do I correctly understand that the Senator is saying that if this amendment is adopted, of the total impact in aid pot, what percentage will be pulled out and given to—

Mr. PELL. Approximately one-sixth of the total money of impact aid will be used to satisfy this amendment.

Mr. BEALL. It will come first, before any other consideration?

Mr. PELL. It will come first, before any other consideration, and the other five-sixths will have to cover what is being covered now by six-sixths, including these areas.

Mr. BEALL. Mr. President, if I understand correctly what we are doing, I would like the opportunity to study this matter in a little more depth, because it seems to me, if I understand this amendment correctly, that we are saying to those areas that have a particularly high concentration of A type impacted aid students that they will get precedence over those which may have a lesser concentration of A type. Is that correct? And certainly they will get precedence over those which have B military students.

Mr. McGOVERN. I think that what the Senator has said is correct. It seems to me that that only makes the point that what we are trying to do is to provide some reasonable compensation to those areas that do have the sharpest Federal impact and where there is the least tax base; because if you have a school district or a school agency where 25 percent or more of the students are on that installation or on that Federal property, it is obvious that you have a diminished tax base from which to draw. To say that the students in that area are going to get only one-sixth of the total money available under Public Law 874 seems to me to make the case. I think they deserve it.

Mr. BEALL. If I correctly understand the Senator's amendment, he is establishing a priority for the distribution of the A money.

Mr. McGOVERN. Absolutely.

Mr. BEALL. So the Senator is making a previously unmade distinction among A students.

Mr. McGOVERN. We are making a distinction that is broad enough by necessity. These schools in such areas are not going to be able to survive without the full entitlement provided under this act.

Mr. BEALL. The Senator, in effect, is adding another category. We have A, B, and C, and he is adding A, A-plus, B, and C.

Mr. YOUNG. This amendment is exactly the same as the one we have had for 4 years in the appropriation bill. It was written by the Department of Health, Education, and Welfare.

Mr. McGOVERN. I should like to add one point, in response to the Senator from Maryland. What we are doing is to reaffirm the existing practice; we are reaffirming existing law. It is the committee bill that is changing the formula. We are providing for 100 percent entitlement, as provided by Public Law 874. This amendment, in other words, reaffirms the law.

Mr. BEALL. But the Senator is only providing 100 percent for this, which formerly—

Mr. McGOVERN. That has been the practice in recent years.

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

Mr. McGOVERN. I yield.

Mr. BURDICK. Mr. President, I commend the Senator from South Dakota for proposing this amendment, and I ask for its adoption.

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

Mr. McGOVERN. I yield.

Mr. COTTON. I merely want to say to the Senator from Maryland, in all fairness, that in the appropriation bill, in the past several years, when we have fought this out each year on the division, with respect to impacted aid funds, we have created and enacted the same class. I think it is completely just that this class should receive it.

What the distinguished Senator from South Dakota is doing is anticipating, ahead of time, and seeing to it that this particular part of the funds is tied up. It leaves the rest open, as they have been in other years. In view of the fact that this is taken care of now, it might possibly strengthen the position of the administration forces that would like to eradicate all the rest. To that extent, it might militate against those in Virginia and Maryland who put up the fight for their share of the impacted area funds, but only to that extent. It simply ties up this particular portion which has been agreed upon by everybody for several years.

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

Mr. COTTON. I do not have the floor.

Mr. BEALL. Will the Senator from South Dakota yield to me, so that I might ask the Senator from New Hampshire a question?

Mr. McGOVERN. I yield.

Mr. BEALL. As I understand what the Senator from New Hampshire is saying,

it is that in previous years the Appropriations Committee, in appropriating the money, has made this allocation for this type of student.

Mr. COTTON. That is correct.

Mr. BEALL. And his analysis of this situation is that the Senator from South Dakota's amendment is authorizing the Appropriations Committee to do under this bill what it has done under previous bills in the appropriations process.

My question is this: Although that may be true, this bill changes the formula for distribution of impacted aid money. Are we now authorizing a further refinement of the moneys within the total authorization? In other words, the Senator is saying he is doing the same thing, but I am asking him whether he is really doing the same thing, or is he assuring, out of a smaller pot, that this fund is maintained at 100 percent?

Mr. COTTON. The Senator from New Hampshire apologizes for not expressing himself as clearly as he intended.

Unless we make the authorization for distribution of impacted area funds to the B students and to the C students, which has been attempted on the housing situation each year, we may find ourselves, when we come to the appropriation bill, with this authorized and the rest unauthorized. That should be borne in mind.

There is nothing wrong with this, but it leaves the other classes open, unless there is a general authorization that permits their distribution. I think the Appropriations Committee probably has the authority, under the general authorization of impacted area funds, to deal with the others, but I am not sure they have, unless somewhere in this bill the authorization is made so that B students and C students can be considered.

Mr. MATHIAS. Mr. President, will the Senator from New Hampshire yield for a question?

Mr. COTTON. I yield.

Mr. MATHIAS. Is the Senator saying to us that, dollar for dollar that is authorized and appropriated, the distribution will be the same after the passage of this amendment, as it has been in the last several years?

Mr. COTTON. No, I am saying exactly the opposite. I have not examined the bill sentence by sentence to see what the general authorization is, but Senators had better make sure if they want to get what they have been getting in the past for their B students. They better make sure that the authorization either is in this bill or is still in existence continuing and that the appropriations could be made without legislation on an appropriation bill. So Senators do have something to guard against, although this particular allocation is completely sound and just and probably would be adhered to when the general appropriation bill came in, or the general authorization.

Mr. MATHIAS. Mr. President, I wish to address an inquiry to the Senator from South Dakota. Does the Senator from South Dakota have a table which would indicate the impact of his amendment in dollars and cents terms on the distribution within the State?

Mr. McGOVERN. I can only give the Senator this assurance. It follows the

same allocation that the Committee on Appropriations has been writing into law for the last 4 years. In other words, you are going to get the same percentage allocation you had in the last 4 years. The change would be made if we adopted the committee position without this amendment. In other words, the Education Committee is making the change in the allocation we had in recent years. This amendment is consistent with what the Committee on Appropriations has done in recent years.

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

Mr. McGOVERN. I yield.

Mr. STEVENS. Mr. President, the Senator is correct. We have not been funding A's at 100 percent. This would affect those that have 100 percent at 25 percent.

We have made changes in this bill, and the Senator from Maryland makes a good point.

Mr. COTTON. We have been funding the A's with 25 percent.

Mr. STEVENS. At 100 percent.

Mr. COTTON. At 100 percent in the past. Now, we find that the Senator from Maryland saw to it early in the bill to get his B's authorized so this does not jeopardize his money.

Mr. BEALL. Mr. President, if the Senator will yield, I am concerned with the A's. If you have a military base in a relatively unpopulated county, then the A students are funded at 100 percent under the amendment, but if there is a large military base in a large county with the same number of children, but less than 25 percent of the total school population, the A's are not funded at 100 percent.

Several Senators addressed the Chair.

Mr. HRUSKA. Then they are not funded at 100 percent.

Mr. BEALL. If a State is unlucky enough to have a military base in a large county, the situation is treated differently than if it were in a small county.

Mr. YOUNG. Mr. President, in most of these cases the school districts operate the schools on the base. If they refuse to operate these schools for less than 100 percent of entitlement, the Federal Government has to operate the schools. If the Federal Government operates these schools you have poorer education and at a greater cost. In fact, it has been reliably estimated that such a procedure would cost twice as much.

Mr. STEVENS. Mr. President, I do not think the Senator from North Dakota understands our problem, and that is that those people that have less than 25 percent might have a situation where they are equally deserving. I think the Senator from Maryland and I are arguing for 100 percent funding of all A students. The Senator is talking about 100 percent of those with 25 percent. We are worrying about the others. I have that situation in my State of Alaska. We have some that have been added and my State will lose. You take all of the A money first and then figure the distribution of the balance. I think we have not funded all the A students at 100 percent.

I am not criticizing the position of the Senator from South Dakota. It is what we have done in the past. But I hope we make progress and commit ourselves to

100 percent funding of A students. That I can support wholeheartedly.

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

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

Mr. METCALF. Originally, of course, this bill was designed to do what the proposal of the Senator from South Dakota provides: to take care of these sudden impacts due to Army bases. Now we are saying that in sparsely populated areas, where you have the impact of a base that takes away the tax allowance, when it is 25 percent we will fund it completely.

I want to make it explicit that this applies also to Indians on Indian reservations where we have taken the trust land away and have taken it out of the tax base, and where we have that impact there is not any way to finance the schools unless we have 100 percent funding.

If areas are fortunate enough to have a military base in a heavily populated area, they do have a real property tax base so that they can take care of it if the Committee on Appropriations does not completely fund it. But originally we said when we go in and create this sudden and extraordinary impact of a military base or an Indian reservation, or some of these things, we will fund it under Public Law 874.

Later several other things have taken place but this is to take care of that extraordinary situation that removes such a tremendous amount of property from the taxing for school purposes. This does apply to Indian reservations. Is that correct?

Mr. McGOVERN. The Senator is correct.

Mr. METCALF. And the boys and girls who live on Indian reservations, up to 25 percent, would be category A students.

Mr. McGOVERN. The Senator is correct.

Mr. METCALF. I thank the Senator.

Mr. McGOVERN. Mr. President, I send to the desk a technical amendment to my amendment in order to conform it to the bill. It does not change the substance but simply brings the numbering into line.

The PRESIDING OFFICER. The Senator has the right to modify his amendment.

Mr. McGOVERN. I ask unanimous consent that change be made.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator will send his modification to the desk.

The amendment, as modified, is as follows:

On page 215, between lines 10 and 11, insert the following new section:

"ENTITLEMENT TO PAYMENTS WITH RESPECT TO HIGH CONCENTRATIONS OF CHILDREN WHO RESIDE ON OR WHOSE PARENTS ARE EMPLOYED ON FEDERAL PROPERTY

"Sec. 205. (a) Section 3 of the Act of September 30, 1950 (Public Law 874, Eighty-first Congress) is amended by adding at the end thereof the following new subsection:

"(f) Notwithstanding any other provision of this Act (including the provisions of section 5(c)) a local educational agency with respect to which the number of children determined for any fiscal year under subsection (a) amounts to at least 25 per cent-

tum of the total number of children who were in average daily attendance at the schools of such agency during such fiscal year and for whom such agency provided free public education, shall be entitled to receive an amount equal to 100 per centum of the amounts to which such agency would be otherwise entitled under this Act. The provisions of section 5(c) shall not apply to any local educational agency to which this subsection applies."

"(b) The amendment made by this section shall be effective on and after July 1, 1974."

Mr. HRUSKA. Mr. President, I rise in support of the amendment numbered 1026.

Thirty-four States contain one or more school districts with severe category A or "on base" impactation from federally connected activities. Severe category A impactation is a rate of 25 percent or greater. Most districts with severe category A impactation serve Armed Forces dependents and American Indians. The 34 States contain a total of 229 school districts in the severe A category. Nebraska has four such severely impacted school districts.

You may recall that for several years it has been necessary to assert a funding priority for severe category A impactation through the appropriation process. S. 1539, the Education Amendments of 1974, does recognize a high category A priority. But, it also contains proration features which threaten category A entitlements.

Under section 203 of S. 1539 school districts with severe category A impactation would be subject to proration of their entitlements if all impact aid categories are not fully funded. Proration could result in a drop in entitlement from 100 percent to 85 percent or less for the severe category A districts.

To forestall this possibility, Senator McGOVERN introduced on March 13, 1974, an amendment which I cosponsored and which would make these districts immune to proration. In essence the amendment reaffirms the provisions included in appropriations bills during the past several years. This amendment merits approval.

Mr. JAVITS. Mr. President, I yield myself 2 minutes from the time in my possession.

The PRESIDING OFFICER. The Senator from New York is recognized.

Mr. JAVITS. Mr. President, I want to be sure we are talking in parallel about the global figure for impact aid not being affected.

Mr. McGOVERN. That is correct.

Mr. JAVITS. It is simply a shift within that figure.

Mr. McGOVERN. That is correct. I might say a shift. The Committee on Appropriations has been making the law for years.

Mr. JAVITS. Mr. President, I feel that we should allow our colleagues from Maryland (Mr. BEALL and Mr. MATHIAS), if they have questions about it, some necessary time.

How much time do we have in opposition?

The PRESIDING OFFICER. Thirty minutes.

Mr. JAVITS. I hope the manager of the bill would yield 10 minutes in order that the matter may be discussed.

Mr. PELL. I am glad to yield. I wish to point out that if this amendment is agreed to we will then be going to conference with the House and the House does not have this provision. I imagine some compromise would be arrived at, splitting the difference between 25 percent and 100 percent. That would seem the normal course of events in conference and this would mean rather than one-sixth of the money distributed you would have less, or maybe 15 percent or something of that sort covering the areas of very heavy concentration, and other areas less affected.

Mr. JAVITS. Mr. President, to have an opportunity for this matter to proceed, I ask unanimous consent that we may have a quorum call, without the time being charged to either side.

The PRESIDING OFFICER (Mr. JOHNSTON). Is there objection? Without objection, it is so ordered.

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

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. McGOVERN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. McGOVERN. Mr. President, I ask that the amendment be put to a vote.

The PRESIDING OFFICER. Do Senators yield back the remainder of their time?

Mr. McGOVERN. I yield back the remainder of my time.

Mr. PELL. I yield back the remainder of my time.

The PRESIDING OFFICER. All time has been yielded back. The question is on agreeing to the amendment of the Senator from South Dakota.

The amendment was agreed to.

Mr. HRUSKA. Mr. President, I move that the Senate reconsider the vote by which the amendment was agreed to.

Mr. McGOVERN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

SECTION 406: ELEMENTARY AND SECONDARY EDUCATION ACT

Mr. CHURCH. Mr. President, the country's enormous tax investment in public school buildings has not been paying the dividends it could. We have allocated between \$150 and \$200 billion to the largest physical plant in the country, our schools, and yet, the facilities are only used for 6 to 7 hours a day and are generally serving only one segment of the population. The doors are usually locked early in the afternoon leaving one of the best equipped facilities vacant and wasted. But there is a remedy.

Community education through the use of neighborhood schools and facilities can expand the concept of the traditional school, usually regarded as a formal learning center primarily for grades 1 through 12 and operating, at most, only 8 hours a day, 5 days a week. It can transform the traditional local school into a community development center which provides opportunities and services to all

segments of the population. Through community education, schools can work in conjunction with the recreational, cultural, social, and teaching services provided throughout the community and keep open the doors of the schools for the entire community.

Since 1930—when community education began in Flint, Mich., with the support of the C. S. Mott Foundation—some 3,600 community schools have been developed in approximately 600 school districts across the country. But many of these programs have had to struggle for funding and have had to use multiple channels such as school levies, local funds, private foundations, and some Federal funding to stay afloat. I think these programs have more than justified their existence; and the creation of a nationwide, federally supported program is now appropriate.

Why use our public schools for this purpose? Public schools are the best equipped to be community centers because they are:

Centrally located in the neighborhoods;

Have facilities adaptable to broad community use;

Have the personnel and volunteers necessary to work with and attempt to solve many community problems;

Owned and supported by the public; and

Are nonpolitical.

For these reasons, I introduced S. 335, the Community School Center Development Act, which has been incorporated into section 406 of the Elementary and Secondary Education Act. I think it is important and encouraging that S. 335 was so incorporated and recognized as a program deserving support.

In the many localities where community schools have been developed and are thriving, there is an excitement and pride expressed by the community about "our school." Schools are becoming more than the halls of education. The young—as well as parents, friends, elderly and neighbors—flock together to work on community problems together, develop new skills in the arts, learn a new language, and much more.

Recently in my home State of Idaho, the community schools in Boise offered tax assistance to many of the community's elderly and isolated who were brought to the schools to receive needed tax counseling and added personal assistance from local Internal Revenue Service personnel. The program was praised by all participants and has been promised to the community for next year.

Transforming the traditional schools into community schools and centers will offer the citizens a more substantial dividend for the huge tax investment they have put out for the schools over many years. The entire community benefits from their investment and is able to meet and work with teachers, students, friends, and neighbors and simultaneously increase their own talents and abilities.

Mr. President, I earnestly ask that our Members support the concept of community education in this country. From the knowledge gained from such a program, we cannot afford to ignore the benefits we have available to us at such low, modest costs.

#### TRANSACTION OF ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there now be a period for the transaction of routine morning business, with statements therein limited to 5 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered. Is there any morning business?

#### EDUCATION AMENDMENTS OF 1974—BUSING

Mr. BROCK. Mr. President, I wish to express my very deep regret over the failure of the Senate to act once more on the problem faced by the children of the country, under compulsion of the courts, as it rejected the Gurney amendment by one vote.

I should say, first of all, that that vote indicated, I think, growing dismay and disenchantment, not only in the country, but also in the U.S. Senate, with conditions that many of us, at least, have considered to be intolerable.

I might say for the benefit of my colleagues that if they have not suffered under this kind of compulsion, perhaps it is understandable that they do not realize the extent of the burden imposed on our schools, our parents, and our children. But for those who do have the problem, as we do in my State, there is no alternative but to continue this fight, and we shall do so until we are successful.

I have some newspaper articles from Tennessee that I ask unanimous consent to have printed in the RECORD, one showing the drastic drop in junior high academic achievement levels, another showing the request by faculty members for the right to use a Lance spray to break up fights, another on the busing debate itself, another on a student behavioral center, another on the increased budget required under this program, another on the incredible millions of dollars that are being required for additional funds for school transit, another relating to an incident where weapons were fired and chains hurled in a fight, others on the drop in our parent-teachers association membership in Nashville from 50,000 parents to 30,000, another on a statement where the school board felt they were fortunate to miss a Federal survey on racism, another on metro school enrollment dropping further, another on metro school attendance, a further one on national PTA votes against busing, and a final one on discipline as a major problem in the schools and communities. I ask unanimous consent that these articles be printed in the RECORD at this point.

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

#### SCORES SHOW DRASTIC DROP IN JUNIOR HIGH'S ACADEMIC ACHIEVEMENT

Metropolitan achievement test scores for the past three school years—1969-70 through 1971-72—at Moore Junior High School show a drastic fall in academic achievement and a dramatic rise in the number of "below average" students, a letter to Dr. Elbert Brooks, Metro school director, from Mrs. Charles F. Frazier, 1971-72 PTA president, discloses.

Achievement scores for the three school years in reading, language, social studies, math comprehension and science were set out in the letter to Dr. Brooks.

The letter was mailed June 1, Mrs. Frazier said, but no reply has been received. Moore has been in operation for three years, so the scores reflect its entire history as a junior high school.

"As parents of some of the students at Moore Junior High School, we appeal to you in their behalf," Mrs. Frazier wrote.

The test scores for the three academic years showed that the number of "superior" reading students dropped more than two-thirds, and the number of "below average" readers increased by threefold.

In 1969-70, Moore Junior High had 18 per cent of its students ranked as "superior" by the achievement tests in reading. The percentage dropped to 11 per cent in 1970-71. Only 5 per cent of the students were discovered to be "superior" readers by the achievement tests in 1971-72.

During the same period of time the "below average" students in reading, as determined by the achievement test scores, increased from 11 per cent in 1969-70, to 13 per cent in 1970-71. In 1971-72, the student body had 32 per cent "below average" readers.

Only 2 per cent of the student body were "poor" readers in 1969-70, and just 1 per cent in 1970-71—but 9 per cent were "poor" readers in 1971-72.

"Above average" readers jumped from 25 per cent in 1969-70 to 28 per cent in 1970-71, then fell to 17 per cent of the students in 1971-72. "Average" readers went from 44 per cent to 47 per cent, then to 37 per cent during the three-academic-year period.

"We are fully aware that this past year has been a trying one for every person involved in public education and especially to those in positions of authority," Mrs. Frazier wrote.

"Realizing the situation, we did not make an appeal last fall when our racial ratio was heavily balanced beyond the court-ordered figure. However, now, at the end of the year, was ask that you re-examine our status before fall opening and grant us relief within the court-suggested guidelines."

On Oct. 12, 1971, Moore had 45 per cent black students—422 black and 522 white, for a total of 944 students. On March 2, 1972, the school had 43.2 per cent black students, according to the division of pupil accounting of Metro schools. The "ideal" ratio is considered to be 15 to 35 per cent black.

In order to support the request of the parents for whom she was making the appeal, Mrs. Frazier stated that "we are submitting Metropolitan achievement test scores for the past three years."

"These scores indicate an obvious academic decline," she pointed out to Dr. Brooks.

"To further support our request, we are citing other concerns. Our children have not received as much scholastic work this year as in the past," Mrs. Frazier told the school director.

#### GRADING TOO LIBERAL

"It is also evident to parents that through the necessity of grade curves, some children

are receiving higher grades than we feel they have earned.

"One factor involved is the continual need for classroom discipline, thus detracting from the teaching hour. Another factor has been the effort to raise the underachievers to a higher level of accomplishment.

"So much time has had to be devoted to basic skills, to learning to read and write, that the average and the above average student had become bored and apathetic," the letter to Dr. Brooks points out.

"Some of those students capable of working on their own have done satisfactory work but not to the level they could have reached with more time and encouragement from the teacher in charge. The teacher has, of necessity, spent more time with the children in need of the most help. We feel that the achieving student is deserving of consideration as truly as the others."

Mrs. Frazier wrote Dr. Brooks that "we want to assure you that this letter is not meant to reflect in any way on the ability or interest of our faculty and teaching staff.

"On the contrary," she stressed, "we would like to commend them on the work they have done this past year while under stress and tension.

"However, there is a limit to time and human energy. We feel the cause of education could be better served with a reduced ratio of underachievers to the average student which would permit the teacher's skills to be more efficiently employed and classroom discipline improved. Those of us who have worked more closely with the school are fully aware of this.

"We do earnestly appeal to you for a more equitable distribution of the racial ratio at Moore Junior High School by the opening of school in September of 1972," Mrs. Frazier concluded.

Copies of her letter were sent to members of the school board and Hale Harris, director of community information and public relations.

[From the Banner, Apr. 30, 1974]

**MEIGS FACULTY ASKS SPRAY USE TO STOP STUDENT FIGHTS**

(By Robert Churchwell)

Fighting students face the likelihood of having their altercations cooled off by a blast of Lance, a chemical riot control spray, if Meigs Junior High School faculty members have their way.

Rather than chance personal injury, the Meigs faculty proposes breaking up fights among youths by using the spray, described on the label's container as being a "riot control agent . . . strong irritant affecting the eyes, respiratory area, and skin."

"We, the Meigs faculty, are deeply concerned about teacher involvement in breaking up fights and other student disturbances," Robert L. Ring, faculty representative, said in a letter to John Younger, Metro schools director of group employ relations.

" . . . One suggestion for a method of handling these types of situations," Ring said, "is the product Lance."

**STUDY REQUESTED**

"We as a faculty are requesting that a study be made of the problem and alternatives and stipulations to us as to our proper conduct so that we may morally, legally, and ethically (be) in bounds if we are expected to control student conduct and disturbances," Ring said.

The Meigs faculty's action follows the suspension without pay of a teacher at W. A. Bass Junior High School for reportedly refusing to stop a fight between two girl students in his mathematics classroom last week.

One of the eighth-grade girls was pushed to the floor kicked in the head and knocked unconscious, school officials said.

Dr. Elbert D. Brooks, director of Metro schools, declined direct comment on the suggested use of Lance to stop student fights. He said a teacher's duty is to "refer disruptive students to the principal. We expect teachers to be alert to situations that might cause disruption in the classroom."

Brooks said the letter should have been sent to Hugh G. Waters, superintendent of school District I, rather than to Younger since Meigs is in that district.

Waters said "we haven't resorted to this method (using Lance) previously to maintain law and order. I believe the best way to do this is to work with the youngsters and their problems."

C. R. Dorrier, Metro Board of Education chairman, said his reaction to spraying fighting students with Lance is "negative," except perhaps as a last resort. "There must be a better way than that to handle this thing," he said.

Dr. Robert Bogen, executive director of the Metropolitan Nashville Education Association (MNEA), said he believes the idea to use Lance comes out of the "desperation of teachers trying to deal with problems we have in our schools . . . the incident at Bass just brought it out in the open."

[From the Banner, Apr. 6, 1974]

**ARE RACIAL BUSING'S DAYS NUMBERED?**

(By Frank Van Linden)

WASHINGTON.—The Old Pol in the White House is making the most of his stand on the popular side of an issue which is splitting the Democrats right down the middle.

Twice recently Richard M. Nixon has gone out of his way to emphasize his undying opposition to busing school children far from their homes for the sake of promoting racial balance in the classrooms.

First, in a radio speech to the nation, urging passage of a multibillion-dollar education bill, he called for an antibusing provision like the one he pushed through the House in 1972, only to see it killed by a Senate filibuster.

Second, in a frankly political campaign pep talk at the Republicans' thousand-dollar plate dinner, the President advised his party that it had a winning issue by opposing forced busing. He said the children should be allowed to attend "neighborhood schools" closest to their homes, not bused hither and yon at the behest of some bureaucrat or federal judge.

Only the day before his speech, the House had written into the education bill the provision Nixon wanted. It would allow busing only as a last resort to achieve desegregation. It would permit no student to be bused, under court orders, any farther than the school next-closest to his home.

The amendment sailed through by a 293 to 117 majority, as liberal Democrats from Northern industrial cities joined with conservatives in both parties in the stampede to go on record against crosstown busing.

Democrats from New York, Pennsylvania, Massachusetts, Ohio, and Michigan were among the liberals from labor union districts who had to break away from their long-time alliance with the civil rights groups that are bitterly opposed to the antibusing measure.

Jim O'Hara, Lucien Nedzi and William Ford Democrats from Michigan industrial areas, explained that they had to vote for the Congress' Republican-sponsored provision because the people of Michigan are almost unanimous in opposing the federal-court order which would enforce busing across the boundary lines of 53 school districts in the Metropolitan Detroit area.

New York's Congressman Mario Biaggi, Joseph Addabbo, Frank Brasco, John Murphy and Otis Pike were among the liberal Democrats with near-perfect records of fa-

voring civil-rights legislation, who nevertheless switched over to the antibusing side.

"Originally, I was in favor of school busing," Biaggi said. But he frankly admitted, "It has not worked and the cure has been worse than the disease." Nixon himself could not have detailed the failures of busing more accurately than Biaggi did in these words:

"The education of our children has been disrupted. Countless thousands have been subject to significant risk of accident on the long roads which lead to schools far from home and their neighborhood school.

"Countless thousands have failed to receive educational services they desperately need for effective programs because great amounts of money have been spent on buses and drivers. . . . The cost of busing is clearly too high. It is unreasonable and it is senseless. Even prominent black educators, such as Dr. Kenneth Clark, have concluded that it is the wrong route."

Foes of the antibusing provision will rally their forces in an attempt to kill it in the Senate with another filibuster.

As a political issue, however, it has already been turned into a plus for the embattled President and his party, and it will remain to split the Democrats—perhaps all the way into the 1976 election.

**SCHOOL BARRIERS?**

(By George S. Thompson)

While listening to the public FM radio station I heard a very moving short program which told the story of a black father, the Rev. Oliver Brown, who through diligent work helped break down the barriers which forced his young daughter to be transported several miles to an all-black school rather than walk four blocks to the nearby school which was all-white.

The little girl could not understand why she could play with the other children in the neighborhood but could not go to school with them. Rev. Brown's efforts helped bring about the Supreme Court decision of 1954 which removed these barriers and enabled children like his to attend their neighborhood school.

Now if I could only find a way to do the same for my daughter.

**METRO SCHOOLS, BROOKS SAYS**

(By Frank Sutherland)

The director of Metro schools said yesterday that 6,600 students fled from the school system this year, more white flight is expected next year and that he favors asking federal court to modify the present busing plan.

Dr. Elbert D. Brooks said in an interview he believes the school board can appeal its desegregation plan to the U.S. Supreme Court while making requests for changes to U.S. Dist. Judge L. Clure Morton.

The U.S. Sixth Circuit Court of Appeals upheld Morton's desegregation plan last week and commented it was "puzzled" why the attorney for the school board had never asked Morton for relief from the hardships the board claims the busing plan has caused in Nashville.

Brooks said his staff will present alternatives to the school board June 13 for the board to consider in making requests to Morton.

C. R. Dorrier, chairman of the board, has said the board "will most likely" appeal the case to the Supreme Court, saying once the decision to appeal was made, the board should "go all the way."

The circuit court judges were critical of the board for arguing about hardships of the busing plan before them when the school board had not asked Morton for any changes.

Dick L. Lansden, attorney for the school board, said in oral arguments before the

appellate court that he had not asked Morton for relief because Morton, he said, had told him privately he would not hear such a motion.

The court said it did not and said "the door is open (as it always has been)" to Morton's court to petition for changes. In fact, the circuit court said, Morton had said himself in his order that he anticipated some changes might have to be considered.

Brooks said his staff will present two basic alternatives to the board: (1) Improve the safety of the program by reducing the extremely early and late bus schedules, and-or (2) Make zone changes to alleviate or modify the black-white ratio within the capabilities of the present transportation fleet.

"The first alternative would result in less integration than is currently carried out," Brooks said. "The second proposal might retain the present degree of integration but make no changes in the safety or inconvenience."

"The underlying fact is that there can be no substantial relief without additional transportation."

Brooks said the current busing plan "has resulted in white flight changing the black-white ratio" from those predicted under Morton's plan.

"Contributing to white flight is the matter of inconvenience. On the one hand, we have a crying need to do something about inconvenience of transportation, and then we also have to alleviate other conditions that lead to white flight, such as racial imbalances."

Under Morton's plan, no school would have had more than a 44% black student body. However, with the flight of 6,600 white students, there are about 10 schools with a majority of black students or hovering at the 50% mark. In some cases, this has meant a majority black school in an all-white neighborhood such as Brookmeade.

The school board voted two weeks ago to change attendance zone lines for 11 schools for next fall, but these changes, while improving the racial balances at these schools, affected only one of the 10 schools with a majority black student body.

Brooks said the clusters will have to be alerted, with the approval of federal court, to change the other nine majority black schools. The reason for this, he said, is that white flight has been so great within the cluster, there are not enough white students left in these zones to give each school a majority white student body.

In reviewing the school year, Brooks said the biggest disappointment was the failure to get the long-range building program off the ground. He said the new Whites Creek comprehensive high school, to serve the Cumberland-Joelton area, is now being considered by the Metro Council.

He said the school board's task force on discipline is "gathering data" on the problem and "if any quick answers can be found, they will be put into effect."

He said there were 4,500 suspensions handed down this year, an unusually high number, showing that the school system has made attempts to control the problem.

[From the Tennessean, Aug. 28, 1973]

#### STUDENT BEHAVIORAL CENTER OPENS SEPT. 4

The Central Learning Center for students with behavioral problems will open Sept. 4 for its first full year of operation in the old Waverly-Belmont School, school officials said yesterday.

In a status report to be made to the Metro Board of Education today, school officials said the major plans and arrangements have been made for the transfer of the center to Waverly-Belmont from Washington Junior High School.

The controversial center, designed to take up to about 150 junior high school students found to have behavioral problems or to be

disruptive to the classroom environment, opened on a temporary basis last winter at Washington.

School officials said the first two weeks of the center's operation will be devoted to identification, screening and placement of students. The center's staff, including principal, assistant principal and 10 teacher-counselor positions, already have been filled for the coming school year, officials said.

In the report to the board about last spring's operation, the center's enrollment varied from 48 to 50 students. About 50% of those students previously had been involved with the Metro Juvenile Court. In the original plans for the center, that percentage had been estimated at only about 33%.

The center staff participated in a two-week workshop earlier this month, preparing the teachers to cope with the special kinds of problems in this kind of school.

The center was developed in response to parent, community and teacher concerns about discipline in the schools. Six junior highs were selected as sources of students for the project.

Schools Director Dr. Elbert D. Brooks, said the center will be regarded as a "top priority, carefully controlled and evaluated developmental project."

At the end of this school year, the school board is expected to evaluate the center program and decide whether it should be continued and/or expanded.

#### DESPITE STUDENT LAG, INCREASED BUDGET SOUGHT

(By Robert Churchwell)

In the face of a declining school enrollment, Metro school officials have asked for an increase of \$13.21 million to operate schools next year.

A record budget of \$97,854,750 has been compiled for the proposed operation of Metro schools during 1974-75.

Delbert S. Nowell, assistant superintendent for business services, said the new general operations budget, figured on expected receipt of local and state tax money, comes to \$89,354,750.

He said a hoped-for \$8.5 million in federal funds, peaked the budget beyond this year's figures of \$76,141,515 in general operation funds, plus \$7 million already received in federal money.

The Metro Board of Education will hold a public hearing on the proposed budget at 7:30 p.m. today at McGavock High School. Dr. Elbert D. Brooks, director of schools, members of his staff, members of the board and members of the Citizens Budget Advisory Committee will present the budget and answer questions from the audience.

The board will give final approval to the budget at its April 23 meeting, after which it must be submitted to Mayor Beverly Briley and Metro Council for approval.

#### 2,000 Decline

The sharply increased budget is being proposed at a time when school officials are predicting a drop by 2,000 in total school enrollment by next fall.

E. T. Carothers, schools information director, said Metro's 140 schools opened this year with 84,000 students. He said the projected enrollment for 1974-75 is 32,115.

Carothers said the peak enrollment was 95,000 in 1971 prior to a decline which set in following desegregation orders of federal district court here which called for extensive busing.

Mr. Roderick G. Snow, Chairman of the citizens committee, called for increased spending on schools in the committee report to the board, saying, "The psychology is not what we can get by with, but what we need."

Nowell said the proposed cost of instruction at \$59,822,377 is the highest priced single item in the budget, an increase of \$7,519,500 over this year's \$52,302,875.

Nowell said increases in teachers' salaries

are figured in this item although negotiations have not been completed between the school administration and representatives of the Metropolitan Nashville Education Association (MNEA).

He said Gov. Winfield Dunn's trimming of \$100 from what was proposed to be a \$700 salary hike for teachers will mean Metro "will get only \$300,000 when we were expecting \$700,000."

#### RISE IN COSTS

All top items in the operation of the school system, as listed by Nowell, show a rise in costs in the proposed budget document.

Operation of plant will cost \$7,852,797 next year, an increase of \$699,624. The hike includes \$150,000 to pay the school system's electric light bill; \$400,000 to pay the school system's electric light bill \$400,000 to pay the telephone bill; and \$50,000 for gas to heat school buildings.

The budget contains \$4,240,454 for transportation, a \$920,427 increase over this year's \$3,320,027.

Other items proposed include \$5,720,776 for fixed charges, an increase of \$901,384. This item includes the school system's contributions to teacher retirement, social security and hospitalization insurance; \$4,971,707 for capital outlay, a \$2,360,326 increase over this year's \$2,611,381; and \$3,015,810 for maintenance costs, an increase of \$258,572 over last year's \$2,757,238.

[From the Banner, Jan. 1, 1974]

#### METRO SCHOOLS 'LUCKY' TO MISS SURVEY ON RACISM

(By Robert Churchwell)

The Metro school system is "lucky" not to be participating in a national survey of racial attitudes of students in desegregated schools, which is "a good thing and necessary but creates difficulty and misunderstanding," Dr. Charles B. Watts, assistant superintendent for program and staff development, said.

The survey is being conducted by the U.S. Office of Education in school systems in 25 states, including Tennessee, "to measure the effectiveness of the hundreds of millions of dollars being spent under the 1972 Emergency School Aid Act (ESAA)."

Funds allocated local school systems under ESAA are designated for programs to help relieve desegregation problems within schools and at the community level.

The Metro school system has fielded a \$7.6 million request for ESAA funds for the 1974-75 school year with the regional U.S. Office of Education in Atlanta, Watts said. He said an answer to the request is expected by the middle of February.

Michael J. Wargo, evaluation project officer for ESAA, said the random survey will continue until 29,000 students have been questioned "despite charges that the questions are highly inflammatory and racist."

Watts said his office was contacted two or three months ago to let "us know we were lucky enough not to be included in the survey."

"It's just a lot of work which we don't get any feedback on. It has to be done for evaluation. It's a good thing and necessary but it creates a lot of difficulty and misunderstanding," Watts said.

Students are asked in the survey to state their perception of their own, their parents', teachers' and principals' feelings about desegregation.

Among questions asked them are:

"How do your parents feel about black and white students going to the same school?"

"Do you think black students cause more trouble than other kinds of students?"

"Do you think white teachers in the school are unfair to students who are not white?"

"Do you think black people are smarter than other people?"

Wargo said Congress requires evaluation of the desegregation aid law's effectiveness in

improving race relations, reducing minority isolation and improving academic achievement.

He said the survey will be repeated during the 1975-76 school year, but the first results won't be available for a year.

#### WEAPON FIRED, CHAIRS HURLED IN FIGHT AT PEARL

(By Robert Glass)

Terror swept through the Pearl High School cafeteria during the lunch hour when three young men attacked two students, hurled chairs and fired a pistol at one of them, authorities said today.

Youth Guidance Director George Currey said the fight and shooting occurred at noon Tuesday while the lunchroom was filled with students. However, no injuries were reported.

Two brothers and another youth, all 17 years old, were arrested Wednesday.

Currey identified those charged as Jeffrey Fenton and Joseph Fenton, both of 1714 Heiman St., and Orlando Westbrooks, who gave his address as the 2600 block of Helman Street.

Principal Leslie Carnes said the attack was directed at students Lorenzo Short and Kevin Howse, both 17.

Carnes said the fight "lasted about 20 seconds" and happened "suddenly."

"The students were frightened but did not run out (of the cafeteria) in any special great numbers," he said.

The episode began in the restroom on the first floor of the senior high school located at 601 17th Ave. N., police reported.

Carnes said Short and Jeffrey Fenton "got into an argument" in the restroom. He said he escorted Fenton from the school by way of "the nearest exit."

Fenton re-entered the school "by another door," Carnes said, and was joined by his brother and Westbrooks.

"They found Short and Howse in the lunchroom and a fight ensued," the principal said.

Currey reported Jeffrey Fenton fired a .22-caliber derringer pistol at Short, the bullet missing him.

The three alleged assailants fled from the school after the shooting, Currey said.

Carnes said the incident resulted from a fight the five youths reportedly had Sunday in which "guns were involved on both sides."

The exact nature of the disagreement among the five youths, who Carnes described as "friends," was not known.

Currey said officers found the derringer pistol under Joseph Fenton's bed mattress when they went to his house to make the arrest.

#### METRO PTA MEMBERSHIP DROP CITED

Memberships in the Metro PTA council have declined 20,000 from a high of 50,000 in 1970, a report to the executive committee said.

The drop over a shorter period of one year was 3,000 members—from 33,000 last year to the present 30,000 members on roll, the report said.

Mrs. Joseph Kott, council president, said "general apathy" and an increase in the number of women working are reasons why PTA membership is down. Other factors include the development of one-year schools, some of which discourage PTAs as part of their programs, and the fact that families who have as many as five children in school and are unable to pay membership dues ranging from 50 cents to \$5, she said.

Mrs. Kott urged local PTAs to try to attract parents whose children attend schools in communities other than where they live. She said "one final membership thrust" in a school year, usually during open house, will not reach these parents.

In other action the committee received a report that state PTA membership was down by 30,000 as of Dec. 1; approved plans to charter a bus for delegates to attend the state PTA convention April 23-25 in Memphis; and approved plans for the annual presidents and principals banquet at 6:30 p.m. March 18 at the Airport Hilton Inn.

#### [From the Nashville Banner, Mar. 27, 1974] METRO SCHOOL ENROLLMENT DROPS

(By Robert Churchwell)

Metro school enrollment will drop another 2,000 students by next fall but there are still reasons why the Metro Board of Education should shape the 1974-75 budget to reflect increased spending over this year, Dr. Roderrick G. Snow, chairman of the Citizens Budget Advisory Committee to the board, said Tuesday.

"The question is," Snow said in reporting the committee's budget priorities, "why spend more money for fewer students? We will lose 2,000 more students next year.

"Status school budgets are not what we want. We want more," said Snow, a pathologist at St. Thomas Hospital.

"The psychology is not what we can get by with, but what we need," he said.

Snow said in an interview that his figure on an enrollment drop was reported by a school official at a citizens budget hearing in school District III.

E. T. Carothers, schools director of information, said schools opened this year with 84,000 students and the projected enrollment for 1974-75 is 82,115.

He said the peak enrollment was 95,000 in 1971 prior to a decline which set in following desegregation orders of federal district court here which called for extensive busing.

The board has not settled on a total figure for next year's budget. Eleven uncut departmental requests reported by officials come to \$98 million, about \$14 million above this year's total budget.

"We do have a lot of cutting to do," said Dr. Elbert D. Brooks, director of schools.

Snow said inflation of current costs in operating the school system and "expanded horizons of people" are reasons to put more money in the new budget. He listed state laws that require public education of children "with varying handicaps" and similar laws expanding the teaching of vocational education among other spending factors.

The committee's priority items recommended for inclusion in the board's adopted budget totals \$9.5 million. Snow said the priorities mean "better teaching, expanded programs of many types and also improved buildings."

The reports call for \$3 million to buy more buses to reduce staggered school openings to no later than 8:30 a.m. by next fall.

Other items include raising the per pupil expenditure for materials from the present \$6 on a scale ranging to \$10 per pupil at a \$328,000 cost; reducing the elementary and junior high teacher-pupil ratio from 27 and 28 students per teacher to 25 per teacher at a cost of \$1.6 million; and programs to improve reading and mathematics in junior high schools at a cost of \$600,000.

The report asks that \$1.6 million be spent to hire 150 more high school teachers and that \$250,000 be spent for more materials at the high school level.

The citizens committee dealt with the controversial subject of salary raises for teachers with a generalized statement.

"Again, as they did last year, the citizens expressed great concern about salaries paid to school personnel. It was strongly recommended that salaries raised for all personnel to keep pace with inflation as a minimum increase," the report said.

The board took no action on the report. The board will present its proposed budget at 7:30 p.m. April 9 at a public hearing at McGavock High School.

#### MEIGS SCHOOL ATTENDANCE POOR, BROOKS SAYS

The director of Metro Schools has advised the Metro Board of Education that student attendance at Meigs Junior High School "is very poor," and that schools throughout the East Nashville section generally have worse attendance records than schools in other sections of the city.

Dr. Elbert D. Brooks said that Meigs students remain absent for "an appreciable time." He said Meigs drew the attention of school officials last week when four students were found to have been absent from school for four months.

Brooks said additional staff members and a team of home visitors will be assigned to Meigs to help its principal, Owen Warford, and faculty deal with the problem.

He said a plan drawn by Dr. Dolphus Spence, director of secondary education, Area I, will distribute the responsibility for absenteeism among school personnel and parents.

Spence said the plan has been completed and will be implemented this week at Meigs. He said he couldn't discuss details until a full report is made to the board.

On a related issue, Dr. Virginia Dobbs, director of pupil personnel services, said she doesn't feel from a philosophical standpoint that "we could ever defend" student suspension to solve discipline problems.

She said suspension keeps a student from learning, if he is a good student and reinforces what he wants (to stay away from school) if he is a poor student.

Dr. Dobbs said suspensions have more than doubled in Metro schools in the last seven years. She said suspensions occur mainly at the secondary level and only a few at the elementary level. She said principals use the alternative of suspension rather than corporal punishment at the secondary level.

Brooks said "we ought to be smart enough to find a better way than suspension to deal with behavior problems."

The board approved new facilities for vocational programs at Cohn, East, Hillsboro and Hillwood High Schools. Dr. Bill M. Wise, assistant superintendent for facility development and services, said the move will "make some impact in vocational-technical programs" at the schools.

#### NATIONAL PTA VOTES TO OPPOSE BUSING

St. Louis, Mo.—The National Congress of Parents and Teachers (PTA) voted two-to-one Tuesday against court ordered busing to achieve racial balance.

In an emotion charged session, 650 delegates opposed busing and 353 were in favor. The measure, however, must be approved by 31 state assemblies in the PTA before it becomes a permanent item for action.

More than one-third of the 1,156 delegates are from Texas, Oklahoma and Virginia. Harold Rhea, an elementary school principal from Birdville, Tex., said his group began recruiting members last year to assure a full delegation at the convention.

Rhea said he opposes busing because "we are already integrated. Of 16,000 students in our community, 27 are colored. We would love for you to visit."

#### [From the Nashville Banner, June 14, 1972]

#### DISCIPLINE MAJOR WOE AT SCHOOLS

(By Grady Gallant)

The problem of enforcement of discipline is growing at a rapid rate and discipline is now "a major problem" in the Metro public schools, a Task Force on Discipline reported to the school board Tuesday afternoon.

The Task Force, which in its Phase I report merely gave the status of discipline in the schools, found that:

1. Suspensions of students have increased 321 per cent in the past four years.

2. Indefinite suspensions have risen over 100 per cent in the last year.

3. A survey of teaching personnel shows that 66 per cent of the teachers feel they spend an unreasonable and disproportionate amount of time with disciplinary matters.

4. Of the principals surveyed, 78 per cent felt discipline problems required an unreasonable amount of their time.

#### TWENTY-NINE MEMBERS

The Task Force, composed of 29 persons, 14 of whom work for Metro schools, was careful not to place the blame for skyrocketing disorder in the schools on busing of students inside the system.

"A survey of 77 urban schools systems conducted by the Pupil Personnel Office indicates that virtually every urban school system has the same kinds of problems as Nashville.

"Very few of these systems have busing or integration as an available scapegoat. While certain problems may be directly attributable to adjustments to the Nashville court order, it is clear that discipline problems were increasing and were a major problem before this school year," the report stated.

"Suspensions did increase 50 per cent this school year over last year; however, previous yearly increases were 27 per cent, 36 per cent and 18 per cent indicating that increases in suspensions is a trend."

The report recalled that Metropolitan Nashville Education Association reported "as far back as 1967," (that) 94 per cent of the teachers in the system" sought support in dealing with discipline.

#### SOLUTIONS EXIST

Dr. Jim A. Burns, chairman of the Task Force on Discipline and administrative assistant to Dr. Elbert Brooks, Metro school director, said he believes there are solutions to the discipline problems the school system faces.

"I don't think the incidents reflect something which has become impossible to deal with," he said in denying that school discipline had reached a state of crisis.

"The fact that we have had incidents and problems does not mean that things are out of control," he told a press conference prior to presentation of the report to the school board.

"You can go into any school in the system and find, indeed, that we are in control—and I think the system this year has made stronger and stronger efforts to insure that control is a factor in these schools."

Dr. Burns said the task force had found that serious disruptions" tend to occur outside the classroom. Asked why students were frequently seen roaming the halls and were not in classrooms, he replied:

#### OFTEN LEGITIMATE

"I think the answer to that is that many times disruptions may occur when students are legitimately not in class—changing of class, before or after school, in the lunchroom, going to and from the lunchroom, going to other classes. The fact that a major area is outside the classroom doesn't necessarily reflect that students aren't where they are supposed to be. They may be where they are supposed to be and still some incidents can occur."

Dr. Burns said that he "would assume" that students can now go to the restrooms in safety. "We have found nothing which indicates that they couldn't," he said in response to a question.

"I would hope that there would be a substantial decrease in the incidents of behavior and hopefully our task force report and the response of the system to this report will contribute," he said.

"We did not go directly to parents in gathering information," Dr. Burns pointed

out. "We do have six lay citizens on the task force and we have received significant input through them and through the people on the task force who work with parents.

"We were not able, really, to isolate parents and find a way to get to the large numbers of parents that we have. We did not have access to parents or getting information from parents as easily as we could from principals, teachers, students.

"We were burdened with the time factor," Dr. Burns said. "We had approximately two months to study the problem. We did feel we were getting significant parent input from the parents who were on the task force, through students, through principals who work with parents daily.

"I think we are pretty much aware of the feelings and concerns of the parents in the community, and we tried to have representation on the task force. It's just that in terms of gathering information we didn't go directly to large numbers of parents—we got it indirectly," Dr. Burns noted.

The task force discovered that principals felt they were the "man-on-the-spot" and that they are caught in a crossfire between student, parent, teacher and administrator expectations.

#### ROOTS LOCAL

The task force "feels that the roots of many of the discipline problems are in the community from whence students come."

The report observed that crime and disorder "in the larger social community are increasing problems.

"Many of the students behave in their homes and in the community in a way that cannot be accepted in the schools," the report asserts.

"While critics of education often suggest that student control for control (sic) sake has become the foremost goal of education, the schools still have to grapple with problems that come directly from the larger community.

"The problem has recently been increased as many citizens who oppose implementation of the court order have increased their criticism or opposition to the school system," the report states.

The task force found that "discipline seems to be one of those concerns where everyone wants to place responsibility or blame on someone else."

"Eighty-five per cent of professional personnel surveyed indicated lack of parental backing was a frequent barrier to resolving discipline problems"—and "85 per cent of the personnel also believed parents are a probable cause of chronic discipline problems."

Students who cause discipline problems "are usually students who cannot or who do not succeed in school."

"This is generally true of students who are unable to behave with acceptable standards in Nashville," the report stated.

The task force also reported that the school program does not meet the needs of all students and that there is a lack of understanding of the purposes, reasons for, and policies of the school system in relation to discipline.

The task force is now preparing its recommendations of steps to be taken next fall to improve school discipline. Dr. Burns said that this report may be ready in time for the next board meeting on June 27.

Mr. BROCK. Mr. President, if I may continue on just one or two other points: When the Senator from Indiana offered his amendment as a substitute for the Gurney amendment, I vigorously opposed it, because I thought that it was an effort to prevent a vote of the Senate on the basic question. We lost the vote on the basic question, after defeating the Bayh amendment.

The Senator from Indiana then further offered his amendment as an original amendment. I felt at first that I should support it, because at least it was an effort to establish the concern of the Senate on this question. I do not think anyone seriously suggested that it would do any good, but it did seem to indicate the concern of the Senate, and I was tempted to support it.

But I could not, and I opposed it, for one reason: Too many times since I have been in this body and when I was a Member of the other body. I have seen Congress pass bills which purported to achieve a certain result and did not, and I simply cannot support further charades, further efforts to delude or mislead or confuse the parents, the teachers, and the pupils of this country of ours.

That, to me, was the effect of the amendment of the Senator from Indiana. It had no positive effect whatsoever. As the Senator from Louisiana described it, it was a probing amendment as originally offered, and I think it is tragic that there will be some who will interpret that vote as a step toward relieving this condition of abuse. It will not. It is a charade.

I fully understand those who supported it. Many of my colleagues who were supporting our amendment, the Gurney amendment, voted for the Bayh amendment because they felt as though we had a desperate need to do something. I understand that. I cannot criticize them for their votes. But for myself, I cannot participate in what I seriously, honestly, and in all candor consider to be a charade and an effort to lead people into thinking something might be done to relieve this problem when in fact it will not.

Perhaps it is well that the amendment carried, because it will not be long, if this amendment is incorporated into the United States Code, before people realize it has no effect whatsoever.

But I urge my colleagues, if they are going to oppose our efforts to achieve some relief—

The PRESIDING OFFICER. The Senator's 5 minutes have expired.

Mr. BROCK. I ask unanimous consent to proceed for 2 additional minutes.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. BROCK. I do ask that if my colleagues, apparently a majority—a majority of one, at least—are going to oppose those remedies which we have proposed to stop compulsion in our schools, I deeply and honestly urge that the committee and its leadership propose their solution.

Today we have none. Today there is no relief, no remedy, no safeguard, no surety for the parent, the child, or the teacher. Our school population is declining. Our school performances are declining. Our parental support is declining, and no one seems to want to provide an answer.

If you are going to oppose the remedy which we suggest, then please offer an alternative that will work, because we simply cannot longer continue this con-

dition of coercion, of abuse, and of discrimination.

The PRESIDING OFFICER. Is there further morning business?

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

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. JOHNSTON). Without objection, it is so ordered.

Is there further morning business?

**ORDER FOR CONSIDERATION OF SENATE JOINT RESOLUTION 202 TOMORROW, AND UPON ITS DISPOSITION RESUMPTION OF THE UNFINISHED BUSINESS**

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on tomorrow, immediately after recognition of the distinguished Senator from Wisconsin (Mr. PROXMIRE), and the consummation of his order to speak, the Senate proceed to the consideration of Calendar No. 817, Senate Joint Resolution 202, that there be a time limitation thereon of 15 minutes to be equally divided and controlled by the distinguished Senator from Virginia (Mr. HARRY F. BYRD, JR.) and the distinguished Senator from Wisconsin (Mr. PROXMIRE); and that upon disposition

of Senate Joint Resolution 202, the Senate resume the consideration of the unfinished business.

The PRESIDING OFFICER. Without objection, it is so ordered.

**PROGRAM**

Mr. ROBERT C. BYRD. Mr. President, the Senate will convene tomorrow at 9 a.m. After the two leaders or their designees have been recognized under the standing order, the distinguished Senator from Wisconsin (Mr. PROXMIRE) will be recognized for not to exceed 15 minutes; after which the Senate will proceed to the consideration of Calendar No. 817, Senate Joint Resolution 202, designating the premises occupied by the Chief of Naval Operations as the official residence of the Vice President. There is a time limitation of 15 minutes on that joint resolution, the time to be equally divided and controlled by the Senator from Virginia (Mr. HARRY F. BYRD, JR.) and the Senator from Wisconsin (Mr. PROXMIRE).

Upon disposition of that joint resolution, the Senate will resume consideration of the unfinished business, S. 1539, a bill to amend and extend certain acts relating to elementary and secondary education programs.

So-called busing amendments will be in order; and under the agreement, all such so-called busing amendments are to be disposed of no later than 1 p.m. tomorrow.

Upon the disposition of busing amend-

ments tomorrow, the substitute by Mr. CURTIS, Mr. McCLURE, and Mr. BUCKLEY will be called up, and there is a 6-hour limitation thereon. Amendments to the substitute would be in order. Yea-and-nay votes could occur. It is anticipated that the substitute will be disposed of one way or the other on tomorrow before the Senate adjourns. So this could indicate a somewhat lengthy day.

**ADJOURNMENT TO 9 A.M. TOMORROW**

Mr. ROBERT C. BYRD. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the previous order, that the Senate stand in adjournment until 9 a.m. tomorrow.

The motion was agreed to; and at 7:11 p.m. the Senate adjourned until tomorrow, Thursday, May 16, 1974, at 9 a.m.

**NOMINATIONS**

Executive nominations received by the Senate on May 15, 1974:

**DEPARTMENT OF DEFENSE**

J. William Middendorf II, of Connecticut, to be Secretary of the Navy, vice John W. Warner, resigned.

Gen. George S. Brown, U.S. Air Force, for appointment as Chairman of the Joint Chiefs of Staff for a term of 2 years, pursuant to title 10, United States Code, section 142.

Gen. David C. Jones, U.S. Air Force, to be appointed as Chief of Staff, U.S. Air Force, for a period of 4 years, pursuant to title 10, United States Code, section 8034.

**EXTENSIONS OF REMARKS**

**CARNEY DEAN: A TRUE PUBLIC SERVANT**

**HON. TOM STEED**

OF OKLAHOMA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 15, 1974

Mr. STEED. Mr. Speaker, during the recent Easter recess I attended the funeral services for a man who had an almost limitless capacity for selfless work in behalf of the cause of conservation—Carney O. Dean of Chandler, Okla.

He was already at the retirement age when a group of us interested in soil conservation and water development formed the Deep Fork Watershed Association in a meeting at Wellston, Okla., High School in 1957.

Soon he became the secretary of the association and continued devoted to this task until his death at 81 last month. While he received some compensation for his work, it could not begin to repay the many hours he put into it. Carney Dean did all this because he believed in conservation, in upstream flood control, and its multiple use of water.

He was born in Lincoln County, Okla., and spent most of his life there. I once heard a soil authority describe it as the most eroded county in the State. This is no longer true due to the work of Carney Dean and many others like him in the Deep Fork Association in the de-

velopment of such projects as Bear, Fall, and Coon Creeks, Quapaw Creek and Little Deep Fork.

Carney Dean possessed a refreshing, almost naive, enthusiasm in the cause in which he believed, a quality we too often miss in these days.

I will always remember his last visit to Washington some 4 years ago. He had been here at the end of World War I, passing through on his way home from France. Then he returned more than 50 years later. He came to testify at the Agriculture Appropriations Subcommittee, headed by our colleague Congressman JAMIE WHITTEN, not to ask it for money but to thank it for what it has already done for soil conservation, particularly that of his native State. We do not have many witnesses of that kind.

Long years ago he was looking ahead to the day when \$100 million a year would be appropriated for soil conservation. That was then regarded as visionary, but it has since been passed.

In my files I have a 2-foot-thick sheaf of the Deep Fork Newsletter, which he always issued so brightly and informatively.

He was possessed by the vision not only of soil conservation systematically applied through tributaries of main streams, but also of the project to provide water transportation for central Oklahoma by extending the Kerr-

McClellan Waterway up the Deep Fork to the vicinity of Oklahoma City.

In his Christmas letter in 1972, Carney Dean wrote:

I do not know how to stop work, and life is so good to me.

This remark was characteristic of a man whom I am proud to have had as a friend.

Milt Phillips, publisher of the Seminole, Okla., Producer, caught much of the spirit of the man in his editorial, which follows:

**NAME IT CARNEY DEAN WATERWAY  
(By Milt Phillips)**

Last week over at Chandler Carney O. Dean passed away. Our own problems here at home prevented our attending his services. Few of you who read this will know Carney Dean. Some of the active leaders of First Christian Church will know him and remember the years of service he provided the Christian Men's Fellowship of The Disciples of Christ. A few of the area here, such as John Marshall and a few others will remember Carney because they were associated with him in Deep Fork Watershed Association. Ruby and Ye Scribe knew Carney from his college days at OU when the three of us worked together in Norman's First Christian Church and the church Christian Endeavor Society. Being in school with Carney over those years, we came to know him fairly well. In later years our paths would cross occasionally, especially when we visited in areas where Carney was in charge of highway appraisals, or where Carney was doing some chore in church effort. But for the past 15 or 20 years we've

worked with Carney often in developing water and soil conservation. When the late Tom Phillips, the late John Ed Davis, the late Chester Gates, Chester Ellis and Ye Scribe were working on the Wewoka Creek flood control project, Carney and some of his associates from around Chandler visited this area often. Because Tom Steed and the Wewoka Creek Water Conservancy District boosters of Wetumka, Holdenville, Wewoka and Seminole developed the state's "Pilot Project" for the upstream flood control project which has become so popular over the years, water conservationists came to visit us from all sections of the state. The newspaper pictorial section of the Holdenville Daily News and the Seminole Daily Producer published to promote the Wewoka Creek (Big and Little Wewoka Creeks) flood control project received nation-wide distribution. In later years Carney Dean and his fellow residents along Deep Fork River from Edmond to Lake Eufaula used much of the same kind of study and information we on Wewoka Creek had used. Carney Dean was a strong leader in that effort.

In later years the Deep Fork was declared by the U.S. Army Engineers to be the only feasible route which could be developed for barge traffic by waterway to Oklahoma City from the Kerr-McClellan Mississippi-to-Tulsa barge canal. Carney Dean was elected Secretary of the Deep Fork Association. He was still serving when he died in Chandler last week. Carney Dean was one of, and at the time seemingly the only one, who was willing to keep working to develop the Deep Fork Barge route. Hundreds of people from Okmulgee on the east to Edmond and Oklahoma City on the west, and from Seminole and Shawnee on the south to Drumright and Cushing on the north, joined the Deep Fork Association and learned to love and respect Carney Dean for his dedication to restoring the thousands of acres of flood-devastated land along the Deep Fork, and for his dedication to developing the waterway through Lake Eufaula to Oklahoma City. They named the Mississippi-Little Rock-Muskogee-Tulsa waterway "The Kerr-McClellan" waterway because of the devotion of those two United States Senators to developing that water transportation route.

This newspaper proposes that if and when the Deep Fork is ever developed into a water transportation route, it be named The Carney Dean Waterway. No one man along all that vast Deep Fork wasteland devoted more time, was more effective or was more dedicated to reclaiming that vast thousands of acres, and to developing an economic-boosting waterway, than our longtime friend Carney O. Dean. Every community along the Deep Fork River owes Carney Dean a vote of thanks and appreciation.

COMMUNITY OWES MUCH TO DR. CROSBY

HON. ROBERT J. LAGOMARSINO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 15, 1974

Mr. LAGOMARSINO. Mr. Speaker, citizens in the Oxnard Union High School district are fortunate to have Dr. Joseph Crosby as their superintendent of education. Dr. Crosby has announced his retirement after 25 years of dedicated service. The following Oxnard Press-Courier editorial expresses in a meaning-

ful way the feelings of Oxnard residents toward their beloved superintendent:

COMMUNITY OWES MUCH TO DR. CROSBY

It is difficult to imagine an Oxnard Union High School District without Dr. Joseph Crosby at its helm as superintendent, but that is the reality to be faced by district administrators, teachers, parents and students in less than two months.

Crosby has announced his retirement after 25 years' service to the district, 17 of them as an outstanding superintendent. His mixed feelings about leaving are shared by thousands who work and live and study in the district: Sadness at his departure and yet happiness over the challenging new turn he has taken in his career.

Next year, Crosby will be teaching educational administration in Europe under the graduate program of the University of Southern California. We can think of no one better qualified for the job, and his excitement at the prospect of this new challenge is contagious—almost to the point of making those around him forget that USC's gain is OUHSD's loss.

That could never happen, of course, because Crosby has had such an influence, personal and professional, on the district during his years as superintendent.

Crosby's career spans a period in which the district mushroomed from one school to seven, from 2,200 students to 17,000. Yet, he never lost touch with the changing educational society—serving it most effectively, in fact, as he faced its issues squarely and honestly, with an insistence that none lose sight of fundamental educational values.

Within a month after Crosby became superintendent in 1957, an earthquake damaged Oxnard's high school so badly it had to be closed. He improvised classrooms in buses, the school garage and gym to keep the system in operation. With similar innovation he used the same set of plans for construction of several high schools in the district, eliminating architect's costs.

It was part of the pattern for an administration that practiced economies in building and personnel, but not at the expense of the students.

Crosby can be tough, blunt and devastatingly honest. Those attributes, combined with his Irish charm and genuine concern for people, have earned him the respect and devotion of nearly all who know him. His largely unsung services to his community, above and beyond his professional duties, earned him selection in 1964 as Oxnard's Distinguished Citizen.

He remains a distinguished citizen, serving his community in full personal and professional measure despite the pain from a pinched nerve in his neck that hastened his decision to retire at 57. His community owes him much, but—knowing Joe Crosby—we are sure he will humbly relish a simple: "Well done . . . and Godspeed in all future endeavors."

CONGRESSIONAL BUDGET ACT OF 1973

HON. TENNYSON GUYER

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 15, 1974

Mr. GUYER. Mr. Speaker, at this very time, legislation which would give Congress the necessary tools to return our Nation to a sound fiscal policy is being considered by a conference committee.

One of the first bills I introduced over a year and a half ago as a freshman Congressman was one very similar to the legislation now in conference.

My constituents are eagerly awaiting this new program of wise and orderly spending which is set forth in the Congressional Budget Act of 1973. The hour is becoming late—the House and Senate have already passed this legislation. Immediate action by the conferees considering the bill is a prime priority, so that this important measure can be signed by the President and enacted into law.

Unless we stamp out the fires of inflation, there is little help or comfort for folks on small pensions and low incomes. Since Congress is the biggest spender in the country, it should set the example by setting its own budget house in order.

Our Federal Government spends cash at a rate of well over one half a million dollars per minute. At that rate, the Government spent more money in the first 10 months of our last fiscal year than they did between 1789 and 1942. In 1900, the Government employed 1 million people; today, there are almost 13 million Government employees.

At this time, Congress lacks a mechanism for systematic budgeting procedures. At no point, do the Appropriation Committees of either House coordinate actions with the taxwriting committees who are responsible for raising the revenue to pay the bills. Astonishingly, enough, the Congress appropriates money in a piecemeal fashion in more than a dozen separate bills without ever first deciding on a budget. It is no wonder that huge Federal deficits of over \$100 billion have resulted in the last 6 fiscal years. By some estimates, an average family's share of the Federal budget has risen from \$2,000 10 years ago to \$4,500 today. Today, our national debt is reaching almost one-half trillion dollars and over 10 percent of the average American family's taxes are used to pay interest on our national debt.

I join with several of my freshmen colleagues in respectfully urging the conferees now reviewing the Congressional Budget Act of 1973 to act expeditiously and give us a bill which will provide the legislative branch of our Government with the necessary tools to establish national priorities, control Federal expenditures, and return our country to fiscal sanity.

ASTOUNDED AT CONTEMPLATED CUTS IN FEDERAL AID TO MEDICAL STUDENTS

HON. FLOYD V. HICKS

OF WASHINGTON

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 15, 1974

Mr. HICKS. Mr. Speaker, it has recently come to my attention that the administration is contemplating a cut in Federal aid to medical students. An article in the Washington Post on Friday, May 10, quotes Deputy Assistant Secre-

tary of Health, Education and Welfare, Dr. Henry Simmons, as suggesting that a cut in aid to medical students is needed to avoid a future "oversupply of health professionals."

I am frankly astounded that at a time when a program of national health insurance is in the works, at a time when medical service to retired military personnel and their dependents is being cut back because of a shortage of doctors, at a time when, according to the Bureau of the Census, 140 counties around the country are without an active physician in patient care, that the administration can actually focus its policy in this regard on cutting back the supply of health professionals.

Dr. Simmons may be correct that a cutback in Federal aid to medical students would result in a savings to our Treasury. But at what social cost? Almost everyone, it seems, except Dr. Simmons, agrees that we are critically short of doctors when we look at our Nation as a whole.

As an alternative, I suggest that we insist on adequate social payback for this Federal financial assistance in medical education. And this repayment should come in the form of medical service to the medically needy sections of our country.

Now that the draft is no longer in effect, the armed services are crying for qualified medical doctors. The same is true for public health and Indian health facilities. And certainly it is true of those counties that have no doctor at all.

Certainly a young doctor should be willing to serve a period of time in one of these programs in return for Federal aid in meeting the high costs of today's medical schools. It is a much better alternative than not being able to attend school at all—as the administration now suggests.

I am concerned—as we all are—about our national health care system. With this in mind, I would suggest that the administration should reconsider its proposal to cut back on aid to medical students at a time when doctors are so badly needed and will continue to be needed in our society.

CONGRESSMAN ROBERT N. GIAIMO  
PRESENTS KEYNOTE ADDRESS AT  
THE FIFTH ANNUAL CONFERENCE  
OF THE IARF

### HON. JOHN BRADEMÁS

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 15, 1974

Mr. BRADEMÁS. Mr. Speaker, our distinguished colleague from Connecticut, the Honorable ROBERT N. GIAIMO, recently made an excellent keynote presentation before the fifth annual meeting of the International Association of Rehabilitation Facilities held in San Antonio, Tex., May 12-15.

I am sure that Mr. GIAIMO's comments

with respect to the "New Federalism" and the vocational rehabilitation program for handicapped persons will be of interest to all my colleagues, and I include his address at this point in the RECORD:

#### THE NEW FEDERALISM VERSUS OUR RENEWED PARTNERSHIP

(Keynote presentation by Congressman ROBERT N. GIAIMO)

It is with very great pleasure that I present the keynote of your Fifth Annual Conference. I was delighted to accept your invitation to speak to you this morning . . . particularly pleased, for several reasons . . . pleased to lay aside for a while those "expensive deleted" transcripts to get a breath of fresh Texas air . . . and to be able to see again and to renew acquaintances with some old and very fine friends, E. B. Whitten . . . Al Call . . . Chuck Roberts . . . Nathan Nolan . . . Dale Eazell . . . and Jim Geletka.

Secondly, I would like, however belatedly, to convey my personal thanks and appreciation to you for honoring me with the IARF's 1972 Distinguished Service Award. I, unfortunately, was not able to attend your third annual conference in Chicago but I am greatly honored by your selection. The Award also serves as a daily reminder of the excellence of your contributions to Vocational Rehabilitation.

I am delighted to be here this morning because I somehow seem to have adopted you and Vocational Rehabilitation and handicapped men and women who are working so hard and being served so well; I've adopted both your successes and your present difficulties.

It has been my observation that many Members of Congress, particularly those who've been in office for five or six terms, lose touch with the reality of social assistance programs as they enlarge—or diminish—people's lives. Congressional realities are the paper world of legislation and committee reports, and the intellectual exercise and compromise of conferences, and debate on the floor of the House or Senate. Concern exists on an abstract level, but abstract ideas and authorization figures don't live in wheel chairs or wear prosthetic devices or need vocational counseling and training.

I frequently rushed along in that same world of appropriations, deficits, budget justifications, and markup sessions until a close friend, Al Call, invited me to visit a rehabilitation facility in New Haven.

That first visit to that very real world of struggle and achievement made a profound impression on me—an impression that translated Labor-HEW appropriations figures into responsive and hardworking men and women of all ages, eagerly engaged in rehabilitation training to enable them to function responsibly, independently, and with dignity in a society that, all too often, is designed for the survival and success of only the strongest and heartiest of us.

The Vocational Rehabilitation program is, without question, the most successful and cost-effective assistance program in the federal government, and has been since its inception 54 years ago. It has been a model for all other welfare and assistance programs.

But because of the trend of events of the last 5 years, I have become concerned, as you are, about the future effectiveness of Vocational Rehabilitation programs.

As the New Federalism—the sharing of decisionmaking as well as revenue—filters down through the bureaucracy, the lack of responsiveness and accountability of officials, the danger of emasculation of program become frighteningly real possibilities.

#### ADMINISTRATION POLICY SINCE 1969

Let me summarize the effects of this administration's policy on Vocational Rehabilitation. The New Federalism began inauspiciously in 1969 when Presidential directives mandating decentralization of program management were sent down to departments and agencies engaged in the administration of social programs.

Bureaucratic progress toward implementation of these directives was typical of the speed of most institutional change, but the seeds of reorganization were sown.

In March of 1973, a memorandum from the Secretary of HEW, Caspar Weinberger, went out to all assistant secretaries and agency heads urging them to delegate all decisionmaking to regional offices. The memo included the frank warning that the rate of progress toward decentralization would mirror their effectiveness as managers. A caution was included in the memorandum. I quote, "We should not impose on those who seek to decentralize the burden of proving its efficacy."

Three weeks later, another memo written by Frank Carlucci, an HEW Under Secretary, was circulated outlining a model for decentralization and containing a number of interesting admonitions: "If a legislative obstacle exists, a complete legal opinion should be provided. Where obstacles can be effectively changed, a plan for such action should be included"—or, in other words, if there are any legal roadblocks, see if the lawyers can find a way around them. Doesn't that have a familiar ring?

The memo went on to describe some exceptions to decentralization—a category of "non-acceptable exceptions" called external considerations. One such external consideration was any resistance to change coming from special groups or the Congress—you and me. And in another part of the memo, "We cannot afford to permit decentralization to become a subject of debate or inaction"—or, they're not going to stop us.

At about this time, career employees began to get wind of the reorganization and asked their union to request a written report on reorganization plans. On August 1, (1973), the union received a flat denial that any reorganization was under way, a denial written by the man who was responsible for an approved reorganization plan for a 40 percent cut in the four basic program operating divisions of the Social and Rehabilitation Services—James Dwight, its Administrator.

The Dwight plan also called for staffing changes—changes that would result in a purge of the SRS career staff—to eliminate the need for a direct one-to-one shift of central office personnel to regional offices. "The job is not one of moving people and materials, but one of identifying positions that can be declared excess."

During the last 10 months of 1973, there was a great flurry of systems planning and scientific management underway in SRS. During that time, the Senate killed a request for 725 new positions for SRS. The new positions were described in the HEW budget request as critical to the Department's capacity to manage programs more effectively, and to ensure an active role in review and approval of state program management so that eligibility procedures and regulations could be improved. 565 of the 725 new positions were to go to regional offices.

Another incident will help to illustrate this zealous desire to overmanage and disrupt. Long after OMB had removed the freeze on promotions, it was continued at SRS and a freeze on hiring was implemented as well. When the freeze was lifted, priorities for a few promotions were given to positions in the regional offices, and the remainder to job

categories in planning, research and evaluation; and information systems and management. In November of last year, it came to light that under Dwight, management consultants were being contracted to help with reorganization, and that they began to develop and write-in jobs for themselves and their friends; in effect, began to pre-select people to fill new management positions.

These staffing policies began to take their effects. Morale began to deteriorate and, in ten months, SRS lost 20 percent of its career staff.

By last September, some of the reorganization plans were complete; those that, in effect, inserted a layer of about 200 employees—management analysts, information scientists, systems planners and designers—between the program operating offices and the agency administrator.

The potential for disruption of program became even more obvious as a result of another memo from Carlucci which said that reorganization plans would not necessarily be accepted in full for any one program, or, that reorganization would be piecemeal.

In spite of prohibitions in the 1973 Vocational Rehabilitation Act which forbade HEW to decentralize programs of the RSA without first submitting such plans to Congress, the process of decentralization is still underway.

#### LEGISLATIVE HISTORY

The "New" Federalism has also been reflected in Presidential actions to impede and delay Congressional initiatives to extend, improve, and expand vocational rehabilitation services.

The level of the Presidential budget request for Fiscal Year 1972 clearly illustrated the Administration's desire to cut back on funding of essential programs in rehabilitation services. Budget requests for basic state grants were reduced from the previous year's appropriations, as well as requests for research and demonstration project funds.

After a series of talks with Mr. Whitten, Al Calli, and others concerning the damage these reductions would do to programs, I thought it was imperative to act. I offered an amendment to the Labor-HEW Appropriations bill for Fiscal Year 72 to increase appropriations by a total of \$82.4 million. The increases were for basic state grants, grants under the developmental disabilities programs, and funds for improvement of rehabilitation facilities. My amendment also restored funds for research and development and raised the allotment base for state grants. The amendment was adopted by the House, and the Administration was foiled in its attempts to cripple the program that year. But it was more successful in 1973.

As you know, the President, last year, twice vetoed legislation which would have extended and expanded the scope of vocational rehabilitation programs—legislation which had overwhelming, almost unanimous, bipartisan support in both the House and Senate. The first veto occurred in October 1972 during the final days of the campaign, and generally went unnoticed. The second veto of a similar bill came on March 27, 1973—interestingly enough, just 3 weeks after the issuance of the memorandum from the Secretary of HEW urging redelegation of decision-making authority to regional offices.

Congress' third legislative attempt in 1973 was successful. The compromise Rehabilitation Act of 1973 extended programs for 2 years instead of 3 but did initiate significant new provisions for training of the severely handicapped. And again, this year, the administration attempted through "benign neglect" of the Supplemental Appropriations bill in April, to reduce basic rehabilitation services.

In the absence of a Presidential request, the House Appropriations Committee added \$20 million to the bill to bring the total appropriations for 1974 to the full authorization. (There had been a prior understanding that if additional amounts were needed, a supplemental appropriation could be requested to bring the appropriation to the full authorization of \$650 million. The states also had sufficient funds on hand to match the full Federal allotment.)

In its report, the Committee stated that it "fails to understand the delay in submitting a budget request to carry out the clear intent of the law." And, although no request was made, the Committee approved the additional amount so that the states could proceed with their plans. On April 11, (1974), the day the House passed the bill, the Congress received a message from the President requesting the additional \$20 million.

#### STATUS OF POLICY AND LEGISLATION IN 1974

This picture of the Administration's punching and counter-punching at Congressional initiatives is not a pleasant or inspiring one, I admit. Nor are its in-agency policies that are subverting career staff morale and fragmenting program structure.

Staffing of Central Office operations for the four program areas has been cut in half in the last year under the decentralization movement; staffing in regional offices has doubled. Professional career employees have either been scattered to the 10 regions or have been disposed of altogether.

Computer and management experts have been placed in key positions throughout the program. Staff morale has deteriorated and added fuel to bitter labor-management disputes. The Civil Service merit system is being undermined.

The President's budget for Fiscal Year 1975 again refuses to meet program and handicapped population needs, particularly in the areas of training of professionals, research funding for rehabilitation of the severely disabled, and in funding of basic state grants, although states have unquestionably proven their ability to provide matching funds as stipulated in the 1973 authorization legislation.

In short, the Administration's budget request falls \$73 million short of what is required to meet the *minimum* statutory requirements of the 1973 Rehabilitation Act.

The end game of any attempt to decentralize a program is to eliminate the middle man—in this case the state agency—altogether, and to provide funds directly to the handicapped individual. What we may perceive to be the next Administration goal, a logical extension of its decentralization philosophy, is described in the new well-known memorandum, written by William Morrill, Assistant SRS Secretary for Planning and Evaluation—a policy statement that came to light last year in the continuum of the Nixon Administration's apparent opposition to vocational rehabilitation programs.

The Morrill memorandum puts forth the notion that state agency programs should be eliminated and a cash assistance policy be instituted in its place—that federal funds should be provided *directly* to the handicapped through individual grants. This philosophy presupposes that the individual in need of services will know what his needs are, know where to buy them, and will be able to find his way through the maze of welfare and assistance programs, offered by both the government and the private sector, to get them. This is a corruption of the philosophy that the government is best which governs least—in this case, an incredibly simplistic approach to a very complex system of people and program needs and services. And, I can just imagine the mushroom-

ing of profit-making rehabilitation centers, trade schools and correspondence courses that that would very quickly turn such funding into "get rich quick and run" schemes.

The Rehabilitation Services Administration itself is a shambles. It's been submerged beneath a layer of management and efficiency experts who know little of rehabilitation programs.

Regional RSA officials will not report to their counterparts in the Department of HEW but to the Administrator of SRS.

Operating regulations have not yet been finalized, and there is no indication as to when they will be completed.

And finally, 2 weeks ago, after a vacancy of a year and a half, the Administration appointed a permanent Commissioner of Rehabilitation, Dr. Andrew Adams, formerly of the Veterans' Administration, who admits that he knows very little about rehabilitation programs.

Congress is concerned about the RSA and the life of vocational rehabilitation. Legislation has been introduced by House leaders to extend the Rehabilitation Act for another year and to move the RSA out of the SRS into HEW's Office of Human Development, on the grounds that it is a human resources program designed to develop the capacities of the handicapped, and, therefore, does not belong in SRS which is a collection of welfare programs. The second reason is to protect the agency from complete decimation at the hands of the SRS.

There are risks involved in this proposal; namely, that relocation would contribute to the frustrations of reorganization and that the restitution itself would tend to help accomplish the Administration's apparent goal to decentralize and reorganize the rehabilitation program out of existence.

Evidence of Congressional interest is apparent in the tone of the Labor-HEW Subcommittee's oversight hearings on the program activities of the SRS. These hearings can make an impact, can be an effective beginning to reestablish Congressional authority to insure, in a very real way, that the intent of legislation is met by agencies, and to contain our imperial President. We must begin somewhere.

#### NEW GOALS, NEW DIRECTIONS

Congress cannot do the job of restoring the vitality of vocational rehabilitation alone. We do not and cannot work in a vacuum. Congress is an institution composed of individual people who develop legislation that will eventually affect individual people who have let their collective, but individual needs be known to us.

The only way to begin to resurrect vocational rehabilitation from the swamp of the New Federalism is to renew our partnership of concern and action, a partnership of you, as individual professional career staff; you, as a professional association; and me . . . the Congress—a tripartite lobby if you will.

Obviously a silent partnership will not work. Communication between us is essential to our success. IARF, as a professional association, and you, as knowledgeable professionals in the field, know better than I the rehabilitation program needs; the funds required to implement those programs.

What are your goals? What new directions do you envision taking to reach and rehabilitate greater numbers of the handicapped?

What additional facilities do you want and need? What improvements need to be made in existing facilities?

Where do you want to go with program? Do you want to expand services for the severely handicapped—those with multiple disabilities, the spinal cord injured, the renal diseased? And in what ways?

What needs to be done in the area of

homemaker services—services that will release members of families of the handicapped from the exhaustion of constant care and allow them to work?

Do you want to push for research and development in prosthetic device design? To explore new materials and production techniques to get the costs of devices down to levels that are affordable by the average disabled man or woman?

What about initiatives in the area of enforcement of existing federal architectural barrier laws? How do we begin to solve the transportation problems that play havoc with the integration of disabled but rehabilitated men and women into society?

Where do we go from here, ladies and gentlemen? You must let us, Congress, know your thinking, your priorities. And the time to start is now.

How do you get your ideas to us? Let me make a few suggestions and briefly explain the communications process.

Members of Congress are people with incredible demands on their time and their abilities to influence. Please don't make the assumption that every Member of Congress knows all there is to know about all programs—they don't. Most Members vote an issue on the basis of the recommendations of the authorizing committee, on a report written by 10 to 30 Members who, over years of involvement with a subject, have become specialists.

Members of Congress have to be shown, as I was, the results and effectiveness of legislation in human terms. How many of you have invited Members of Congress to your facilities to see, first hand, what you're doing? Invite them. Set up some news coverage. See what happens.

How do you communicate with Members of Congress? Call them on the telephone. Go to Washington to visit with them personally. If you can't see the Member, talk with staff. Congressional staff will convey your thoughts and concerns to the Member. Write letters only as a last resort.

If you can't get an opportunity to talk to a Member, talk to someone who knows one of us. Talk to your board members. They're influential, and they know a great many people who can be of help in getting the word to us in Washington. Use your Association representatives in Washington, they, too, need to hear from you . . .

The challenge that faces our renewed partnership is to override the Nixon Administration's program-crippling policies, its vetoes, its refusals to request funds, its attempts to reorganize and decentralize Vocational Rehabilitation away from excellence . . . away from accountability . . . and out of existence.

It is time to exercise our Congressional authority, your individual expertise, and the Association's professional obligation to insure that Vocational Rehabilitation services in the future reflect the program excellence of the past.

Thank you very much. It is an honor to be here . . . to have this opportunity to express my appreciation, my interest in you and my concern for Vocational Rehabilitation.

**SURVEY: REPUBLICANS AGITATED BY TRANSCRIPTS**

**HON. WILLIAM L. HUNGATE**

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 15, 1974

Mr. HUNGATE. Mr. Speaker, not infrequently the earliest way to discover what Congress is doing or going to do is through the daily papers.

A recent Christian Science Monitor

article has an interesting view on the Presidential transcripts and their effect on our Nation's citizens and our Government. The article follows:

**SURVEY: REPUBLICANS AGITATED BY TRANSCRIPTS**

(By Godfrey Sperling Jr.)

WASHINGTON.—The presidential transcripts have stirred up moral indignation from coast to coast, a Monitor survey of Republican leaders discloses.

State chairmen and national committee-men in 23 states—representing every geographical region—say that they and the voters in their states are terribly upset over the tone of the Watergate-related transcripts. They say that hard-core Nixon loyalists are, for the first time, shaken in their confidence in the President.

However, only a few of these leaders were recommending that the President step down. Instead, almost all were urging that the impeachment processes be pushed along as quickly as possible.

Of the transcripts, a Deep South leader says: "It was bad to see that the President considered payment of hush money. And it was terrible that he expressed no moral outrage at what he was hearing. We must proceed with the impeachment process as soon as possible."

Said a Western state chairman: "I thought they [the transcripts] were devastating. I think it is a pretty sorry thing that it was so totally shabby. I agree with the words of Senator [Hugh] Scott [Senate Minority Leader] about how shabby it all was. Around here it is raising the moral indignation of everyone."

**GOLDWATER'S VIEW**

From the Midwest: "I'm disgusted at the tone of the transcripts. It has raised a lot of doubts here. And it hasn't cleared up anything. This is what Republicans are saying in my state. And they are disgusted over the moral tone—the conniving and the smoke-filled-room atmosphere."

This growing storm, as evidenced in this survey, is a further extension of the unhappiness over the transcripts expressed by leaders of Congress, including Senator Scott, and House Republican leader John J. Rhodes.

Mr. Rhodes has even suggested that the President "consider" resignation.

But Sen. Barry Goldwater is not ready to urge the President to step down. Instead, he says Mr. Nixon will "know" when to quit. He says he thinks Mr. Nixon will resign if he is impeached.

The President continues to say he will stick it out. And his daughter, Julie, along with son-in-law David Eisenhower, say that Mr. Nixon will stay with this fight to the end, even if he only has a senator or two behind him in a final showdown.

**RESTLESS FOR FORD**

The reluctance of Republican leaders to urge resignation was put in words like these by most of those polled: "There is a constitutional way of dealing with this crisis, and we should follow it."

But most of them were indicating, in one way or another, that they would be relieved if Vice-President Gerald R. Ford could take over the reigns of government.

Said a Midwesterner: "There is no question but what [the transcripts] hurt [Nixon]. I think he's done. And there's no question that it would make my job easier if Nixon weren't in there."

From the Southwest: "My reaction was one of general disappointment and disenchantment. You would expect much better from a man in that position—a better tone. I am against resignation. It is better for history if we can see this thing through the constitutional processes."

**SOUTHERNERS SLIP AWAY**

In a number of previous post-Watergate surveys of Republican leaders, some of the strongest voices of criticism of the President came from the North and the more highly populated states.

This time the erosion of Republican and conservative support for Mr. Nixon clearly had moved into the more-rural regions of the United States, particularly the South.

**AN UNSEEMLY PERFORMANCE**

**HON. DAVE MARTIN**

OF NEBRASKA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 15, 1974

Mr. MARTIN of Nebraska. Mr. Speaker, last week's action of the Democratic Caucus in sidetracking committee reform legislation was an irresponsible act which showed contempt for the American public. It is not enough that the caucus action threatens to shelve the unanimous report of a bipartisan committee of the House, but the deed was done by a secret vote in a secret meeting.

Fortunately, this irresponsible act has not escaped public attention. A New York Times editorial of May 13 placed the blame exactly where it belongs: on a small minority who are placing personal convenience above the public interest. The Times concludes, correctly, that "It was an unseemly performance."

Mr. Speaker, I ask unanimous consent that the editorial, "Liberals Astray," be reprinted in full. The editorial follows:

**LIBERALS ASTRAY**

By the time that the LaFollette-Monroney Legislative Reorganization Act passed Congress in 1946, it had been the subject of intense public controversy and of innumerable articles and editorials. For more than a year now, a committee of ten House members drawn equally from both parties has been at work on a reform proposal that—so far as the House of Representatives is concerned—would be as far reaching and as desirable as the LaFollette-Monroney Act. But in a Congress and a nation preoccupied with Watergate, this committee has done its work silently and unnoticed.

On Thursday, reform paid the price for that silence. By a narrow margin, the House Democratic caucus shelved the reorganization plan by sending it to another committee for study. The barons of the House led by Representative Wilbur Mills of Arkansas, chairman of the Ways and Means Committee and the pressure group lobbyists know what was at stake even though the public did not.

It was not essential that the plan be submitted to the Democratic caucus. It could have gone directly to the floor as a privileged motion. But Speaker Albert and Representative Richard Bolling of Missouri, chairman of the committee that drafted the reorganization, believed that as a practical matter the reforms would not last unless they had the support of a majority in each party.

House Republicans meeting in their conference endorsed the reforms. The Democrats did not. Significantly, they did the deed in secret avoiding a rollcall vote. There is no justification for conducting public business in that devious fashion.

Labor unions and liberal Democrats who on most other days are in the vanguard of those calling for progressive change were instrumental in blocking the reforms. Since

the AFL-CIO did not want the Labor and Education Committee split into two committees or the Post Office Committee abolished, it used its political muscle against the plan. Noted liberals such as Representatives Frank Thompson of New Jersey, John Brademas of Indiana, James O'Hara of Michigan, and Phillip Burton of California would have lost cherished subcommittee chairmanships and for that selfish reason opposed the plan. It was an unseemly performance.

In theory, reform is not dead. The study committee to which the plan has been referred could resubmit it with only minor changes at the Democratic caucus in July. In coming weeks, the liberals who joined with their party's old-timers in unorthodox alliance have an opportunity to prove that they can come up with constructive alternatives rather than the self-interested negativism they have evinced thus far.

#### SBA COMMENDED FOR EFFICIENT PROCESSING OF LOAN APPLICATIONS

### HON. JOE L. EVINS

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 15, 1974

Mr. EVINS of Tennessee. Mr. Speaker, in the February 1974 issue of the Bank Loan Officers Report, a publication prepared by the editorial staff of the Bankers Magazine, the Small Business Administration is commended for its efficient processing of participation loans to American small businesses.

Because of the interest of my colleagues and the American people in SBA, I place these comments in the RECORD herewith.

The comments follow:

#### TAKE ANOTHER LOOK AT SBA LENDING

Almost all banks have, at one time or another, looked into participating in Small Business Administration Loans. And many have become disillusioned with the excessive red tape which was involved . . . and the excessive amount of time needed to process the loan. As a result, many banks simply advise their customers that they had, after careful evaluation, decided that SBA lending was not worth the effort involved.

In the past, those banks might have often been right. However, two out of three banks in the nation are now finding that they can do business with SBA. Reason: SBA has been improving its performance, cutting red tape and reducing the time it needs to reach a decision. Thomas S. Kleppe, national SBA administrator now is telling bankers: "We are not in competition with banks. SBA tries to fill that niche which is not bankable without a guarantee. We take risks that banks won't touch, and that's our job."

BLOR has talked with a number of bankers who now do business with SBA. They say that what Mr. Kleppe has stated to bankers, i.e., "We have eliminated about two-thirds of the paper work formerly involved" in processing SBA loans, is correct.

#### RECOMMENDATIONS

If your bank is one in three that does not make SBA loans based on past track records, we suggest that you and your bank take another reading. You may find SBA loans are now bankable.

#### POST EMBARGO ENERGY CONSERVATION RESOLUTION

### HON. DONALD G. BROTZMAN

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 15, 1974

Mr. BROTZMAN. Mr. Speaker, this Nation has recently been through one of the most trying periods in its history. When the oil embargo was imposed, we were made suddenly aware of the importance of sufficient energy supplies to the well being of the U.S. economy. We also became aware that we have been rapidly depleting our nonrenewable petroleum fuels while failing to develop any adequate alternative sources of energy.

We had been operating under the assumption that cheap, abundant energy would always be available, and this contributed to wasteful patterns of consumption and insufficient incentives to develop adequate domestic sources. This left us very vulnerable to any interruption in the flow of imports upon which we had come to rely so heavily.

No one was more delighted than I when the OPEC countries released a statement announcing the end of the embargo. However, my enthusiasm is qualified.

For until we regain energy independence, we will continue to face the threat of another embargo, production cuts, and the caprices of oil diplomacy.

The choice to the American people is quite clear. Either we take the necessary actions to develop our abundant natural resources, or we subject ourselves to the continued threat of economic and political blackmail.

We have seen through Project Independence a national effort begun to achieve energy independence in the 1980's. It presents a two-fold approach to the problem: first, to develop the resources that are in abundant supply in this country, and second, to use what we already have wisely.

Each one of us in the Congress is aware of a number of pieces of legislation in both the House and Senate designed to promote and effectuate the efficient development of energy resources. We will hear a lot about these bills in the future, and I sincerely hope that we act on as many of them as possible before the end of this Congress.

But in order to realize the full impact of this legislation, we must first reshape our energy concerns into new patterns of action that will increase energy efficiency, and eliminate needless energy waste. Until we learn to curtail waste, we will never fully realize energy self-sufficiency.

Our energy conservation goal should be to cut back the growth of American energy consumption from the 4- to 5-percent annual rate of increase over the past 20 years, to approximately 3 percent.

Accordingly, today I am introducing a

resolution which calls upon the American people and American industry to diligently continue their conservation efforts.

This resolution congratulates the American people for their energy conservation success during the embargo period. That experience showed what we are capable of doing. Jobs were stressed first, and comfort second. The result was that there was no massive unemployment, schools and hospitals stayed open, there were no huge power failures, and the industrial community kept operating efficiently.

Mr. Speaker, it is the responsibility of Congress to take a major role in developing a permanent conservation ethic in this country. I am convinced that we can do this only with the confidence of the American people that this goal is worth attaining.

We must stress that goal to the public and private sectors alike. We should encourage the theme of conserving energy until people want to do it and believe in doing it—not just that they have to do it. Such measures as reductions in speed limits, lower levels of heating in public buildings and homes, reduced lighting, improved insulation of buildings, and carpooling were the backbone of our conservation effort this past winter.

I strongly believe that this measure warrants immediate consideration of the Congress, and I urge my colleagues to join with me in pushing for early consideration and enactment.

#### THE DEATH OF ROY DAVID PINKERTON

### HON. ROBERT J. LAGOMARSINO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 15, 1974

Mr. LAGOMARSINO. Mr. Speaker, I am saddened to advise the Members of the death of Mr. Roy David Pinkerton, of Ojai, Calif., on May 5, 1974. Mr. Pinkerton was the founder and editor emeritus of the Ventura County Star-Free Press, and a man whose entire life was dedicated to the field of journalism.

Starting as a \$3.50 a week cub reporter with the Tacoma Times, Mr. Pinkerton went on to graduate from the University of Washington school of journalism, worked on papers in Los Angeles and Seattle, then returned as editor of the Tacoma Times at the age of 29, serving in that position from 1915 to 1921. In subsequent years, Mr. Pinkerton became editor of the Scripps-Canfield Seattle Daily, associate editor of the Cleveland Press, and editor of the San Diego Sun.

In 1925 Mr. Pinkerton founded the Star-Free Press along with his wife, Air-drie and Mr. W. H. Porterfield. The venture grew, and in 1928, Mr. Pinkerton was joined by John P. Scripps, the two of them assembling the seven newspapers in California and Washington States

that make up the John P. Scripps chain. Mr. Pinkerton continued to serve as editor of the Star-Free Press until his retirement in 1961, in addition to serving for many years as editorial director of the John P. Scripps newspapers.

A world traveler, Mr. Pinkerton was also an active civic leader. He had served as past president of the Ojai Festivals and was one of the founders of the Ventura Concert Series Association. He was also active in the Ventura Chamber of Commerce and Rotary Club. His professional affiliations included the American Society of Newspaper Editors, Sigma Delta Chi journalism fraternity, Overseas Press Club of America and the Los Angeles Press Club. He was also a member of the Sigma Alpha Epsilon social fraternity.

He leaves two sons, Robert, of British Honduras, and Roy, of Tiburon; a daughter, Airdrie Pinkerton Martin, of Ojai; a brother, Ralph, of Ferndale, Wash.; eight grandchildren and four great-grandchildren. His wife preceded him in death in 1966.

I know the Members join me, Mr. Speaker, in extending our condolences to Mrs. Martin and the other members of the family.

STATEMENT OF REPRESENTATIVE  
JOEL T. BROYHILL OF VIRGINIA  
ON A BILL TO AMEND THE FEDERAL  
ELECTION CAMPAIGN ACT  
OF 1971 AND TITLE 18, UNITED  
STATES CODE

**HON. JOEL T. BROYHILL**

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 15, 1974

Mr. BROYHILL of Virginia. Mr. Speaker, I am today introducing legislation which would amend the Federal Election Campaign Act of 1971 to provide for the reform of the Federal election campaign process. The legislation I propose today establishes a seven-member Federal Election Commission to oversee Federal elections, requires each individual who is a candidate for Federal office—other than the office of Vice President of the United States—to designate to the Commission a political committee to serve as the election committee of such individual, limitations on who can contribute to any candidate for Federal office to include a maximum contribution to each candidate along with a total aggregate of contributions to all candidates, allows an income tax deduction for political contributions up to \$100—\$200 in the case of a joint return—limitations on expenditures of candidates, identifies the form of contributions, sets forth penalties for violations up to 10 years and/or \$100,000 fine and prescribes that the income tax return of the President, Vice President, and each Member of the House and Senate be fully audited by the Internal Revenue Service.

Mr. Speaker, the Federal Election Commission I have proposed would be established as an independent establishment of the executive branch of the Government, composed of seven members appointed by the President by and with the advice and consent of the Senate, and the Comptroller General who shall serve without the right to vote. Commission members, with the exception of the Comptroller General would serve for terms of 7 years with the exception of the original members who would each be appointed to staggered terms of service. Of the seven members, two members shall be chosen from among individuals recommended by the President pro tempore of the Senate, upon the recommendation of the majority leader of the Senate and the minority leader of the Senate, and two shall be chosen from individuals recommended by the Speaker of the House of Representatives upon the recommendation of the majority leader of the House and the minority leader of the House.

Briefly, the commission has the power to require, by special or general orders, any person to submit such reports and answer to questions as the commission may prescribe and such submission shall be made within such reasonable period and under oath or otherwise as the commission may determine, to administer oaths, to require by subpoena the attendance and testimony of witnesses and the production of all documentary evidence relating to the execution of its duties. In any proceeding or investigation the commission may order testimony to be taken by deposition before any person who is designated by the commission and has the power to administer oaths and, in such instances, to compel testimony and the production of evidence. The commission may request that the U.S. Justice Department initiate, prosecute, defend, or appeal any civil action on behalf of the commission for the purpose of enforcing the provisions of this title. Should the U.S. Justice Department fail to take such legal action as the commission requests within 30 days of the time the U.S. Justice Department receives such request, the commission may demand that the U.S. Justice Department make a report giving information as to what action is expected, and if none, the reason therefor. Such report shall be a complete response to the demand of the commission and shall be delivered to the commission and made public information within 90 days of the date on which the original request for legal action was received by the U.S. Justice Department. Further, the commission may request that the U.S. Justice Department present to a grand jury, and prosecute any violation of this act or chapter 29 of title 18, United States Code. Should the U.S. Justice Department fail to take such legal action as the commission requests within 30 days of the time the U.S. Justice Department receives such request, the commission may demand that the U.S. Justice Department make a report

giving information as to what action is expected, and if none, the reason therefor. Such report shall be a complete response to the demand of the commission and shall be delivered to the commission and made public information within 90 days of the date on which the original request for legal action was received by the U.S. Justice Department. The commission may delegate any of its functions or powers, other than the power to issue subpoenas to any officer or employee of the commission. Any U.S. district court within the jurisdiction of which any inquiry is carried on, may, upon petition by the commission, in case of refusal to obey a subpoena or order of the commission, issue an order requiring compliance therewith; and any failure to obey the order of the court may be punished by the court as a contempt thereof. No person shall be subject to civil liability to any person—other than the commission or the United States—for disclosing information at the request of the commission. Whenever the commission submits any budget estimate or request to the President or the Office of Management and Budget, it shall concurrently transmit a copy of the estimate or request to the Congress. Whenever the commission submits any legislative recommendations, or testimony, or comments on legislation to the President or the Office of Management and Budget, it shall concurrently transmit a copy thereof to the Congress. No officer or agency of the United States shall have authority to require the commission to submit its legislative recommendations, or testimony, or comments on legislation, to any officer or agency of the United States for approval, comments, or review prior to the submission of such recommendations, testimony, or comments to the Congress.

Addressing political committees, this legislation requires each individual who is a candidate for Federal office—other than the office of Vice President of the United States—to designate to the commission a political committee to serve as the election committee of such individual. No political committee other than the election committee of a candidate may receive contributions to such candidate or make expenditures on behalf of such candidate. Any expenditure in excess of \$100 by any such election committee shall be approved in writing by the candidate who designated such committee or by the chairman or treasurer of such committee. Each political party shall designate to the commission not more than one national committee, one Senate campaign committee, one House of Representatives campaign committee, one State committee for each State, and one congressional committee for each congressional district. Political party, as identified by this legislation means any association, committee, or organization which nominates a candidate for election to any Federal office whose name appears on the election ballot as the candidate of such association, committee,

or organization. State committee means the organization which, by virtue of the bylaws of a political party, is responsible for the day-to-day operation of such political party at the State level, as determined by the commission. Congressional committee means the organization which, by virtue of the bylaws of a political party, is responsible for the day-to-day operation of such political party at the congressional district level, as determined by the commission. National committee means the organization which, by virtue of the bylaws of a political party, is responsible for the day-to-day operation of such political party at the national level, as determined by the commission.

This legislation further prescribes that it shall be unlawful for any person, other than an individual or any committee designated under section 314(c) of the Federal Election Campaign Act of 1971, to make any contribution to any one candidate or to any one political committee, with respect to any election which, in the aggregate, exceeds \$6,000. No individual may make contributions to any one candidate for Federal office or to any one political committee designated under section 314(c) of the Federal Election Campaign Act of 1971, with respect to any election which, in the aggregate, exceed \$1,000. No individual may make contributions to all candidates for Federal office or to all political committees designated under section 314(c) of the Federal Election Campaign Act of 1971, with respect to any election which, in the aggregate, exceed \$25,000. No candidate or political committee may accept any contribution from any non-resident alien. Contributions made to or for the benefit of any candidate nominated by a political party for election to the office of Vice President of the United States shall be considered of such party for election to the office of President of the United States.

This legislation further sets forth that no candidate shall make expenditures in excess of 12 cents multiplied by the voting age population of the United States, in the case of a candidate for nomination for election to the office of President of the United States. Twenty-five cents multiplied by the voting age population of the United States, in the case of a candidate in a general election for the office of the President of the United States; 8 cents multiplied by the voting age population of the geographical area in which the election is held, in the case of a candidate for nomination for election to the office of Senator. Sixteen cents multiplied by the voting age population of the geographical area in which the election is held, in the case of a candidate in a general election for the office of Senator. Thirty cents multiplied by the voting age population of the geographical area in which the election is held, in the case of a candidate for nomination for election to the office of Representative, Resident Commissioner, or Delegate, or 50 cents multiplied by the voting age population of the geographical area in which the election is held, in

the case of a candidate in a general election or special election for the office of Representative, Resident Commissioner, or Delegate. Expenditures made by or on behalf of any candidate nominated by a political party for election to the office of Vice President of the United States shall be considered to be expenditures made by or on behalf of the candidate of such party for election to the office of President of the United States. The term "voting age population" means the voting age population estimated by the Secretary of Commerce under section 104(a) (5) of the Federal Election Campaign Act of 1971. At the beginning of each calendar year—commencing in 1975—as there becomes available necessary data from the Bureau of Labor Statistics of the Department of Labor, the Secretary of Labor shall certify to the Federal Election Commission established by section 312(a) of the Federal Election Campaign Act of 1971, and publish in the Federal Register, the per centum difference between the price index for the 12 months preceding the beginning of such calendar year and the price index for the base period. Each amount determined under subsection (a) shall be increased by such per centum difference. Each amount so increased shall be the amount in effect for such calendar year. The term "price index" means the average over a calendar year of the Consumer Price Index (all items—U.S. city average) published monthly by the Bureau of Labor Statistics. The term "base period" means the calendar year 1973.

In addressing the form of contributions, this legislation proposes that no person may make contributions to or for the benefit of any candidate or political committee which, in the aggregate, exceed \$100 in any calendar year, unless any such contribution is made by a written instrument identifying the person making the contribution. Violation of this particular provision is punishable by a fine of not more than \$1,000, imprisonment for not more than 1 year, or both.

Deduction for political contributions as contained in section 218(B) (1) of the Internal Revenue Code of 1954—relating to amount of deduction for contributions to candidates for public office—is amended by striking out "\$50" and inserting in lieu thereof "\$100" and by striking out "\$100" and inserting in lieu thereof "\$200."

Income tax audits, addressed in this legislation, requires that the Secretary of the Treasury or his delegate shall conduct a complete audit and examination of the income tax returns of any individual who—at the time he files such return—holds the office of President of the United States, Vice President of the United States, Senator, Representative, Resident Commissioner, or Delegate. The audit and examination shall be completed no later than July 15 of the year following the taxable year for which the return involved is filed. The Secretary of the Treasury or his delegate shall report apparent violations of law discovered by any audit and examination conducted

under this section to the appropriate law enforcement authorities. Such Secretary or his delegate shall prepare a report with respect to any income discovered by any such audit and examination which is not income from the Federal Government. Such report shall be transmitted to, if the return involved is that of the President or the Vice President, both the Senate and House of Representatives; if the return involved is that of a Member of the Senate, to the Select Committee on Standards and Conduct of the Senate; or if the return involved is that of a Member of the House of Representatives, to the Committee on Standards of Official Conduct of the House of Representatives. The Secretary of the Treasury or his delegate shall prescribe such regulations as may be necessary to carry out this section.

Violation of any provision of title III of the Federal Election Campaign Act of 1971 is a misdemeanor punishable by a fine of not more than \$10,000, imprisonment of not more than 1 year, or both. Violation of any provision of this title with knowledge or reason to know that the action committed or omitted is a violation of this title is punishable by a fine of not more than \$100,000, imprisonment for not more than 5 years, or both.

Violation of amendments to title 18, United States Code, new sections 614, pertaining to limitations on contributions and 615, addressing limitations on expenditures contained in this legislation is a misdemeanor punishable by a fine of not more than \$10,000, imprisonment of not more than 1 year, or both. Violation of any provision of these sections with knowledge or reason to know that the action committed or omitted is a violation of this title is punishable by a fine of not more than \$100,000, imprisonment for not more than 5 years, or both.

Mr. Speaker, the legislation I propose today focuses upon limiting contributions, limiting expenditures, limiting political committees and their activities, limiting who can contribute to candidates, a strong Federal Elections Commission, tough penalties for violations and complete income tax audits with full disclosure of outside income for the President, Vice President, all Senators, Representatives, Resident Commissioners, or Delegates. I strongly urge every consideration by my colleagues of this legislative proposal which stands with the many other bills before Congress concerning reform of the Federal election campaign process.

#### DIFFERENT RATING SYSTEMS FOR NATIONAL FIGURES

**HON. WILLIAM L. HUNGATE**

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 15, 1974

Mr. HUNGATE. Mr. Speaker, since the rating system which many special interest groups have used to "grade" na-

tional figures seems to be misunderstood by many, I was pleased to read recently a clarification of this by a noted student of Congress, Time magazine's congressional correspondent, Neil MacNeil. He notes that since the 1950's many public interest and lobbying groups have studied the voting records of Congressmen and rated them according to the individual group's own private and special interests. The aim of the rating is to guide followers of the groups as they make their decision at the polls.

Included in the list of such influential organizations are the AFL-CIO's Committee on Political Education, COPE; the Americans for Democratic Action, ADA; the National Farmers Union, NFU; the American Farm Bureau Federation, and the Americans for Constitutional Action, ACA. The first three are liberal organizations and the last two conservative organizations. Not surprisingly, their ratings tend to be opposites of each other. For example, one distinguished colleague from New York received an ADA rating of 100 percent and an ACA rating of zero, while another able colleague from California received an ADA rating of zero percent, while another able colleague from California received an ADA rating of zero percent and an ACA rating of 100 percent.

I am sure that many of my colleagues carefully examined the special interest groups' ratings recently published in Congressional Quarterly.

My favorite ratings are those of the Americans for Good Habits—AGH—issued by our distinguished colleague TOM REES of California. AGH tends to prove that beauty is in the eye of the beholder, as all Members from ABDNOR to ZWACH score 100 percent on their chart. This occurs because AGH selects only those bills passing the House unanimously.

#### ETHICAL STANDARDS OF BRIGHT YOUNG MEN IN THE WHITE HOUSE

**HON. JOE L. EVINS**

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 15, 1974

Mr. EVINS of Tennessee. Mr. Speaker, a recent editorial published in the Nashville Banner points out that one of the more distressing aspects of Watergate is the revelation of the conduct of many well-educated and supposedly bright young men in the White House.

The editorial, entitled "What Happened to the Elite?" raises questions regarding some social, moral, and educational standards of today and their impact on the behavior of young people employed in the White House surrounding the President.

Because of the interest of my colleagues and the American people in this matter of ethics, morals, and high standards, I place in the RECORD herewith a copy of this editorial:

#### WHAT HAPPENED TO THE ELITE?

One cannot help but look on with wonder and amazement at one of the most baffling and distressing aspects of Watergate—the clean-cut, well-educated, successful young men not knowing the difference between right and wrong, between lying and telling the truth, between political infighting and lawbreaking.

As one peruses the 1,200 pages of presidential tape transcripts and recalls these men coming one by one before the Senate Watergate Committee, it can't seem possible that these same men would be involved in perjury and burglary.

Each looks like the man of which any family would be proud, every mother boastful, welcomed into any corporation for the climb up the ladder.

Some are graduates in law, some in political science, some in business administration. But the crimes they have confessed or been convicted of range through perjury, burglary, violation of campaign contribution laws and impeding justice deliberately.

Though our society expects every teenager to know that smoking marijuana is illegal and the offender subject to arrest, these college graduates of early middle age—at the highest level of the federal government—broke some of the best known laws of our free society.

What happened? Where did their education fail them then?

Didn't anyone in all their years of education and upbringing give them the simple rules of right and wrong? As these cases may indicate, it's too late in graduate school. The start should have been in kindergarten.

Many parents, however honorable in their own behavior, today bring up their children with no exposure to Sunday School. The exposure instead is to children's literature, now heavily dredged in violence and social realities of divorce, broken homes, drug addiction. And television and movies aren't far behind, if at all.

At this century's beginning, most college students studied moral philosophy, logic—and yes, ethics. Today, many colleges and universities have dropped these courses in favor of "more practical" ones. But the subjects dealing with honesty in life should be part of every person's education and taught in the public schools. They should be required for graduation. But first there would have to be the training of teachers, the selection of textbooks—and probably their writing, too—and the subjects introduced into the curriculum.

The start should be made now.

#### MEDICARE AS PREVENTIVE MEDICINE

**HON. STEWART B. MCKINNEY**

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 15, 1974

Mr. MCKINNEY. Mr. Speaker, today I introduce legislation, with cosponsors, to amend the Social Security Act to expand medicare coverage for regular physical examinations.

The more I study our present health delivery systems and the proposals pending before Congress, the more I am convinced we are taking the wrong approach to the health needs of our older citizens.

The emphasis is on providing care after the person becomes seriously ill.

We must move from crisis medicine to preventive medicine. I am sick and tired of hearing of our older Americans suppressing symptoms, tolerating unbearable pain, watching as the sores spread slowly over their body, because they cannot pay the high cost of medical care. I am sick and tired of hearing of our older Americans who needlessly lose many years of their lives, who endure incredible pain during their last years, who have lost depth and value to their life because of lingering or even fatal illnesses that could have been avoided had they been able to get medical care when they first realized the need.

I view this bill we introduce today as a step in the realization of the goal of preventive medicine. Our medical profession has the knowledge of what can be done on the basis of early findings to prevent the development of overt disease. Let us use that expertise. According to statistics, about 80 percent of our elderly population are fairly healthy. I say, let us keep them that way. And the way to keep them that way is to insure they receive regular physical examinations which may very well mean early diagnosis and treatment.

There is no argument over providing medical care for our aged sick. But let us not be so busy thinking of our sick older citizens and delivering health care to them that we fail to adequately concern ourselves with those in basically good health to insure they remain in that state of health. Our attention will be much more appreciated if we help our elderly avoid illness rather than showering them with attention after they have suffered.

Presently, if an elderly person receives a physical examination, should something be found wrong with him, medicare covers part of the cost of that physical examination. Today, due to soaring medical costs, far too often our older citizens ignore or suppress symptoms of serious illness. They do not see their doctor until they are convinced that indeed something is wrong—and seriously wrong. Hence, I believe medicare already covers a good portion of physical examinations because something is usually wrong by the time our average older American visits his doctor.

I am convinced that in the long run costs would be cheaper both to the patient and to the Government if the medicare covered regular physical examinations. Aside from improving the health of the well individual, a periodic health appraisal could mean early diagnosis and early treatment, entailing far less expense than the hospitalization and long-term nursing home care that may be necessary because the illness was not treated in the early stages.

Our elderly need to be encouraged to immediately seek medical help when symptoms of illness first appear. A reasonable charge for a physical examination is essential so that our older population will know medical care is available and within their means.

The Public Health Service has provided me with an outline of the yearly physical examination that most physicians agree is essential for an elderly person 60 years of age or older and the estimated cost. The total price is indeed staggering—roughly \$200. When a person is on a limited income, it is no wonder he does not partake in the preventive measure of a yearly physical examination. The cost is prohibitive.

A breakdown of this \$200 medical examination shows that a little over \$100 covers the medical history and a complete general physical examination which in addition to the usual procedures includes examination of the retina and testing for glaucoma, testing of hearing, testing for cancer and arteriosclerosis, blood pressure determination, palpation of the abdomen, examination of the circulation of the legs, and examination of the genitalia and rectum. Additional pertinent tests for our elderly such as electrocardiogram, chest X-ray, hemologic and white blood cell count, cervical examination, urinalysis, proctoscopy, and tests for serum glucose, cholesterol, urea and uric acid, increase the cost another \$100.

Not many of our elderly can afford such a sum, particularly in these inflationary times. When our elderly determine their monthly budget, a possible medical examination goes by the wayside in order to keep that roof over their head and food in their stomach. It is no wonder that symptoms are suppressed.

This legislation we propose does not mandate a free yearly physical examination. At this point in time, unfortunately, such a proposal is totally unrealistic. Part B of medicare would apply for physical examinations for the present and the Secretary of Health, Education, and Welfare would issue regulations with respect to the scope and cost of the examinations. But this legislation should put a regular physical examination within the means of our elderly population.

#### DEMOCRATIC CAUCUS PUTS REFORM IN DEEP FREEZE

### HON. DAVE MARTIN

OF NEBRASKA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 15, 1974

Mr. MARTIN of Nebraska. Mr. Speaker, one of the most outrageous aspects of the Democratic caucus' derailment of congressional reform is the deep, dark secrecy in which the deed was done. The Democratic caucus meets in private. The public and the press are barred from attending. The records, if they are kept at all, are not available to the public.

The caucus vote to sidetrack the Committee Reform Amendments of 1974 was taken by secret ballot. What is more, the vote on whether to cast a secret ballot was itself an unrecorded vote. The result is nothing short of ludicrous; This landmark piece of legislation, badly needed to

bring the Congress up to date, is killed in a secret caucus by a secret vote on whether to have a secret vote.

Mr. Speaker, it is hardly surprising that the Democrats who instigated this action are ashamed of themselves. But the public's business is at stake here, and we are entitled, at the very least, to know exactly what the caucus has done, and why, and who favored or opposed it. As a beginning, the complete transcripts and voting records of the caucus should be made available so that the Nation can judge the Democrats' stewardship in handling the public's business.

The Select Committee on Committees' reform proposals, embodied in House Resolution 988, are the result of a year and a half of effort on the part of a representative, bipartisan group of Representatives. The report was unanimous. It should be debated in public, not defeated in secret.

SIDNEY R. REDMOND

### HON. WILLIAM L. HUNGATE

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 15, 1974

Mr. HUNGATE. Mr. Speaker, a distinguished and respected member of the St. Louis community, Sidney R. Redmond, passed away on Thursday, May 2, 1974.

As the following article will indicate, he served in many positions of leadership and community service, and many of us will miss his contributions to public service and his personal friendship:

S. R. REDMOND FUNERAL, LAWYER, SCHOOL OFFICIAL

Services for Sidney R. Redmond, prominent St. Louis lawyer and member of the state Board of Education, who died Thursday, will be at 1 p.m. Monday at Union Memorial Methodist Church, 1141 Belt Avenue.

Mr. Redmond, who was 71 years old, died in St. Luke's Hospital. He resided at 16 Windemere Place.

In 1965 he was named by Gov. Warren E. Hearnes as a member of the state Board of Education and was elected its president in September 1971. In March 1972 Hearnes reappointed him to an eight-year term.

He was active in Republican politics and civil rights for more than 30 years.

In 1940, he was president of the Negro National Bar Association and in the same year he was appointed to direct the western section of the Republican Party's Negro Division.

A year later, Mr. Redmond was appointed special assistant city counselor, a position he held for the following five years.

He resigned to run for the Board of Aldermen from the Eighteenth Ward. He was elected and served two terms until 1955, when he was defeated for re-election.

In 1945, he unsuccessfully ran for election to the Board of Education.

Mr. Redmond was nominated in 1950 as the Republican candidate for Congress from the old Eleventh District, but was defeated in the general election. Six years later, he again sought election from the Third District, but was defeated.

Mr. Redmond, who graduated from the Harvard University Law School, was a former president of the St. Louis Branch of the National Association for the Advancement of Colored People.

He was also a member of the American Judicature Society, the Board of Methodist Foundation of Missouri, the Harvard Club of St. Louis, the Arts and Education Council and was a trustee of the City Art Museum.

He was editor of the National Bar Journal and was a member of the NAACP National Legal Committee.

Surviving are his wife, Gladys, and two sisters, Mrs. Esther R. Austin of Memphis and Mrs. Ruth W. Hall of Washington.

#### THE ASSOCIATION OF LOCAL TRANSPORT AIRLINES

### HON. BROCK ADAMS

OF WASHINGTON

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 15, 1974

Mr. ADAMS. Mr. Speaker, the Association of Local Transport Airlines held its spring quarterly regional meeting in Toronto, Ontario, Canada, hosted by Allegheny Airlines which serves Toronto, on May 8-10, 1974.

One of the highlights of the meeting was the occasion of the signing of a new Canadian-American Bilateral Route Agreement which opened up 20 new routes for U.S. carriers in border crossings.

Another highlight of the impressive ALTA business meeting was an address by the distinguished chairman of the House Subcommittee on Transportation and Aeronautics and our colleague, the Honorable JOHN JARMAN.

Significantly, he addressed his remarks in part to the need for the Federal Energy Administration to provide 100 percent of fuel required to meet current needs and to new routes and new services by the ALTA carrier members serving the United States and, further, urged the Civil Aeronautics Board to press forward in an area of ever-increasing consumer interest, additional air service between medium-hub sized U.S. cities.

Knowing of your great interest in such improved services, I offer for the record a copy of Chairman JARMAN's address in its entirety:

ADDRESS BY HON. JOHN JARMAN

Two years ago in Atlanta I appeared before the Spring Quarterly Meeting of ALTA to discuss with you certain aspects of the regional carrier operations. I specifically discussed the quality of service being provided by the local service carriers and the price the government was paying in subsidy for your services. Based on the record between 1967 and 1971, it appeared to me that the carriers had done well in keeping their part of the bargain, providing a very substantial amount of service to 461 cities, of which 290 receive certificated service only from local service carriers. Over 27 million passengers were carried in 1971 with passenger miles increasing to almost 8 billion.

At the same time I was disturbed that subsidy need had been growing but that the government had failed to meet the need of the industry by rather substantial amounts. As I figured it, the shortfall during the five years, 1967 through 1971, was a staggering \$130 million. With a shortfall of this magnitude it was no wonder that there were significant pressures on the members of this

association to curtail severe loss operations, impacting services at our smaller cities rather significantly in some cases.

I also commented in my remarks two years ago that the commuter air carriers and smaller aircraft would have a greater role to play in the future of providing small city service. I asked that you consider affirmative action to fit the commuter carriers into our air transportation system so as to maximize their potential.

I am pleased to say that the government has very significantly improved its side of the bargain to the point where the bargain appears now to be somewhat in balance. I am also pleased that the carriers continue to provide a significant service to the smaller and intermediate size cities of this country. 49% of the airports served by locals serve cities with a population of less than 100,000. 44% of the airports that local service carriers serve enplaned less than 50 passengers per day. At the same time the CAB has moved to make some rather significant improvements in the rates being paid for subsidy-eligible service.

A major improvement in the subsidy situation occurred with the development of a new class rate effective June 1, 1973. This rate order provided some basic improvements, including a new profit sharing provision which improves the incentive for both the carriers and the government. The new rate is intended to bring subsidy paid in line with subsidy need. I commend the CAB for its responsiveness to a situation which could have led to a very serious deterioration of service to smaller cities, had the Board failed to act promptly in improving the subsidy payment situation. I hope that that Board and the carriers will continue along the new path which has been established.

I would like to comment on some of the problems which I believe your industry, the CAB and the Congress must focus on in the future.

First, is fuel. The allocation system which was administered starting last fall has left much to be desired. The Congress intended that public transportation services receive adequate fuel to perform their public service obligations. This intent of Congress was reflected in the Emergency Petroleum Allocation Act of 1973. Public transportation includes all public transportation, not just buses and trains. The FEO has not treated scheduled air carriers the same as ground transport services for reasons which I find difficult to understand. The air transport system of this country has as much right to fuel as the other modes of transport. The attempt to cut back the air transport operation to 1972 levels created severe problems for many of the air carriers and even more important—severe imbalance in service being provided at many of our cities.

I do not subscribe to the proposition that our air transport system has been wasteful and therefore does not require adequate fuels to meet its current needs. I do subscribe to the proposition that the air transport industry and particularly the regional airlines have provided meaningful service. The inefficiency which may exist for most part is that which cannot be avoided due to the peculiar nature of your route structures. I recognize that a city receiving two or three schedules a day is at the minimum level of service for air service no matter what its load factor generation may be. Many of the cities you serve cannot possibly generate load factors approximating 60 or 70% of available seats. I believe therefore that the FEO and the CAB should move at an early date to assure that the scheduled airlines of this country receive a more equitable share of the fuel which is available. The intent of Congress is to provide 100% of fuel required to meet current needs—not 80%, 85% or 95%. It means what you need, not something less.

Having said this I do not mean to suggest that the CAB should be oblivious to our fuel situation in dealing with route matters. We must be judicious in our use of fuel which means that the CAB's current in-depth review of the long-range route structure is most timely. We in the Congress who are close to aviation matters look forward to the release of this study for use in our deliberation.

One area which I hope will be covered by the Board study is the adequacy of service for our larger intermediate cities. I am aware that many medium-hub cities ranging from 200,000-500,000 population have become increasingly active in seeking improved air service. At the same time the CAB has continued its policy of almost total restraint in processing applications for new route authority. As I read the Board's current policy, in the absence of an interchange agreement or a route transfer or route exchange, a city is left to negotiate with its existing air carriers for such services as they may be authorized to provide. In some instances such negotiations can be sufficient. In others they may not be, and sometimes we know they cannot be. I am particularly concerned about services in the short- to medium-haul markets under 750 miles.

It seems to me that Section 401 of the Federal Aviation Act says that the Board will consider applications for new authority and will grant such applications if the public convenience and necessity so require. Section 102 at the same time gives the Board some rather flexible standards in deciding what is in the public interest, including competition to the extent necessary. What does Section 401 mean in today's fuel short environment? What is the bargain between the cities of this country and the Civil Aeronautics Board? In the old days we use to think that if a carrier had a fair chance of making a reasonable profit on a service for which there was a demand, it should be encouraged to seek authorization, invest the capital and provide the service.

If this is to remain a healthy, viable air transport industry it cannot resign itself to a no-growth situation. This would be a severe blow to our country, which continues to grow. It will require more air service, not less. Rail service is no substitute in most areas and while it may be helpful in certain high density corridors, it certainly will not take care of the large majority of our communities. Many major cities do not even have passenger rail service.

In this connection I would like to also urge that the carriers monitor very carefully the results of the ever increasing cost of air service. We must keep air transportation priced within the means of our population. It is a mass transport system today and I worry that we may forget this. In a few weeks family and youth fares will disappear entirely. If we are to keep air travel as an attractive alternative to the private automobile, its price must be a factor in your thinking.

I believe the CAB is to be commended for many important steps to secure the future of this industry, particularly the improvement in subsidy policy for the local service airlines. I commend the Board for its willingness to consider increased use of commuter services for many communities, where this type of service can be implemented. The Allegheny Commuter program continues to set a standard for service with small aircraft which is outstanding. The Board's new flow-through subsidy experiment with Air Midwest is also interesting. At the same time the Board has shown that it is willing to tackle the more difficult problems of suspension or deletion, where such action is warranted.

I urge however that the Board begin to look at the needs of the many cities whose time for service improvement may well be far overdue. I think the regional airlines have

an obligation to continue to seek to provide those services which they believe are in the public interest and the cities who would benefit from these services are equally entitled to be heard. Let us not withhold these services because of our fuel situation. Until such time as the Congress changes the legislation, you are entitled to have sufficient fuel to meet the public needs. It's time again to step up and announce your programs to keep our vital air services functioning.

#### RECHANNELING FISHING FINES AND IMPORT DUTIES

HON. ROBERT H. STEELE

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 15, 1974

Mr. STEELE. Mr. Speaker, today I am reintroducing legislation to channel all fines on foreign fishing vessels and all import duties on fishery products into a special fund for research and development of domestic fisheries. This legislation, which is cosponsored by several members of the Subcommittee on Fisheries and Wildlife Conservation and the Environment, is important to the American fishing industry and to the American consumer, for it would insure a strong and expanded Federal effort to broaden our knowledge of fishery resources management and development.

I do not need to remind the House of the rapidly declining state of our American fisheries. The Members of this body are all too painfully aware of the depletion of our fishery stocks which has resulted, for the most part, from callous plundering of our fishery resources by Russian, Japanese, and other foreign fishing fleets. It has become clear that our coastal fisheries—and particularly those of the Georges Bank in the North Atlantic, which have been the traditional fishing ground for over 200 years for boats from my State of Connecticut—are in danger of being raked entirely clean unless something is done to cut down overfishing and rebuild our fishery resources.

Moreover, to make this problem doubly frustrating, we are not only losing a large portion of the catch off U.S. shores to other nations, but as a result we are being forced to import increasingly huge amounts of the fish needed to keep up with the Nation's growing demand for fish protein. Since World War II, the level of U.S. fish imports has jumped from 13.4 percent of consumption to almost 60 percent. And quite often the fish products we import actually come from foreign nets operating within sight of American soil.

One effective response we can take to this foreign challenge—and to the critical international problem of guaranteeing adequate food supplies to feed the Earth's expanding population—is to maximize our understanding of domestic fisheries and our effort to replenish depleted stocks. I believe it is appropriate that the fines foreign vessels pay when they are apprehended in our waters, and the duties they pay on the fish products

they send into the United States, be directed toward this end.

Presently, the proceeds from fines or confiscations of foreign ships caught fishing in U.S. territorial waters go into the General U.S. Treasury. In the first 4 months of this year, the income from these fines has multiplied dramatically. Between 1967 and 1973, the United States collected about \$1.25 million from foreign vessels violating fishing prohibitions in American waters. During January and February alone of this year, nearly \$400,000 in fines were levied on a Bulgarian trawler seized off New Jersey and a Russian ship caught in Alaskan waters. In addition, Japanese and Rumanian vessels seized in late March may draw similarly large penalties. It is likely that as much as \$1 million will be added to the Treasury this year from fines on foreign boats operating illegally within U.S. waters.

Furthermore, customs duties on imported fish and fish products currently exceed \$24 million annually. In 1954, Congress earmarked 30 percent of these duties for creation of a fund to promote and develop fishery products and research pertaining to American fisheries. This fund, usually called the Saltonstall-Kennedy or S-K fund, is now operating within the National Oceanic and Atmospheric Administration, with outlays averaging above \$7 million each year. However, the remaining 70 percent of import duties are uncommitted and go into the General Treasury.

In my view, this money, which will total over \$25 million in 1974, should be used for one purpose only: to aid the American fisherman and consumer by recycling these fines and duties to where they belong—in fisheries research, development, and management. By routing these receipts into the S-K fund, we can insure these domestic fishery programs not only increased Federal support, but also a stable source of research dollars. This is particularly important, since NOAA programs have often fallen victim to the budgetary ax.

Mr. Speaker, domestic fisheries are already badly damaged, and even were an effective international system of catch quotas or an agreement on a new regime for control of the sea's resources reached today, a difficult job of nourishing and rebuilding our fish stocks would still confront us. This legislation can mark an important start on this task. I urge my colleagues to join me in securing quick action on it from the House.

#### CONSERVATION AWARD WINNER

**HON. B. F. SISK**

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 15, 1974

Mr. SISK. Mr. Speaker, I will have the privilege of being in attendance tonight at the 20th annual American Motors Conservation Awards dinner. One of 10 nonprofessional conservationists receiving the honor this year is Mr. J.

Martin Winton, a stalwart in the development of Ducks, Unlimited, and a vigorous defender of the waterbank program which the Congress saw fit to restore after the President canceled the program last year.

Mr. Winton, a recently retired pharmacist, is being cited for his work in helping preserve waterfowl. For that he is richly deserving. The award he will receive tonight has long been regarded by many conservationist leaders as the most prestigious of all such recognition plans, and focuses public attention on citizen and professional conservationists whose achievements are helping this Nation preserve, yet utilize, its renewable natural resources.

Although the award signifies past excellence, I can assure you all that this excellence will not diminish his role in conservation efforts in either waterfowl preservation or natural resource utilization. He remains active as president of the Grassland Water District in central California where his interests range far and wide.

I now join in saluting Mr. J. Martin Winton, one of three Californians to be cited tonight his work in conservation.

#### RURAL DEVELOPMENT ACT IS EFFECTIVE

**HON. J. EDWARD ROUSH**

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 15, 1974

Mr. ROUSH. Mr. Speaker, I was gratified and honored last week at the invitation to be present at a very special and unique loan closing ceremony in Topeka, Ind., May 10, in the Fourth Congressional District which I represent. The loan to enlarge Rockwood, Inc. at Topeka was made through the rural development program, with a guarantee provided by the Farmers Home Administration.

The occasion was special and unique because this is the first Farmers Home Administration loan of this kind in Indiana. I hope this is the first of many because it will be so important to the community. This loan will enable the Rockwood firm to add farm trailers and other light farm equipment to its trailer manufacturing line, which until now has been concentrated in recreation trailers. The addition of this farm equipment to the company's line will make it possible for Rockwood to add more than 60 people to its work force after a slow winter when the firm had to lay off about 60 employees due to the energy crisis.

I am proud to have been one of those supporting the Rural Development Act of 1972 through which the U.S. Department of Agriculture can provide loan guarantee authority to help arrange private bank financing of rural business. This is an important assistance to rural communities.

The Agriculture Subcommittee of the House Appropriations Committee has just completed hearings on appropriations

for 1975 for the Rural Development Act programs, including loan authority and grants for water and sewer facilities, other community facilities, and for rural industrial assistance. The loan in Topeka to Rockwood is an example of this rural industrial assistance and I think the Congress is aware of the manifold benefits to be derived from the rural development program. There are many other communities and industries that stand in need of just the kind of assistance provided last week in Topeka. I cannot think of a better and more fruitful return on the taxpayer's dollar than investments such as these.

#### SUPPLEMENTAL SECURITY INCOME PROGRAM MUST BE REVISED

**HON. JONATHAN B. BINGHAM**

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 15, 1974

Mr. BINGHAM. Mr. Speaker, this is Senior Citizens Month, yet millions of senior citizens who participate in the supplemental security income program have every reason to believe that the Nation is not honoring them but cheating them instead. These elderly poor have seen the Government take away with one hand what it gives with the other, as social security increases are deducted from supplemental security income checks.

More than 20 members of the New York State congressional delegation have introduced legislation to revise and improve supplemental security income, and I hope many more of our colleagues will soon join us in seeking a comprehensive overhaul of this program.

There is growing awareness and resentment of the cruel way in which this program works, as evidenced by the following editorial from WOR-TV in New York:

SENIOR CITIZENS

(By John Murray)

The Federal Supplemental Security Income Program for aged, blind and disabled persons is better known as S.S.I. It began last January, and was intended to be a real improvement over the old public welfare system. However, the Supplemental Security Income Program has severe deficiencies and shortcomings. They are having a detrimental effect on the unfortunate persons it purports to serve.

Public officials at the City, State and federal levels are not addressing themselves to the inequities in the S.S.I. Program.

What is needed is a provision for emergency funds to cover non-receipt of checks, or lost or stolen checks, financial emergencies such as loss of clothing, food or shelter, and provision for advance monies at the time of application.

Food stamps and rent increase exemption eligibility should be guaranteed to all S.S.I. beneficiaries.

S.S.I. beneficiaries, who receive a seven percent cost of living increase, should be entitled to keep their full portion of S.S.I. benefits from New York State. It's a disaster that the millions of beneficiaries across the country had their S.S.I. benefits reduced by

seven percent. Their total monthly income therefore, remains the same.

The month of May is Senior Citizens Month throughout our country. Yet, the catastrophe dealt to our older citizens through the Supplemental Security Income Program is a poor tribute to those older people who helped build our nation. City, State and federal officials should act now to make the S.S.I. Program live up to its promise.

TRIBUTE TO REPRESENTATIVE  
JULIA BUTLER HANSEN

HON. JOHN J. ROONEY

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 15, 1974

Mr. ROONEY of New York. Mr. Speaker, the announcement by my good and longtime friend from Washington State, Mrs. JULIA BUTLER HANSEN, that she will retire at the end of this session of Congress saddens me.

I have had the pleasure of knowing JULIA for all of her 14 years of congressional service and consider it my privilege and honor to have served with her on the House Committee on Appropriations. Her accomplishments and devotion to public service mark her as a singularly effective legislator both in this body and in the Washington State Legislature.

Her devotion to public service and accomplishments were deeply ingrained in JULIA's character long before she came here to the House of Representatives in 1960. Behind her were 23 years of service to both city and State government and all of that service was precedent shattering.

JULIA's accomplishments in the Washington State Legislature, Mr. Speaker, were near legendary. As a member of that body she helped create a governing structure free from political pressures to oversee the Washington State highway system. The result has been one of the finest State systems of roads in the country.

As a Member of Congress, JULIA's interests were many and varied and as the first woman chairman of either a House or Senate Subcommittee on Appropriations she was in a position to follow those interests closely.

As chairman of the Interior Appropriations Subcommittee she became well known for her interests in the environment, hydroelectric power, reclamation of the land, both fishery and forestry resources and particularly the plight of the American Indian. Her concern for the plight of the Indian earned her, along with Senator ERVIN, of North Carolina, the first presentation of the Henry M. Teller Award for outstanding efforts in behalf of legislation affecting the Indian peoples.

Mr. Speaker, we shall all miss JULIA when she leaves. She has been a great credit to this body, to her State, her country, and herself. Mrs. Rooney joins with me in wishing JULIA a long, leisurely and well-deserved retirement.

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MEDICREDIT

HON. ED JONES

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 15, 1974

Mr. JONES of Tennessee. Mr. Speaker, the concept of national health insurance is far from new, but it now appears that such a program will soon be a reality.

There are many proposals before the Congress which fall under the general heading of national health insurance but which vary greatly in their scope and of course in their costs. Some proposals would provide national health insurance for almost everyone while others would provide considerably less.

I personally feel that our Government should provide help where it is truly needed, but I feel just as strongly that it should not go beyond that point. In my opinion each individual should provide for his own health care if he can afford it.

The medicredit plan, of which I am a cosponsor, would preserve the right of free choice in the health care field for both the patient and physician.

Medicredit guarantees the right of every American to choose the health care environment which he believes best for his family. This environment includes the patient's choice of medical institution, regardless of whether it is a publicly or privately supported facility. Furthermore, the traditional doctor-patient relationship will be preserved for both the patient and the doctor.

If a national health care plan is to succeed in our system it must allow the physician to choose whether or not he wants to participate in a federally subsidized health care program. In all the leading health care proposals now before Congress, with the exception of the medicredit plan, participation is compulsory on the part of both the patient and the physician.

Many Americans fear the establishment of another giant Federal bureaucracy with it is accompanying regulations and redtape. Under the medicredit plan the Federal Government would not take over the health insurance business but would merely assume responsibility for the health care of persons who are either too poor to meet their medical expenses or for those citizens whose present health insurance is inadequate to meet the costs of catastrophic illness.

The medicredit plan allows individuals to assume responsibility for their own health care if they are financially able but insulates them from the colossal results of unforeseen major medical needs. It is every American's right to have adequate and proper health care and I believe this bill provides the best protection for the American people. The medicredit plan does not contain all the answers to our Nation's health care needs but I believe it is a reasonable and responsible step in that direction.

RENT SUPPLEMENTS IN NON-METROPOLITAN AREAS

HON. BOB BERGLAND

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 15, 1974

Mr. BERGLAND. Mr. Speaker, I would like to comment briefly on one aspect of pending housing legislation. The Housing Subcommittee has recommended approval of what is popularly called a "bob-tailed" housing and urban development bill, and while I appreciate their desire to find legislation on which there can be wide agreement, I am very much disappointed in the rural housing provisions in H.R. 14490. It seems to me that it falls short not only of the measure which the other body sent over to us in this respect, but fails to include some substantive provisions which the House Banking Committee itself found noncontroversial 2 years ago.

Among these is a provision to give Farmers Home Administration a rent supplement program. Such a program has been available to urban areas for nearly a decade but—as is so often the case—it has been denied people in rural areas and small towns where the Federal Housing Administration programs are little utilized. The census figures show us that there are nearly 5 million one- and two-person households with very low incomes—less than \$4,000—living outside our metropolitan areas. More than half of those households are elderly and at least one out of every five lives in substandard housing.

Given their low incomes only public housing or rent supplements can adequately serve these people. Yet, we know that less than a quarter of our public housing is located in nonmetropolitan areas. The Rural Housing Alliance has recently done a study of the rent supplement program and found that it too is failing to reach people in rural areas and small towns. I shall insert the text of their study, "Rent Supplements in Nonmetropolitan Areas," at the end of my remarks.

They estimate that less than 30 percent of all rent supplement units are located in nonmetropolitan areas and that most of those are in the larger towns. Their conclusion is that as long as Farmers Home Administration lacks its own rent supplement program, nonmetropolitan areas of less than 10,000 population, "which account for at least 35 percent of the Nation's poverty-level families and 40 percent or more of its occupied substandard housing will continue to receive less than 15 percent of all rent supplement assistance."

I urge my colleagues on the full Banking and Currency Committee to give Farmers Home Administration a rent supplement authority and end this pattern of discrimination against rural people.

The material follows:

RENT SUPPLEMENTS IN NONMETROPOLITAN AREAS; ANOTHER HOUSING PROGRAM DENIES EQUITY TO THE PEOPLE OF SMALL TOWNS AND RURAL AREAS

(By George Rucker)

Summary: As of October 1973 there were an estimated 125,400 rent supplement units in housing projects insured by the Federal Housing Administration under Sections 221(d)(3) and 236 of the National Housing Act. Of these, less than 15 percent appear to be in nonmetropolitan towns and places of less than 10,000 population, although such areas contain at least 35 percent of the nation's poverty-level families and 40 percent or more of its occupied substandard housing.

Nearly a decade ago, in the Housing and Urban Development Act of 1965, Congress expanded the available program resources for low-income housing assistance by authorizing a rent supplement program for the Federal Housing Administration. Under this authority, FHA can contract to make rent supplement payments covering units financed under certain FHA-insured mortgages. The eligible occupants of such units, whose income must generally be in the public housing tenant range, pay 25% of income (which must equal at least 30% of the normal rent on the unit) and FHA makes up any difference between that and the full rent.

At the end of Fiscal 1973, the Department of Housing and Urban Development reported that rent supplement funds had been reserved for a cumulative total of 192,500 units, that 167,500 of those units were under contract, and that 118,200 of them were in occupancy. None of these published statistics, however, provide a breakdown between metropolitan and nonmetropolitan areas. In fact, as far as I can determine, HUD does not publish and evidently does not even tabulate that sort of a breakdown. It does publish a quarterly "Rent Supplement Status Report" which lists by state and by program all projects for which any rent supplements have been approved and this report does make it possible to determine the metropolitan/nonmetropolitan distribution of those projects.

The most recent such report is that for September 30, 1973. It showed that insurance in force at that time under Sec. 221(d)(3) and carrying market interest rates covered projects with a total of 86,631 units.<sup>1</sup> It also showed that insurance in force under the Below-Market-Interest-Rate Sec. 221(d)(3) and the Sec. 236 interest subsidy programs covered another 155,036 units in projects with

at least some rent supplements approved. But the "Status Report" doesn't show the number of units actually receiving supplements—only the number of units in the project. While market rate projects can (and usually do) carry supplements on all units, those under 221(d)(3) BMIR or Sec. 236 are limited in the share of units which can be covered by rent supplements—generally no more than 20%, although sometimes increased to a maximum of 40% of the units in the project.

Based on conversations with HUD staff and my analysis of such national statistics as are available, I concluded that an average of 25-30% of the units in these BMIR and Sec. 236 projects probably received rent supplements.<sup>2</sup> HUD staff also advised that they saw no reason to think that the average would vary significantly between metropolitan and nonmetropolitan areas. Using the lower percentage figure, a total of 125,400 rent supplement units would appear to have been covered by insurance in force as of last September. Of these, 36,900 units or just over 29% are projected as being in nonmetropolitan areas.<sup>3</sup>

The accompanying table breaks these figures down by individual state and totals them by census division and region. Although they are estimates subject to some margin of error, particularly in the case of individual states with small programs, they presumably reflect the pattern of rent supplement coverage.

Over all, the nonmetropolitan share is slightly less than population would dictate and a great deal less than poverty and housing conditions would mandate. (Nonmetro areas account for nearly 46% of the nation's poverty level families and for 54% of its occupied substandard housing.<sup>4</sup>) The disparity is even more striking among the states which were the biggest users of the rent supplement program. Eight states—Texas, Ohio, Florida, California, Tennessee, Washington, New York and Michigan—account for more than half of all rent supplement units. In only one of those states (California) does the nonmetro share of rent supplement units appear to equal the nonmetro share of population (and even there it is less than the nonmetro share of the poverty population).

Reflecting smaller program levels but far greater metro-nonmetro disparity were Illinois, New Jersey, Missouri and Utah. In each of these states and in Michigan the share of population residing in nonmetropolitan

areas was several times the share of rent supplement units going into such areas. At the other end of the spectrum only in Delaware is the nonmetro share of rent supplement units more than one-and-a-half times as large as its share of population.

Finally, analysis of similar statistics for an earlier date (the end of calendar 1971), shows that nonmetro areas are getting a declining share of rent supplement units. At that time the "Status Report" on insurance in force indicated that almost 38% of the units in market-rate projects and almost 32% of all rent supplement units were in nonmetropolitan areas.<sup>5</sup>

When it is considered that almost 60% of the nonmetro rent supplement units are in towns of 10,000 or more population,<sup>6</sup> though such places account for only a third of the nonmetropolitan population, a further dimension of the imbalance comes into view. The remaining areas depend primarily on Farmers Home Administration for housing assistance to low- and moderate-income people—and Farmers Home Administration has no rent supplement program, though legislation approved by the Senate earlier this year would provide it with one. Until this equalization of program resources becomes a reality, however, the areas of the country which account for at least 35% of the nation's poverty-level families and 40% or more of its occupied substandard housing will continue to receive less than 15% of all rent supplement assistance.

FOOTNOTES

<sup>1</sup> These figures exclude Puerto Rico and the Virgin Islands.

<sup>2</sup> Note that these percentages are not for all units in those programs, but only units in projects receiving at least some rent supplements.

<sup>3</sup> These figures are based on projects under only three programs, but they will account for more than 95% of the rent supplement units under all programs.

<sup>4</sup> Nonmetro areas account for an even larger share (57%) of the substandard housing stock (i.e., all year-round units).

<sup>5</sup> The total number of rent supplement units involved at that point was less than 100,000—about 78% of the number covered by the more recent analysis. The figures indicate, in other words, that only about one-fifth of the rent supplement units put under insurance in the 21 months following December 1971 were located in nonmetro areas.

<sup>6</sup> This is based on an analysis of the projects under the market rate program.

TABLE.—ESTIMATED NUMBER OF RENT SUPPLEMENT UNITS IN HOUSING PROJECTS COVERED BY FHA INSURANCE UNDER SECTIONS 221(d)(3) AND 236, SEPT. 30, 1973, AND SHARE OF SUCH UNITS IN NONMETROPOLITAN AREAS

States, divisions, and regions	Total number of units under rent supplement <sup>1</sup>	Number of rent supplement units in nonmetropolitan areas	Nonmetropolitan share of rent supplement units (percent)	Nonmetropolitan share of population (percent)	States, divisions, and regions	Total number of units under rent supplement <sup>1</sup>	Number of rent supplement units in nonmetropolitan areas	Nonmetropolitan share of rent supplement units (percent)	Nonmetropolitan share of population (percent)
Maine.....	460	240	52	71	South Carolina.....	3,740	2,060	55	61
New Hampshire.....	530	330	62	70	Georgia.....	2,880	1,490	52	50
Vermont.....				100	Florida.....	8,990	1,530	17	31
Massachusetts.....	1,180			3	South Atlantic <sup>2</sup> .....	26,260	8,750	33	42
Rhode Island.....	1,140	160	14	10	Kentucky.....	2,620	1,630	62	60
Connecticut.....	1,300	120	9	11	Tennessee.....	6,270	2,100	33	51
New England.....	4,610	850	18	19	Alabama.....	1,430	350	24	48
New York.....	4,600	390	8	14	Mississippi.....	3,550	2,720	77	82
New Jersey.....	1,450	30	2	12	East South Central.....	13,860	6,800	49	58
Pennsylvania.....	2,060	400	19	21	Arkansas.....	3,310	1,800	54	69
Mid-Atlantic.....	8,110	820	10	16	Louisiana.....	2,930	1,380	47	45
Northeast region.....	12,720	1,670	13	16	Oklahoma.....	1,780	920	52	50
Delaware.....	190	100	53	30	Texas.....	14,480	2,650	18	26
Maryland.....	2,310	160	7	16	West South Central.....	32,500	6,750	30	37
Virginia.....	2,730	1,080	40	39	Southern region <sup>3</sup> .....	62,620	22,300	36	44
West Virginia.....	1,120	480	43	69					
North Carolina.....	3,100	1,850	60	63					

Footnote at end of table.

TABLE.—ESTIMATED NUMBER OF RENT SUPPLEMENT UNITS IN HOUSING PROJECTS COVERED BY FHA INSURANCE UNDER SECTIONS 221(d)(3) AND 236, SEPT. 30, 1973, AND SHARE OF SUCH UNITS IN NONMETROPOLITAN AREAS—Continued

States, divisions, and regions	Total number of units under rent supplement <sup>1</sup>	Number of rent supplement units in nonmetropolitan areas	Nonmetropolitan share of rent supplement units (percent)	Nonmetropolitan share of population (percent)	States, divisions, and regions	Total number of units under rent supplement <sup>1</sup>	Number of rent supplement units in nonmetropolitan areas	Nonmetropolitan share of rent supplement units (percent)	Nonmetropolitan share of population (percent)
Ohio.....	13,690	1,980	14	22	Montana.....	830	490	59	76
Indiana.....	1,900	390	21	38	Idaho.....	440	380	86	84
Illinois.....	1,610	40	2	20	Wyoming.....	340	340	100	100
Michigan.....	4,070	300	7	23	Colorado.....	1,360	410	30	28
Wisconsin.....	2,730	950	35	42	New Mexico.....	1,570	1,120	71	69
East North Central.....	24,000	3,660	15	26	Arizona.....	340			26
Minnesota.....	1,850	1,060	57	43	Utah.....	140	10	7	22
Iowa.....	1,070	460	43	64	Nevada.....	200			19
Missouri.....	960	80	8	36	Mountain.....	5,220	2,750	53	43
North Dakota.....	310	310	100	88	Washington.....	4,820	1,180	24	34
South Dakota.....	2,010	1,530	76	86	Oregon.....	1,760	570	32	39
Nebraska.....	370	140	38	57	California.....	6,450	610	9	7
Kansas.....	750	450	60	58	Alaska.....	130	130	100	100
West North Central.....	7,320	4,030	55	52	Hawaii.....	350	30	9	18
North-central region.....	31,320	7,690	25	33	Pacific.....	13,510	2,520	19	15
					West region.....	18,730	5,270	28	21
					United States total.....	125,390	36,930	29	31

<sup>1</sup> Estimated on basis of insurance in force Sept. 30, 1973, as reported in "Rent Supplement Status Reports." Assumption is that 25 percent of the units in sec. 236 and sec. 221(d)(3) BMIR projects with rent supplements actually were covered by the supplements.

<sup>2</sup> Includes 1,200 units in District of Columbia.

NATIONAL TRANSPORTATION WEEK

HON. LEONOR K. SULLIVAN

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 15, 1974

Mrs. SULLIVAN. Mr. Speaker, this is National Transportation Week, and as a Representative in the Congress of the United States of Metropolitan St. Louis, one of the most important transportation centers in the world, I want to salute the men and women of the transportation industries of the St. Louis area and of the State of Missouri for the vital contributions they are making to the economic strength of our Nation.

Since the days of the Louisiana Purchase, St. Louis has been known as the Gateway to the West, a role symbolized by the magnificent stainless steel arch which rises majestically and dramatically on the St. Louis waterfront on the grounds of the Jefferson National Expansion Memorial.

Through St. Louis flows a steady movement of goods of all kinds, East and West, North and South. Here are joined the eastern and western railway systems, the Missouri and Mississippi water traffic, a vast system of pipelines, the cargoes of one of the greatest accumulations of motor carriers in the world, and the commerce to and from one of the busiest airports.

The Traffic Club of St. Louis, Inc., of which Mr. Robert Mahfood of the Bee Line Trucking Co. is president, is conducting a week-long series of observances of National Transportation Week under the chairmanship of Mr. Ralph Percival of Fry-Wagner Moving & Storage. They are to be commended for their efforts in spotlighting the importance of the transportation industries in the life of our city, our State, and the Nation.

ARAB TERRORISM MUST BE STOPPED

HON. NORMAN F. LENT

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 15, 1974

Mr. LENT. Mr. Speaker, as I did less than 2 years ago, after the murder of 11 Israeli Olympians at Munich, I rise to condemn an act of terrorism perpetrated by a band of Arab guerrillas.

Last night, a group of Arab terrorists seized a school at a farm settlement in northern Israel, kidnaping more than 80 schoolchildren, and demanding the release of a group of guerrillas now held in Israeli jails. This despicable act has shocked and offended the sensibilities of the entire civilized world.

For several months, our Secretary of State has been working closely with all of the parties involved in the recent Middle East war to try and arrange a peace settlement which will ease tensions in that troubled area of the world. This senseless act of terrorism, which came at a time when the peace negotiations were perhaps at their most delicate stage, seriously jeopardizes the chances for a lasting peace in the Middle East.

Shortly after the Munich tragedy, this body passed a resolution expressing an unbending resolve to cut off from the civilized world all nations which provide refuge or comfort to these sorts of criminals rather than punish them as they should. I believe that sentiment should be reiterated today. There should be no hiding place for these international outlaws. There should be no place to which they can flee after executing such hideous plots. I know of no other way in which such acts of terrorism can be stopped.

Tomorrow, I will be introducing a resolution condemning the activities of the

Lebanese terrorists. I hope that many of my colleagues will join me in expressing indignation over their immoral, senseless act.

GEORGE S. BENNETT

HON. ELLA T. GRASSO

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 15, 1974

Mrs. GRASSO. Mr. Speaker, I would like to bring to the attention of my colleagues a most remarkable gentleman from Southbury, Conn., one of my Sixth District towns.

Mr. George S. Bennett, a retired rural mail carrier, has been an active conservationist for over four decades. At the age of 80, Mr. Bennett has just been awarded an American Motors Conservation Award for his contributions to resource conservation in the State.

While performing his daily rounds on the region's rustic country roads, this devoted civil servant observed how beautiful land and water could be. Dismayed by how often these resources were ignored and abused, he decided to do his part to preserve the environment.

As chairman of the Southbury Rod and Gun Club Conservation Committee for over 30 years and head of the Southbury Conservation Commission, Mr. Bennett has promoted tree planting to retard soil erosion, developed wildlife habitats, and pressed for the purchase of permanent open spaces.

As one committed to improving and preserving the environment for ourselves and our posterity, Mr. Bennett truly deserves the honor awarded him.

Mr. Speaker, it is my hope that this noble person will be an inspiration to all our citizens who must share in the effort to preserve our environment if we are to succeed.

ANTIBUSING AMENDMENTS DEFY  
CONSTITUTION

**HON. CHARLES B. RANGEL**

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 15, 1974

Mr. RANGEL. Mr. Speaker, this afternoon the Senate is considering several amendments to the Elementary and Secondary Education Act of 1974. These amendments threaten achievement of the goal set by the Supreme Court 20 years ago in *Brown* against Board of Education: integration of the public schools. An attack on busing is an attack on this constitutionally mandated goal.

The supporters of these amendments have opted for political expedience over concern for racial justice. It is ironic that a bill designed to further educational opportunity should be riddled by amendments which serve to counteract this Nation's slow but inexorable progress toward equal educational opportunity for all schoolchildren.

I place in the CONGRESSIONAL RECORD an editorial from the May 15, 1974, edition of the Washington Post entitled "Race, Schools and the Senate." I urge my colleagues to read the Post's evaluation of the antibusing amendments:

RACE, SCHOOLS AND THE SENATE

In March of 1972, when Watergate was still a gleam in Gordon Liddy's eye and the Board of Directors (as we now know) had yet to give final approval to his plans, Mr. Nixon unveiled his preposterous "anti-busing" plan. Mr. Ehrlichman, now busy with other matters, did the best a lawyer could do to justify and explain its patent illegalities to the press. And Richard Kleindienst, then Acting Attorney General and nothing if not blunt, happily explained to a committee of Congress that the proposed legislation would authorize the reopening of every school case—North and South—that had been settled since the Supreme Court's original school desegregation decision in 1954.

Since that time we have acquired, for our sins, a much richer context of administration law-breaking and contempt for the commands of the constitution into which to fit this particular exercise in defiance and contempt—from the court-blocked adventures in impoundment of congressionally appropriated funds to the Watergate crimes and improprieties to the sloven procedures for obtaining wiretaps, which has just compelled the Burger Court unanimously to render a decision that will free some 600 persons accused and/or convicted of violating federal criminal statutes. So it is hardly surprising that the administration's proposed monument in the field of desegregation law turned out itself to be a monumental challenge to due process, to the Constitution and to the rule of law. What is surprising and—to put it mildly—distressing, is that two years later the U.S. Senate is considering commemorating the 20th anniversary of the Supreme Court's 1954 decision by passing this proposal. Today the Senate is scheduled to vote on a House-passed variation of the Nixon administration bill which has been introduced by Senator Edward J. Gurney of Florida as an amendment to an extension of the federal school aid act. And the vote, according to most accounts, is likely to be close.

Everybody, as it seems, is against skulduggery and for the rule of law—except when it is either inconvenient or inexpedient to explain. Thus, legislators who in a nonpolitical year would acknowledge themselves horrified by the reckless sweep of this proposal and acutely aware of the cynicism from which

it springs, are counted among those who, for "political" reasons are likely to go over the side and vote with Mr. Gurney. We refer to the cynicism underlying the effort because for all the chaos and disruption it could bring to settled school systems North and South, the proposal itself would almost undoubtedly be overturned in many of its key parts by the Court, meanwhile creating new and burdensome problems for numerous of those communities whose burdens it purports to relieve.

Consider the bill's provisions. Its list of mandatory remedies that must be invoked before busing can be ordered could cost tax-ridden communities a fortune in the demolition and construction of schools. It is a rich man's bill, in effect providing that any busing which occurs will spare the affluent suburbs and be contained within geographical limits that are likely to result only in sending poor blacks from their own inferior schools to the inferior schools of neighboring poor white children—to communities where racial hostilities and insecurities are keenest. And, above all, it says to black children—to black people generally in this country—that even where a finding has been made of unconstitutional discrimination against them by the state, there will be no remedy in many cases. It is a tribute of sorts to the monstrosity of this concept, in a nation of laws, that back in 1972 even Mr. Ehrlichman had trouble explaining it when pressed.

In the 20 years that have passed since the Supreme Court rendered its original decision in *Brown*, and in the 10 years that have passed since the Civil Rights Act of 1964 gave that decision heightened impact and authority, there have been some lower court decisions and administrative interpretations that, to our mind, have skewed and distorted the meaning of the law and imposed senseless burdens on communities around the country, so that both blacks and whites have suffered. There have been, in other words, some bad busing decisions and some unreasonable and unsound bureaucratic regulations rendered. It could hardly be otherwise, given both the complexity of the cases and the familiar resistance to reasonable and desirable change that preceded and, in effect, brought on the compulsory programs to which so many now object. But it has been clear for some time now that the Supreme Court was moving carefully and deliberately to refine its position in consonance with the constitutional command that is the bedrock of *Brown* so as to take account of changed circumstances that underlie so many school cases 20 years later. This is as it should be. The question is whether the Senate will wait. The alternative before it today was admirably summed up by William McCulloch, who was ranking Republican member of the House Judiciary Committee, when the Nixon bill first came up two years ago, accompanied by a proposal for a temporary freeze on busing orders:

It is with the deepest regret that I sit here today to listen to a spokesman for the administration asking the Congress to prostitute the courts by obligating them to suspend the equal protection clause so that Congress may debate the merits of further slowing down and perhaps even rolling back desegregation in public schools—What message are we sending to our black people? Is this any way to govern a country?

THE LATE KARL KING

**HON. O. C. FISHER**

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 15, 1974

Mr. FISHER. Mr. Speaker, news of the passing of Karl C. King of the State of

Pennsylvania was received with much sadness. He served three terms in this body before voluntarily retiring. As a legislator he was faithful and devoted to the cause of good government. Above all, he had a way of putting the welfare of the country above petty partisanship, and he became known as a sound thinker whose judgment was dependable and respected.

To the survivors I extend my profound sympathy in their bereavement.

THE DISTRICT OF COLUMBIA AND  
CONGRESSIONAL STAFFING RE-  
FORM

**HON. WALTER E. FAUNTROY**

OF THE DISTRICT OF COLUMBIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 15, 1974

Mr. FAUNTROY. Mr. Speaker, the insertion into the RECORD on April 24, 1974, by Congressman HAROLD V. FROELICH, of Wisconsin, calls attention to the very real problem created by gross disparities in District populations.

The study he ordered from the Congressional Research Service, entitled "Congressional Delegates to the 93d Congress Ranked in Order of Size of the Average Population of the Congressional District in Each State," however, is incomplete as a result of a major oversight of the District of Columbia's 763,000 residents.

The study shows that North Dakota's at-large Representative MARK ANDREWS represents the entire State population of roughly 617,000; which is the largest of all districts included within the 50 States.

By comparison, in the scantily populated sprawling States of Alaska and Wyoming, at-large Representatives DON YOUNG and TENO RONCALIO represent about 302,000 and 332,000 people, respectively. There are the districts with the smallest populations among those in the 50 States.

The District of Columbia's constituency is over 763,000—as much as 450,000 persons greater than some congressional districts. My office employs the full contingent of 16 paid staffers, as do 135 of the House Members. The remainder hire from 13-14 staffers out of the maximum 16 allowed. All Members have the same allotment for staff salaries, and I sincerely believe that this equal staffing can be very unequal and highly unfair to those citizens of the United States who happen to reside in districts which are relatively ill equipped to represent them faithfully.

This overlooked aspect of congressional reform is especially crucial in the case of the District of Columbia. The District is not represented, as are all States, by two Senators. This increases both the responsibility and the actual workload in my office.

Furthermore, my constituents live, for the most part, within simple commuting distance of my office, or can make a local telephone call to register their views and complaints. My staff, office space, and monetary allowances are not sufficient to operate my office as efficiently as one in

which the sheer number of constituents was less or their geographical location more remote.

We ought to be thinking about ways to equalize the representation of people who are mathematically under-represented. It is neither logical nor fair for a Member who represents 763,000 people to be limited to the same staff and staff salary allotment as a Member who represents 302,000.

I would prefer a system similar to that which is used in the Senate where the Members are funded depending on the State's population. In this way a House Member with a larger than normal constituency would be provided with additional funds with which to hire adequate staff and provide for the larger than normal office load.

I hope that other Members will join in this dialog with Congressman FROELICH and me.

**UNITED NATIONS, UNITED STATES  
MUST SHARE PORTION OF BLAME  
FOR MAALOT ATTACK**

**HON. BENJAMIN S. ROSENTHAL**

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 15, 1974

Mr. ROSENTHAL. Mr. Speaker, the United Nations Security Council, including the United States, must share a portion of the responsibility for the latest terrorist attack by Arab guerrillas, who held nearly 90 Israeli schoolchildren hostage today at the village of Maalot.

By the end of the day, possibly a dozen or more children were dead and many more were wounded following efforts to free the young hostages.

The terrorist attack may very well have happened anyway, but the guerrillas certainly must have felt encouraged when the Security Council late last month censured Israel for its raid on terrorist bases in Lebanon but purposefully ignored the bloody Palestinian massacre of innocent Israeli civilians at Kiryat Shemona, which prompted the Israeli action.

The United Nations, which has done little to hide its strong anti-Israel bias, once again gave aid and comfort to Israel's enemies. But, for the first time, that action last month had the support of the U.S. Government.

The United States failed to get a reference to the Kiryat Shemona attack inserted in the U.N. resolution, but instead of abstaining on final passage or voting "no," the United States gave its approval.

At that time I pointed out:

This must be viewed as the best news the Arab guerrillas have had since they began their campaign of terror and murder.

Well, it is about time to start sending those terrorists and the governments which house, protect, encourage, and arm them some bad news. The United States—and, indeed, all civilized nations—should not tolerate such behavior, nor should it even consider, as the Nixon administration is, giving economic and even military assistance to those coun-

tries giving aid and comfort to the murderers of innocent Israeli women and children.

I have joined over 250 of my colleagues, led by the majority leader Mr. O'NEILL and the minority leader Mr. RHODES, in introducing the following bipartisan resolution:

**BIPARTISAN RESOLUTION**

Whereas Arab terrorists have threatened the lives of 90 Israeli school children; and

Whereas these cruel and heartless acts only exacerbate tensions in the Middle East at a time when very serious efforts are being made to negotiate a lasting peace; and

Whereas such acts of violence are an affront to human decency and standards of civilized conduct between nations; Now, therefore, be it Resolved, That it is hereby declared to be the sense of the House that—

(1) it most strongly condemns this and all acts of terrorism;

(2) the President and the Secretary of State should and are hereby urged and requested to (a) call upon all governments to condemn this inhuman act of violence against innocent victims; and (b) strongly urge the governments who harbor these groups and individuals to take appropriate action to rid their countries of those who subvert the peace through terrorism and senseless violence.

(3) the President should request the American Ambassador to the United Nations to take appropriate action before that body in order to have introduced a Security Council resolution condemning this brutal act of violence.

**LEGAL LOTTERIES SHOULD HAVE  
USE OF MAILS**

**HON. ANGELO D. RONCALLO**

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 15, 1974

Mr. RONCALLO of New York. Mr. Speaker, under leave to extend my remarks in the RECORD, I include for the benefit of my colleagues a statement which I made to the Claims and Governmental Relations Subcommittee of the House Judiciary Committee in support of H.R. 12443. It introduced this legislation because it is hypocritical to permit legal private and State-run lotteries to exist and then hinder them from carrying out their programs by denying them the use of the mails and broadcast media. State lotteries help keep taxes down; private ones raise funds for charitable purposes. Both of these are lofty objectives which do not deserve the treatment they have received at the Federal level.

I hope that H.R. 12443 will soon be reported to the floor so that every Member can go on record in favor of lower taxes in the several States and lower administrative costs for charitable non-profit organizations. My statement follows:

**STATEMENT OF HON. ANGELO D. RONCALLO**

Mr. Chairman, I appreciate this opportunity to make a brief statement in support of H.R. 12443, a bill to amend Title 18 of the United States Code by exempting lotteries from its gambling provisions. Specifically, the bill would permit the mailing of lottery information and related matter, broadcasting or televising of lottery information, and it

would allow the transportation and advertising of lottery tickets in interstate commerce, but only when the lottery is legal in the state in which it is conducted.

I have made a slight change in language from versions of this legislation introduced earlier by other members. In both proposed sections 1307(b) and 3005(d)(2), I use the term "tickets or any other materials." The insertion of the word "any" should be taken to indicate that promotional matter is to be included in the exemption as well as lottery paraphernalia.

Legal lotteries run by States appear to have survived a shaky start and to be headed now for adoption in many more parts of the United States. Because they are a painless and voluntary method of generating badly needed funds, lotteries are gaining favor with many hard-pressed taxpayers and legislators.

Current Federal restrictions on lotteries prohibit the interstate transportation of tickets or promotional material and bar the use of radio or television for advertising or promotion. So far, despite the record of integrity and honesty established by the states operating lotteries, efforts initiated by Congressional Delegations to seek relief from these Federal roadblocks have remained stalled.

In order for legal state-sponsored or private lotteries to advertise in newspapers or other publications, the advertisement must be removed from editions which are delivered through the mail. Promotional material, such as posters and descriptive literature, cannot be conveyed through the post office. It is unlawful even for states or organizations to notify winners by letter or to pay them prizes directly by mail.

The eight operating states, as a result of this blockade, must go to great lengths to transport material by truck or bus, at heavy cost in time, money and manpower. They must turn to alternate means of advertising in addition to newspapers and outside of the broadcast media—in subways and buses, etc.

I am inclined to feel that Congress is well-advised to eliminate these prohibitions. Simple justice would seem to dictate that legal lotteries should be able to enjoy the same entree to the public marketplace as any other legitimate business. It seems inevitable that this must happen. The achievements of the lotteries in spite of the Federal problems make these restrictions even more regrettable.

Ten years ago New Hampshire started the first State-run lottery of modern times, running into a variety of complications and disappointments, but it has managed to survive. Last year the lottery in New Hampshire, the only State with neither a sales tax nor a broad-based personal income tax, returned almost \$2 million to the State for education. From December of 1964 to December of 1973, the State has received around \$17.6 million.

In 1967, New York launched its version of the lottery, offering bigger and more frequent prizes. New York now averages about \$4 million a month from the lottery and its effort, as of the end of 1973, had yielded some \$243 million for schools.

In January 1971, New Jersey began its lottery and immediately surpassed both of its predecessors in sales, prizes and popularity. Since it began, until December 1973, the State has received close to \$200 million for education.

Pennsylvania, Massachusetts and Connecticut began their lotteries at about the same time in early 1972. All three States got off to a good start, being able to capitalize on the New Jersey method which had been instantly successful. After a year and a half of operation, Pennsylvania had collected over \$80 million for property tax assistance for the elderly; Massachusetts had collected over

\$36 million for cities and towns; and Connecticut had collected over \$25 million for the general fund.

The Michigan lottery started in November 1972, and after six months contributed over \$14 million for the general fund. Maryland's lottery which began in May 1973 had \$3.5 million in the general fund after only 2 months.

Illinois will be beginning a lottery in July of this year and according to the Commission on the Review of the National Policy Toward Gambling some 30 States will have legal lotteries within 2 years. Some foresee the day when almost every State will operate a lottery to raise revenues without raising burdensome taxes.

For several years charitable organizations have depended on raffles and bingo as major sources of funds to carry on worthwhile work from which all society benefits. These are both lotteries, and although legal, are subject to the same restrictions as their state-run cousins.

Many churches and hospitals began their building programs with revenues raised from lotteries and bingos. Numerous fraternal organizations all over the country depend upon this source of revenue to sponsor recreational, rehabilitative, and supportive services for the elderly, disadvantaged and the handicapped.

Various groups working toward these goals reflect the best qualities of American life—unselfish people volunteering their time and effort to help others.

Bingos and lotteries are only vehicles and tools by which the self-sacrificing persons, churches, hospitals and community organizations can help others. I do not feel that it should be the policy of the Federal Government to maintain laws which will make it more difficult for them to carry out their charitable works.

Newspapers and the broadcasting industry are placed in an absurd position. Most papers are trying to serve the public by offering information on all subjects of general interest, but if they attempt to do so for lotteries, they are breaking the law. The answer to this dilemma must come at the Federal level.

Mr. Chairman, I urge that H.R. 12443 be promptly reported so that the House will be able to take badly needed action to remedy this obvious anomaly in our laws and allow the States and private charitable organizations to carry out their programs without undue Federal interference. Thank you.

THE LATE HONORABLE  
CARL DURHAM

HON. O. C. FISHER

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 15, 1974

Mr. FISHER. Mr. Speaker, I share with many of my colleagues the sadness occasioned by the death of Carl Durham of the State of North Carolina. He served with much distinction in this body for 20 years and was universally respected by all who knew him. Always faithful and trustworthy, he never faltered in discharging his duties. His influence and leadership were widely recognized and helped to direct the course of many important legislative decisions.

It was my privilege to serve with Carl Durham on the House Armed Services Committee. There he was a faithful attendant and a knowledgeable force in promoting the cause of an adequate national defense. He provided leadership

and prudence in the solution of many vexing problems.

To me Carl was a valued friend. Affable and friendly, he was forever attentive and helpful when his advice and judgment were needed. His record was indeed outstanding.

I extend to his survivors my deepest sympathy in their bereavement.

A PECULIAR CONGRESSIONAL DISEASE: PILE-ITUS

HON. ANCHER NELSEN

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 15, 1974

Mr. NELSEN. Mr. Speaker, a peculiar, incurable disease seems to have grabbed control of the Congress. It is hard to find a proper name for it, but I would suggest that it be called pile-itus. Pile-itus is indicated by the continual feverish effort to pile one layer of Government regulators on top of another, presumably to do the work that existing laws should already permit to be done.

Symptomatic of this malady is the on-going effort to enact a questionable version of a Consumer Protection Agency, a version I have warned could well result in the creation of another OSHA. As Anthony Harrigan noted in an editorial appearing in the Austin, Minn., Daily Herald the other day:

Many citizens are convinced that a \$10 million-a-year Consumer Protection Agency would impose its subjective outlook on every administrative procedure and create endless legal action. In short, the agency would be an advocacy force harassing already over-regulated private business.

In my judgment, private enterprise already has its hands full trying to deal with all the rules and regulations being imposed by existing governmental agencies and departments. Piling on another layer of Federal regulators to regulate the regulators might just prove the last straw for thousands of small businesses struggling mightily to keep afloat under the crushing bureaucratic weight.

I include the complete text of the Harrigan editorial at this point in my remarks:

NADER'S PET BILL

Ralph Nader may get his New Year's wish—the enactment of the so-called Consumer Protection Agency bill. Last January he said that this was his No. 1 wish for the New Year. And many officeholders are determined to oblige him. Indeed Sen. Ernest F. Hollings (D-S.C.) writes in a letter to constituents opposing the bill: "I believe it would be a healthy thing to institutionalize Ralph Nader."

Not everyone will agree with Hollings. Many citizens are convinced that a \$10 million-a-year Consumer Protection Agency would impose its subjective outlook on every administrative procedure and create endless legal action. In short, the agency would be an advocacy force harassing already over-regulated private business.

Recently, I received a letter from a small manufacturer on the West Coast which reveals the justifiable concerns of business. This businessman, writing to his congressman, said the following:

"Our apprehensions are not at all based on the fact that an agency is being set up to protect the consumer. As a matter of fact, considering the amount of money this company spends on perfecting and insuring the quality of our products, I would be delighted to have more and more people look closely at our products. My apprehension is that the bill includes a provision that would allow this new agency to intervene in, and possibly reverse, the rulings of existing agencies which currently have jurisdiction over business activities.

"As you are no doubt aware, there is already a great deal of correspondence and telephone contact necessary with the various existing government agencies, to establish just how the federal government wishes to conduct our affairs. It is often only after much probing on our part, that we can determine precisely what we are expected to do.

"It is not at all unusual to have contradictory opinions stated by the same agency on successive days, and it is occasionally virtually impossible to get them to commit themselves in writing, so that we can conduct our business in an agreed upon manner. However, this is the existing state of affairs, and we do our best to find out what is required and to comply.

"Now, however, it is proposed that a new agency, acting independently, can challenge agreed upon procedures (agreed upon by our company and a government agency) upon which we may have been acting for a considerable period of time. This is similar to summarily imposing the rules of hockey on a baseball game halfway through the game, and expecting everyone to adapt to the new rules instantaneously, to continue playing, and hopefully to win the game.

"We are extremely anxious to be in compliance with government regulations, but government regulations which can be obviated at any time by a separate agency which had no part in making up the initial rules, sends cold chills up our spines."

This small manufacturer expresses the concern of countless other businessmen who create the products from which the wealth of this nation is derived. It is tragic that Congress worships at Ralph Nader's shrine and pays so little heed to the people who manufacture needed goods and create wealth for America. The Consumer Protection Agency bill (HR 13163) can only hinder the U.S. as a manufacturing nation. (Anthony Harrigan).

INDIANA JAYCEES SPONSOR OLYMPICS FOR EXCEPTIONAL CHILDREN

HON. JOHN P. MURTHA

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 15, 1974

Mr. MURTHA. Mr. Speaker, I had the honor and privilege of participating in the Olympics program held at the Indiana University of Pennsylvania on May 11, 1974, for exceptional children in and around the 12th Congressional District.

The program was sponsored by the Joseph P. Kennedy, Jr. Foundation, IUP Chapter of the Council for Exceptional Children, and the Indiana, Pa., Jaycees.

I would like to commend the Indiana Jaycees for all of the efforts put into the organizing of this worthwhile program. Every detail of the athletic program was professionally administered, and the dedication of the men in the Indiana

Jaycees as well as the students from the Indiana University of Pennsylvania was readily apparent.

The enthusiasm of the participants and the dedication of those sponsoring this great event formed a catalyst for one of the most inspiring sports events which I have ever attended.

#### HANDY DAN'S "OPERATION CONSERVATION"

### HON. THOMAS M. REES

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 15, 1974

Mr. REES. Mr. Speaker, the energy crisis has had a marked effect on every citizen of our State.

One business enterprise headquartered in my State has moved into the forefront of the effort to inform the public of the crisis and help them to overcome it. That company is Handy Dan Home Improvement Centers, Inc. which operates Angel's Do-It-Yourself Centers in northern and southern California, as well as in other parts of the country.

Under the direction of its president, Bernard Marcus, Handy Dan has launched "Operation Conservation" designed to help the consumer fight the battle of reduced energy. This program consists of an all-out educational program through use of the company's advertising media, in-store training sessions, and brochures.

Handy Dan and Angels advertising departments are engaging in a variety of activities to support the company's operation conservation program. Special energy advertising supplements have been spearheaded by Handy Dan people in newspapers circulated in the areas of its stores. In addition to taking energy-oriented ads in these sections, Handy Dan has supplied articles and pictures for the news sections discussing the crisis and giving tips on how to help the country and each other at this time of emergency.

Utilizing the theme, "Conserving Energy Is Everybody's Business," special signing was created for the stores with further tips on conserving energy.

Tips include: "One 100-watt bulb uses 20 percent less energy than two 50-watt bulbs, the average family wastes 15 percent of their electricity by leaving unnecessary lights and appliances on, and fluorescent lighting is 7 times as effective as incandescent."

Every newspaper ad carries a conservation tip. These ads appear in major newspapers in every large city that has a Handy Dan or Angels store.

In addition, printed materials, called "energy savers", are handed out in each store describing ways to conserve with plumbing, lumber and building materials, paints, electrical, automobiles, and so forth.

The company has ordered special measures in each of its stores and offices to conserve energy, such as removing every fourth ceiling light and turning off outdoor advertising pylon lights at

9:30 p.m. instead of leaving them on all night.

An appeal has been made to others in the industry and to other businesses associated with Handy Dan and Angels, as well as neighboring merchants, to follow the lead of this company.

Handy Dan officials have offered to show other businesses how they can cooperate and overcome the energy crisis.

Mr. Marcus has stressed his belief in our ability to solve the energy crisis through such statements to his employees as:

The American people have been put to the test time and time again and in each instance the strength and stability of our form of government and way of life has proven equal to the task.

I know Congress joins me in paying special tribute to this fine company. Its outstanding public-spirited officers are to be commended for their action which benefits all of us.

#### DICKEY-LINCOLN: THREE CHANNEL 5 EDITORIALS CONTRIBUTE TO THE DIALOG

### HON. JAMES C. CLEVELAND

OF NEW HAMPSHIRE

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 15, 1974

Mr. CLEVELAND. Mr. Speaker, recently, there has been a renewed interest in construction of the Dickey-Lincoln School hydroelectric project, which would consist of two dams on the St. John River near the Maine-Canada border about 460 miles from Boston.

Authorization of \$277 million for planning and construction of this project was contained in the Flood Control Act of 1965. An initial study of the Dickey-Lincoln Dam showed, however, that the cost-benefit ratio was only marginally in its favor. Subsequently, therefore, a number of votes took place on the House floor to block the appropriation of funds for further planning and construction of the dam. Because of environmental considerations as well as the economic feasibility factor, I voted in the past to oppose these appropriations for Dickey-Lincoln.

Dickey-Lincoln has of late been the focus of much attention by the media, with proponents of the project stressing that the need for alternatives to use of imported oil, such as hydroelectric power, precludes further opposition.

I do agree that in view of the current energy situation, a fresh and thorough look at Dickey-Lincoln is in order. I do not mean to suggest, however, that we should proceed hastily with funds for construction without first considering the current economic figures, environmental impact, and the important factor of whether the kind of power generated by Dickey-Lincoln will in fact adequately serve the needs of New England in the future. To embark on such an expensive—at least \$500 million—and controversial project without first considering such facts would indeed be a misguided approach.

Just recently in the RECORD my friend and colleague, Congressman SILVIO CONTE, inserted a background paper which raises some questions about this project prepared by the Friends of the St. John—May 9, 1974, pages E2915-6. Congressman CONTE has stated he was doing this to help set the record straight. I agree that all factors involved should be thoroughly discussed. Therefore, in an effort to contribute to the dialog, I submit the following three editorials from WCVB-TV in Boston, which represent one point of view:

#### THE DICKEY-LINCOLN HYDROELECTRIC PROJECT: SHOULD WE BUILD IT?—PART 1

The wild beauty of this river is deceptive, for it is near this spot—in far northern Maine—a place never seen by the vast majority of New Englanders—that some people wish to build the region's first hydroelectric power project.

Its name is Dickey-Lincoln, and it's been embroiled in controversy since Congress first approved the project in 1965. But money to build Dickey-Lincoln was *not* approved. And the issue has boiled up in Washington again this spring.

Thanks to the energy crisis and the high cost of oil, Dickey-Lincoln has a new lease on life. Its supporters argue that the power in this magnificent, free-flowing river, the Saint John, is desperately necessary to New England.

We do not agree. If you'll excuse the pun, Dickey-Lincoln can't "hold water" on economic or environmental grounds. And we hope to prove that to you in our editorials this week.

When completed, Dickey-Lincoln would have cost at least \$800 million but will supply only 1 percent or less of New England's electricity—electricity, moreover, that will be sold only to the 8 percent of consumers served by publicly owned electric systems. Ninety-two percent of New Englanders would get nothing out of Dickey-Lincoln.

Further, this project will destroy a superb and irreplaceable wilderness area whose recreational and scenic value far exceeds its worth as an energy source.

Dickey-Lincoln, if built, would be a tragic mistake and one more example of this nation's bungled energy policies. Congress should reject Dickey-Lincoln this year and forever.

We'll be back tomorrow with more on the economic aspects of this project.

#### THE DICKEY-LINCOLN HYDROELECTRIC PROJECT: SHOULD IT BE BUILT?—PART 2

We're back today near the site in far northern Maine of the proposed Dickey-Lincoln hydroelectric power project. In yesterday's editorial, we said construction of Dickey-Lincoln would be a tragic economic and environmental mistake.

Let's look at the economics of this project, which the Army Corps of Engineers now says will cost close to \$800 million, or possibly more.

If Dickey-Lincoln is completed by 1980 it'll produce 1.2 billion kilowatts of electricity per year, an amount equal to only 1 percent of New England's total supply. By 1990, Dickey-Lincoln power will be only 1/2 percent of total supply.

According to the original Army Corps of Engineers' report, Dickey-Lincoln would produce annual power benefits equal to \$44 million. Yet, many of this project's key supporters don't realize that this is not a true figure. New information released by the Corps shows that power benefits will actually be only \$4 1/2 million, or only about two-tenths of 1 percent of New England's total electricity bill.

These facts explode the principal argument of Dickey-Lincoln supporters, which is that the project will serve as a yardstick for the cost of electricity in New England and force private utilities to lower their rates. Nonsense. Dickey-Lincoln is too small to be a yard-stick for anything.

Moreover, and here's another misunderstood aspect, Dickey's power will be sold by the government only to publicly owned electric systems. Since private utilities serve 92 percent of New England's electricity consumers, we'd be spending nearly one billion dollars to provide minimal benefits to a fraction of New England residents.

Tomorrow, we'll have more to say about the environmental effects of Dickey-Lincoln.

#### THE DICKEY-LINCOLN HYDROELECTRIC PROJECT: SHOULD WE BUILD IT?—PART 3

Most of those who support the Dickey-Lincoln hydroelectric power project have never seen the beauty its construction would forever eliminate. We came to the Saint John River in far northern Maine, so that we could better understand what this controversy is all about.

Dickey-Lincoln's six dams and two reservoirs would eliminate 75 miles of this pure and free-flowing river and flood 150 square miles of Maine's deepest woods. The project would also submerge part of the spectacular Allagash River and obliterate 90 miles of the Big Black and Little Black Rivers, as well as 80 miles of other rivers and streams.

Dickey-Lincoln would ruin some of the best hunting, canoeing, camping and trout fishing in the Eastern United States. The acreage needed for the reservoir at Dickey Hamlet alone exceeds the total land required for all new power plants and high-voltage lines in New England between now and 1990.

Nine new nuclear power plants will be completed in New England by the early 1980s, with 14 times as much total power as Dickey-Lincoln can produce. Solar power is also rapidly developing. And the ethic of conservation, if pursued, will completely eliminate any marginal need New England may have for Dickey-Lincoln power.

We don't need this billion dollar white elephant. It would be nothing short of insanity to destroy this priceless natural resource for such a minuscule energy gain.

We say no to Dickey-Lincoln. Please join us in getting that message where it counts—to your Congressman in Washington. And please, do it today.

#### THE POLITICS OF IMPEACHMENT

### HON. JEROME R. WALDIE

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 15, 1974

Mr. WALDIE. Mr. Speaker, this month's issue of the American Bar Association Journal contains an excellent article by Albert Broderick entitled "The Politics of Impeachment." In the belief that it will contribute to our understanding of the process of impeachment, I insert it be reprinted in the RECORD.

The article follows:

#### THE POLITICS OF IMPEACHMENT

(By Albert Broderick)

In a marvelous way the impeachment process may be seen as a microcosm of our entire system of constitutional representative government, and in no way can it be studied as simply a "question of law." The parameters, of course, are set by law. But the working out of decisions—impeach or not,

convict or not—are strikingly interdisciplinary, and the input is as much from history, political science, ethics and morals, and perhaps even psychology and statistics as from law. We must free ourselves from the tyranny of legal mystique when we consider impeachment, particularly impeachment of a president.

Until recently it was undisputed that the action of the House of Representatives and the Senate in the impeachment process—the House as accuser and prosecutor and the Senate as trier and judgment pronouncer—is final and unreviewable. However, Raoul Berger in his 1972 book, *Impeachment: The Constitutional Problems*, argues for the existence of judicial review. I agree with the accepted view that there is no official revision of congressional action in the impeachment process in the courts or elsewhere.

On this assumption, one may understand Vice President Ford's statement in 1970, when he was House minority leader, that an "impeachable offense is whatever a majority of the House of Representatives considers it to be at a given moment in history; conviction results from whatever offense or offenses two thirds of the [Senate] considers to be sufficiently serious to require removal of the accused from office." That statement answers the question as to power, but it needs amplification to tell us what the Congress may "rightly" do, or what would be a wise or appropriate exercise of its impeachment power.

That statement also partly answers the question of who decides what is an impeachable offense. It seems to concede the relevance of precedents but finds impeachment precedents unhelpful as guides. It stresses the contemporaneous situation—"at a given moment in history." But there is a vacuum when the further question is asked: What factors are relevant to this "consideration" by the House or Senate? Assuming that the "legal" standards of "impeachable offenses" are met, what political factors, considering "political" in its broad rather than partisan sense, bear on the decisions of individual members, the appropriate committees, or the houses of Congress whether to impeach and to convict when the official in question is the president of the United States? To determine the "political" essence of the question of whether there are reasons for impeachment requires citizen reaction in a unique way.

I believe that the design of the constitutional impeachment process with respect to the president implies citizens input to get in motion, particularly when the offense or offenses charged are to come under the heading of "other high crimes and misdemeanors." Certainly in a day like this, when the relevant data become public property so swiftly through modern communications media, the House of Representatives would be justified in holding back from initiating the impeachment process until there was ample indication of citizen concern. Indeed, this appears to have happened in the current movement regarding the impeachment of President Nixon. The 1973-74 investigation by the House Judiciary Committee, on reference by the Speaker of the House, was triggered by the unprecedented public response to the events of the weekend of October 20-21, 1973, when the president caused the discharge of the Watergate special prosecutor.

The dynamics of the process, as it has developed historically, include the following steps: (1) introduction of a resolution for impeachment and reference to the House Judiciary Committee for recommendation to the whole House; (2) vote by the House to impeach or not; (3) trial by the Senate in the event of impeachment by the House. Not until very late in the Constitutional Convention of 1787 was it finally determined that the Senate should be the court of impeachment. This conclusion was reached in the face of continuing argument by Madison

and others that this would subject the president to the possibility of removal by a hostile and partisan legislature, a prediction realized in the impeachment of President Johnson in 1868. Madison pressed for a trial before the Supreme Court.

#### FOUNDERS OPTED FOR A "POLITICAL TRIAL"

While there was recognition by the founders, both in the convention and later, that the Senate forum subjected a president to the possibility of political reprisal, the choice was deliberately made that the forum be political. The two-thirds vote was adopted to limit the likelihood of a partisan decision. This is not to suggest that the founders intended that a president or any other official should be impeached or convicted for less than "high crimes and misdemeanors." The president should have fair treatment, but no protections are enshrined in the constitutional provisions other than to put senators under special oath. The implementation of fairness was left to the legislative bodies, and in practice they have had good days and bad.

The founders, in short, opted for a "political trial," not for a judicial one. It is clearer that they did so from the misgivings that were stressed en route to their final determination. In this "political" climate elected representatives of localities would be acting on the fate of an elected representative of the people. But they are representatives, and as such must be understood as supposedly responsive.

There is no constitutional function assigned to the House Judiciary Committee. It acts solely as an appointed committee of the House to whom has been delegated the constitutional decision of impeachment. But in fact the work of the committee has been critical in impeachments. Rarely has the House rejected its recommendation of whether to impeach or not to impeach. Two political factors of the constitutional impeachment design compete to influence the conduct of its work. On the one hand, fairness to one accused would justify an *in camera* element in some of its preliminary investigation. On the other hand, the fact that public reaction has a place in the determination of whether to impeach means that some opportunity should be given the citizenry to react to the factual data the committee accumulates.

Of course, the feature of citizen input could be achieved by the Judiciary Committee's making public its report before the House votes the impeachment resolution up or down. Since the Archbald impeachment in 1912, the House practice has been for the articles of impeachment, the specific charges against the "respondent," to accompany the committee's resolution to impeach. Before that case the House practice was to adopt the impeachment resolution and then to authorize either the Judiciary Committee or a special committee to prepare the articles of impeachment.

It has been suggested that the role of the House is comparable to that of the grand jury in the criminal process—that it should impeach a charged official if there is "probable cause" to believe that the official has committed an impeachable offense. Although this proposition has been accepted implicitly in some past impeachments, it is a faulty interpretation of the constitutional design. By separating impeachment from the criminal process, the founders specifically removed it from the force of the English criminal precedents. It is true that the vote of impeachment by the House is only the preliminary step and that it will lead to removal only if the Senate so votes after "trial." It is also true that the House proceedings, like those of a grand jury, sometimes have considered evidence on only one side of the case. There is no requirement, and perhaps sometimes no opportunity, for the accused official to present his side in the House proceedings.

In fact, however, there generally have been members of the House friendly to the official under investigation, and they have brought favorable evidence to the attention of the House.

#### HOUSE DOESN'T ACT AS GRAND JURY

The context in which the impeachment provisions were adopted by the convention suggests that, while the House may certainly impeach if the evidence before it indicates to its satisfaction that treason, bribery, or other high crimes and misdemeanors have been committed, it is treating too lightly its independent legal and political responsibility to say that it may vote impeachment using a one-sided criminal law model of grand jury practice.

The House vote of impeachment connotes the responsible view of that body that evidence before it constitutes the offenses of treason, bribery, or other high crimes and misdemeanors, and if this evidence is not answered to the satisfaction of the Senate, that body may invoke the constitutional consequence of removal from office. This independent responsibility of the House fairly implies both a legal and a political judgment. The legal judgment is that the evidence before it shows an impeachable offense in the constitutional sense. The political judgment is that some "high crime" or "high misdemeanor" is sufficiently serious to justify impeachment.

#### POLITICAL FACTORS CAN JUSTIFY A VOTE AGAINST

There are legitimate political factors that might justify a vote against impeachment in some cases, even when there is adequate evidence to meet the constitutional standard of impeachable offenses. The overarching design of the founders in fashioning a constitutional provision for impeachment of a president was the national need for removal of a chief executive whose continued presence in office was disadvantageous to the nation. This consideration was sufficient in the convention to withstand arguments that impeachment was not necessary as long as the president did not serve for life (Farrand, II:68). The mere protection of voting him out of office was not enough.

So strongly held was this view of the need for impeachment that the founders were willing to assign the impeachment role to political bodies, despite Madison's continued urging that the Supreme Court should be the court for trial of an impeached president (Farrand, I:232; II:42 551). While a concern for fair treatment and protection of a president against partisan legislative removal was expressed, the only constitutional limitations on the process implementing these concerns were the special oath to be given the Senate members prior to trial and the requirement of a two-thirds vote in the Senate for conviction.

The following are among the political factors that might justify the House to decline to impeach:

1. The availability of a less drastic means to achieve removal. The stage of the presidential term in which the impeachment process matures makes consideration of the shortness of the remaining presidential term important. The consequences of continuing an incumbent in office for a brief time may be balanced against the disruption caused by an impeachment trial. The likelihood of resignation in the absence of impeachment has been considered a possibly relevant factor. There is some danger, however, that giving credit and force to the resignation possibility would set an unhealthy precedent for partisan pressures against the presidency in the future.

2. The consequences of the removal of the president at a particular time. The concept of national need entails consideration of the consequences of the removal of an in-

cumbent president in terms of the quality and public receptivity of his successor and of the effect of removal on the conduct of national affairs, foreign relations, and the implementation of the national will expressed in his election. These factors would be balanced against the incumbent's continued ability to govern in light of present citizen and foreign reaction.

3. Consideration of the constitutional "high crimes" or "high misdemeanors" in light of the positive qualities the incumbent may still effectively exert in the public interest. This factor is somewhat duplicative of aspects of the previous one but perhaps merits independent evaluation, particularly if the constitutional offenses are borderline.

4. Even in the absence of other means to achieve removal, the fact that impeachment of a president was conceived as an emergency measure gives political counsel that it should not be employed in borderline situations. The vigorous debate on the need for an impeachment provision as a "bridle" on the chief executive (to use Professor Berger's word) ended with the adoption of one. But it was not without cautions as to the partisan use to which it might be put. The lessons of the impeachment of Andrew Johnson should not be forgotten, and the use of impeachment in a borderline situation could do much to destroy the effectiveness of the presidency as a creative agency of popular government.

Without passing on the merits of any of these considerations in the present political context, I submit that all of them are fairly subject to consideration as legitimate political factors. There may be other political considerations tilting toward impeachment that might legitimately bear on a decision—loss of ability to give governmental leadership, loss of credibility among the electorate, loss of capacity to deal with foreign relations from a position of strength.

#### "INDIGNATION MAY SECURE A CONVICTION"

But other factors might arise from the ethical or moral implications of declining to impeach on the basis of certain evidence: What effects would nonimpeachment have on the future conduct of the presidential office, or derivatively, other offices of government? What impact would nonimpeachment have on professed national ideals? To what extent does nonimpeachment imply approval of the conduct shown by the evidence at hand? What effect on private morals? What likelihood of inciting cynicism among present and future generations? These, too, may be political factors. If they are not, perhaps the evidence in a given case may not be so deviant from current standards in the nation as to warrant invocation of the emergency measure of impeachment of the elected chief executive.

Astute observers of our constitutional processes have stressed the relation of citizen input to decision making in the impeachment process. Bryce in *The American Commonwealth* characterized impeachment: "It is like a hundred-ton gun which needs complex machinery to bring it into position, an enormous charge of powder to fire it, and a large mark to aim at." And Woodrow Wilson in *Congressional Government* noted that the impeachment processes "required something like passion to set them agoing; and nothing short of the grossest offense against the plain law of the land will suffice to give them speed and effectiveness. Indignation so great as to overcome party interest may secure a conviction; nothing else can."

Bryce and Wilson were writing of the actual operation rather than the conscious design of impeachment. But at least some founders—for instance, Luther Martin (Farrand, IV:219)—predicted that impeachment would function sluggishly. It seems reasonable that legislators called to make impeachment decisions should react, at least in

borderline cases, only when citizen reaction to impeachment evidence, adequate in a constitutional sense, clearly calls for impeachment of a president. Reluctance by a member of the House to vote for a marginal impeachment on grounds of citizen apathy is not, I believe, "petty politics" but a legitimate fulfillment of his representative role in the impeachment process. Gross violations apart, this is how the process is supposed to work.

The House member called upon to vote impeachment up or down may properly make his judgment based on factors I have suggested, and he legitimately (apart from special knowledge) may take his cue largely from citizen reaction, particularly today when he may assume that the news media have produced a well-informed citizen. There are, however, political factors that all identify as illegitimate: the manipulation of an impeachment proceeding to make an opposing party vulnerable at election time; the refusal to impeach because the opposing party may be weaker with the incumbent in office rather than out; the refusal to impeach in the face of strong evidence because of damage to the political party; the citing of the absence of legal (constitutional) grounds for impeachment, when they are obviously there, to screen a partisan political decision; the manufacture of conscience reasons to screen raw partisan ones.

#### CITIZENS HAVE THE CENTRAL POLITICAL ROLE . . .

All this underscores the central political role that citizens have in the impeachment of a president and the consequences of their declining to participate. There is a role for education, particularly in avoiding the continuing confusion of the "legal" and the "political," all the time keeping full respect for the legitimate "political" functioning of our governmental system.

If there is no impeachment of a president by the House, there is, of course, no Senate trial. But the confusion of the largely "political" trial in the Senate with a criminal proceeding—an aspect the founders specifically expunged—and the rampant partisan unfairness of the Johnson impeachment have obscured the legitimate political considerations that may be invoked by the Senate, particularly in a borderline case.

The chief justice presides at the proceedings, there are rules for the conduct of the trial adopted at its outset, and each senator takes a special oath of fairness. But after weighing the evidence fairly and determining the facts, the Senate as a court is limited only by the constitutional requirement that the ground of its action be treason, bribery or other high crimes and misdemeanors. The range of these grounds is broad, but no less than the House, the Senate is entitled to consider the same legitimate political factors. These include the degree of citizen urgency that has a bearing on the ability to govern, views with respect to the impact on national moral values, and, I believe, even an estimated citizen reaction at the polls to their performance at the trial. These political factors, of course, cannot justify a conviction if offenses of constitutional proportion have not been committed, but they may make "serious" some offenses that a milder citizen reaction might justify overlooking. For the impeachment mechanism was contrived to satisfy a national need, and when the people do not bespeak that need, their representatives ordinarily are under no obligation to convict.

The citizen's role in voicing his views within the political framework of impeachment of a president is as significant as in exercising his right to vote. Once the constitutional parameters have been met by a body of evidence before either the House in impeachment or the Senate in trial, these political factors reach right into the decision to impeach or not to impeach, to convict or not to convict.

The citizen's role entitles him to as much information about the pending proceedings as reasonable fairness to the beleaguered president will allow. The citizen's responsibility requires him to make his views known to the proper source at the proper time. He may withhold rendering his verdict until subsequent elections. Perhaps members of Congress are entitled to interpret this lack of response as freeing their hand. And they may fairly assess, perhaps at their peril, that their failure to accord with their constituents' political views on the impeachment will bring no election sanction because the citizen is (or then will be) more interested in other issues: jobs, peace, or energy comfort.

It is consistent with the constitutional design that, within the broad constitutional limits, public response or the lack of it ordinarily should be persuasive, if not conclusive, on the House in an impeachment decision. There is a general unawareness of this key role of the public. Members of Congress recognize as a fact of life that in general they must listen to constituents. But in impeachment matters the connotation sometimes comes through that this listening is somehow "dirty politics." It is politics, but not on the seamy side, unless it lapses into raw partisan advantage without regard for the facts.

#### ... AND THEY MUST KNOW THIS FACT

Given the existence of a crucial citizen role in the impeachment decision, certain consequences follow irresistibly:

1. There is, first of all, a need that citizens be educated to this very fact—that they have this vital function to perform and that they are responsible for whatever decision is made either as a result of their action or inaction.

2. As much information as fairness permits as to the specific situation at hand should be made available to citizens so that they may exercise their important function knowledgeably. This means information should be made known by the House Judiciary Committee engaged in the investigation and later by the full House when it considers the report. This means information and evidence as to the charges made and the credible evidence in support of and against the charges. The president's response should be expected at this stage and should be fully available. Just as he would not ignore damaging charges in an election campaign, so he should not stand back and withhold his response until a Senate trial.

3. There is need for full opportunity for public debate. Here the responsibility of the communications media extends to offering a generous forum for diverse views, arguments, and the weighing of relevant factors beyond sheer advocacy for one position or the other.

4. The public should give substantial response to their representatives in Congress at each stage of consideration of the impeachment decision. There is no accepted dogma as to what form this response must take. The ordinary means of between-election communication are appropriate—mail, telegrams, visits, responsible group action. It is no coincidence that the reference of the Nixon impeachment resolutions to the House Judiciary Committee followed almost immediately on the response to the orchestrated events of the "Saturday night massacre." The responsible polling organizations have a contribution to make, although careful thought must be given to the formulation and methods used in translating their input into a decision.

5. One question remains: What quantum of public support for impeachment of a president should be taken as adequate? The question should be considered from the national and the congressional district aspect. The Constitution provides that the simple majority of one vote in the electoral college is sufficient to elect a president. But votes are

in practice compiled with each state voting as a unit for the candidate who wins the popular vote, regardless of the plurality. A measure of a national consensus adequate for impeachment could more reasonably be keyed to the actual national consensus average in presidential elections. In the last seven presidential elections the successful candidate received the following percentages of the vote: 1972, 61.7; 1968, 43.6; 1964, 61; 1960, 50; 1956, 57.8; 1952, 55.4; 1948, 49.8. The elected president received an average of 54.2 per cent of the vote in these seven elections. If the average is computed on the basis of the last six elections (omitting the close Truman election of 1948), it is 54.9. This same range persists when elections are examined back to 1900 (1900-1972 average: 55.2 per cent).

#### EXORCISING THE MYTHS ABOUT IMPEACHMENT

Let us lay to rest several enervating myths about impeachment: that an indictable crime is required to constitute an impeachable offense; that citizens cannot read pertinent constitutional language and clear passages from the convention and make their own judgments; that grounds for impeachment are exclusively a legal and not a political question; that the citizen's role in impeachment is to sit back and let "experts" and the members of Congress make the impeachment decision without their intervention; that impeachment is a criminal proceeding in which the House's function is to act as a grand jury and consider impeachment as in the nature of an indictment.

Of all myths, the last is the most difficult, but the most necessary, to smother. So long as it persists against all the constitutional language and history we have seen, emphasis will be put on the secrecy of House proceedings. This flies squarely in the face of the political aspect of impeachment and the need to share data with the citizens so that they may play their proper role. Simple fairness may argue in favor of the Judiciary Committee's proceedings being conducted with circumspection until evidence develops that meets the constitutional minimum. When that point is reached, the legal inquiry is complete. Any screen then should be withdrawn.

No more specific definition of impeachable offenses is needed than history has furnished, but there may still be doubt whether impeachment is politically appropriate. To answer this political question the citizen must be informed, so that he will have a basis for the political judgment he is entitled to make.

#### SOCIAL ADVISERS IN PLACE OF ECONOMIC ADVISERS

### HON. RAY J. MADDEN

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 15, 1974

Mr. MADDEN. Mr. Speaker, today's Chicago Tribune quotes Mayor Gordon Hatcher, of Gary, Ind., as advocating that President Nixon create a Council of Social Advisers to study and recommend programs and legislation to aid the poor and unemployed in urban areas.

The present Council of Economic Advisers has failed to curb or conquer the fabulous inflation and high cost of living. The mayor's recommendation should be followed:

HATCHER PROPOSAL: U.S. COUNCIL URGED FOR URBAN POOR

"The most important new scarcity for the residents of central cities today is not gaso-

line, and it's not nuclear power, and it's not basic brick, and it's not trashy plastic products," said Mayor Richard Hatcher of Gary yesterday.

"The most important scarcity is a shortage of concern for the lives led by millions of poor and near-poor people in modern, megapolitan America," the mayor told the American Society of Planning Officials in a conference in the Palmer House.

Social injustice, economic and social discrimination, and lack of concern for the poor still impose a burden on society and can undermine attempts to improve urban America, he said.

Mayor Hatcher asked the Nixon administration to establish a council of social advisers similar to the President's Council of Economic Advisers. It would be, he said, "a cabinet of ombudsmen for poor people, for black families, for Latin families, and for other minority Americans."

The social cabinet would consist of people of independent spirit, said Hatcher. "They would have to be in a position where what they said to the President was not necessarily what the President wanted to hear."

He named Floyd Hyde, former undersecretary of the Department of Housing and Urban Development, as a candidate for the new post.

Using his own city of Gary as an example, Hatcher said it is "a handy case study of original urban sin" in which "sins of omission and commission were committed that have hobbled the development of the city ever since."

Early housing in Gary, he said, was built for the wealthy. He described housing eventually built by United States Steel Corp. for workers as "double dry goods boxes" which became slums.

MINNARD H. JONES (1923-1974)

### HON. RON DE LUGO

OF THE VIRGIN ISLANDS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 15, 1974

Mr. DE LUGO. Mr. Speaker, I wish to memorialize a highly respected Crucian and personal friend who recently passed away. Minnard H. Jones, who moved to the Virgin Islands in 1953, committed his professional and social lives for the benefit of the St. Croix community.

Mr. Jones began his career in 1953 as a teacher of vocational education at St. Croix High School. He eventually advanced to the post of assistant director of vocational education for the Virgin Islands. Many young men can thank Minnard Jones for the guidance and patience he provided during their decisive and turbulent teenage years. The Department of Education can also be thankful for his constructive contributions to the structure of vocational education programs in the Virgin Islands.

But Minnard will be most affectionately remembered as "Jonesey," organizer of the "Gentlemen of Jones." This social group sponsored activities to raise funds for local charities.

Mr. Jones constantly exuded an inspirational, aggressive love for life. For him, everything had to be done to its fullest, whether it was teaching a young student or cavorting with the "Gents." This personal strength was evident to the end of his 4-year illness. He was, as always, quick with a smile, firm with a handshake, and warm from his heart.

I respectfully submit the following comments on Mr. Minnard H. Jones:

[From the St. Croix Avis, Mar. 2, 1974]

FOUNDER "GENTLEMEN OF JONES" PASSES  
(By Fred Clarke)

"Man, when I see a fish walking down Fifth Avenue, then I'll learn how to swim. God decides and he gave me legs and not flippers." On Thursday, at the Charles Harwood Memorial Hospital in Christiansted, God decided and Minnard H. Jones, known to two generations of Virgin Islanders as "Jonesey," died.

Well-known as a teacher, a bon-vivant, a businessman, a leader in charitable causes, a helping hand, "Jonesey" succumbed following an illness of almost four years. Until the last two months, he was still the fast man with the grip, the first guy with the smile, the last person to sell the rest of the world short. To "Jonesey" there was nothing but good to be found and "there's so much work to do before I ever buy the farm."

Minnard H. Jones was born on Dec. 11, 1923, in Atlanta, Ga. In high school he became enamored of music and he continued this sideline during his days at Hampton Institute. Later he was to play with some of the outstanding bands of the "big band" era. An accident ended his musical career and "Jonesey" returned to a teaching career.

He came to Christiansted in September 1953 as a teacher at the St. Croix High School. He was in charge of the vocational education department until illness forced his retirement.

In 1953 "Jonesey" also opened a bar on Strand Street in Christiansted and from that bar evolved the "Gentlemen of Jones." Included in its membership were men who were to become leaders of Virgin Islands society. One of the original members was a young attorney who today is Chief Judge Almeric Christian of the V.I. District Court.

The "Gentlemen of Jones" had fun—but all of their fun was aimed at raising funds for charity. There were baseball games, fishing trips, fish fries, get-togethers. And at the head of the table, the person with the brightest smile, the fastest retort, the warmest heart. He once said he founded the "Gentlemen of Jones" out of desperation. "All these guys were coming into the bar and putting everything on the tab. Money wasn't too easy come by in those days. So, one day, I decided to start a club and everybody who had a tab became a member. At least, that way, we could collect a membership fee."

OBITUARY

Minnard H. Jones, former Director of Vocational Education passed away Friday, February 28, 1974, at the Charles Harwood Hospital. His life was beautiful and exemplary. During his long productive years in the Virgin Islands in business and education, he was able to establish one of the best vocational systems in the Caribbean.

He was a member of the American Legion, American Vocational Education Association, and the Virgin Islands Vocational Education Association, and the founder of the Gentlemen of Jones.

He was a lover of beautiful things and was a spark of light in every group that he was a part of.

His early childhood education was received in Atlanta, Georgia. He was a graduate of Atlanta University Laboratory High School and Hampton Institute.

Mr. Jones is survived by his wife, Mrs. Julia Hansen Jones; two daughters, Mrs. Jennifer Jones Stone of Detroit, and Miss Judith Jones, a student at Spelman College; a son, Minnard Jr.; two brothers, Eddie Frank and Robert Henry Jones of Detroit and a host of nieces, a nephew, friends and other relatives.

EDITORIAL ON NIXON

HON. ROBERT H. MICHEL

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 15, 1974

Mr. MICHEL. Mr. Speaker, there has been a good deal of comment in the Washington media as well as the national media with respect to editorials appearing in some of the larger newspapers around the country calling for the President to resign.

An editorial appearing in the May 10, 1974, edition of the Peoria Journal Star has some specific comment regarding the Chicago Tribune editorial and I insert it in the RECORD at this point:

TRIB THROWS NIXON TO WOLVES

(By C. L. Dancy)

It is not at all surprising that the Chicago Tribune has seized upon the cynicism in the taped conversation of Richard Nixon and company to turn abruptly on the administration and call for his resignation—or whatever.

It is totally understandable coming from an institution that functions as a major power in the Republican party with policies long based on the welfare of that party.

The Trib has operated as a prime influence making policy in the party and working for the party.

If we were a Republican newspaper dedicated to manipulating the party, representing the party, exerting controls on the party and tied to the welfare of the party, we, too, might think the most important thing in the world is to have Richard Nixon simply disappear from the public scene, once and for all.

But we are NOT a Republican newspaper, and our prime concern is NOT the welfare of the Republican party in these elections or any others.

For 20 years, we have pursued a policy sometimes effectively and sometimes mistakenly but always on the premise of taking each issue and each candidate, one by one, on its merits without regard to party.

A review of that record, after the fact, shows a remarkably balanced result—and it shows something else.

We have been extremely fortunate in the "enemies" we have made over those years. Having the right enemies is very important. We have not always been that lucky in our "friends." It is there that a few times we've been too trusting.

That seems to demonstrate which way we lean—that we have preferred to give people the benefit of the doubt; that we have taken after them only with reluctance; and that as a result when we have erred it has been on the side of forbearance and not on the side that suggests a cynical eagerness to cut people down.

Since error is inevitable, we would rather it be that way than the "hatchet man" opposite.

So, we aren't really inclined to change now.

The Trib is right that Richard Nixon is "devious"—and we described him as such a year ago. That such is an impeachable offense, however, is another matter and one we aren't sure this democracy can live with well in future.

That's the problem.

And we don't give a hoot what these circumstances do to the Republican party in Illinois in 1974. We care what such a process does to America in all the years to come.

It makes us cautious.

On the other hand, if we were a Democratic newspaper we would probably agree with the National Chairman of the Demo-

cratic party, that shrewd veteran political strategist, Robert Straus, who has warned his party that if Nixon is steamrollered into a resignation he may end up looking like a "martyr" to a sizeable segment of the population, to the ultimate disadvantage of the Democratic party.

But we are not a Democratic newspaper, either.

We don't care what events do to the chances of that party at a given time, either.

The interesting thing is how the Republican powerhouse Chicago Tribune and the Democratic party chieftain both, obviously, see the situation so much alike—that it would be better for the GOP if Nixon resigns. The Trib wants it. Robert Straus fears it.

But for most of us, what happens in this matter is a temporary affair of the immediate period—a sort of skin rash. How we conduct this affair, however, is precedent with long term fundamental effects on the system itself. That is a heart condition.

We must do things right.

Meanwhile, in its eagerness to be out from under, we suspect that the Chicago Tribune is doing what the President and his aides considered doing in one of their recorded "unfeeling", ruthless, and "immoral" discussions.

They talked about throwing John Mitchell or somebody to the wolves in order to save their own skins.

They just talked about it.

The Trib appears to have done it.

THE PRESIDENTIAL CONVERSATIONS

HON. LEE H. HAMILTON

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 15, 1974

Mr. HAMILTON. Mr. Speaker, under leave to extend my remarks in the RECORD, I include my Washington Report entitled "The Presidential Conversations."

THE PRESIDENTIAL CONVERSATIONS

On May 1, a White House messenger brought to my office a 1,308 page, 5 pound, 8 ounce blue book entitled, "Submission of Recorded Presidential Conversations to the Committee on the Judiciary of the House of Representatives by President Richard Nixon." It is the most extraordinary document ever to come from an American president. These edited transcripts of 33 hours of key presidential conversations on Watergate are massive in content, fascinating in language and comments on public figures, candid beyond any papers ever made public by any president, and explosive in content.

A few of the highlights of the transcripts, as I read them, are these:

There is no evidence that President Nixon knew about the plans of the Watergate burglary before it took place.

The President ruled out clemency for E. Howard Hunt, one of the Watergate conspirators, but discussed on at least a half dozen occasions the payment of hush money to Mr. Hunt without once suggesting that paying him for silence would be wrong.

The President and his chief assistants, H. R. Haldeman and John Ehrlichman, were concerned to keep the facts from the public and the prosecutors.

The President assured his assistants that he would use the FBI and other federal agencies against his political enemies.

At no time did the President suggest that his aides testify fully before the Watergate federal grand jury, or order a complete in-

vestigation, but he did discuss at length how to handle criminal charges of perjury or obstruction of justice, and he approved an improvised national security defense.

Many of the conversations refute the explanations the President has offered the nation in his public statements on Watergate. He has stated that he knew nothing about the Watergate cover-up prior to March 21, 1973. But on September 15, 1972, he congratulated John Dean for his "very skillful putting your fingers on the leaks." He raised the question of clemency on February 28, 1973, and on March 13, 1973, his aides advised him of the cover-up, and he turned down a recommendation to make all the information public. The President has often used the need to protect national security as a bar to investigation, but in the March 21 conversation the President and his aides manufactured the national security defense against investigation. The President has insisted repeatedly on his determination to "get to the bottom of the scandal," but the transcript demonstrates efforts to limit the information given to investigators, to create plausible, not truthful, explanation, and to reduce the number of persons who could be accused of criminality. The President talks of "heading (the investigators) off at the pass." His assertion that he began "intensive new inquiries" after March 21 and personally ordered all of his aides to get all the facts about Watergate, simply is not supported by the transcripts (and has been denied under oath by his top law enforcement officials).

The view of the President in the transcripts is unflattering. He appears profane, isolated, cynical, inarticulate, indecisive, suspicious of his friends as well as of his political enemies, and more concerned with imagery than substance. He says his nominee for the FBI Director, L. Patrick Gray, "isn't very smart." He decrees the use of the FBI to hound his political enemies, advises his senior aides that "perjury is a hard rap to prove," and that they can safely forget facts before a grand jury. He calmly listens to reports that various aides had lied to him, advises his aides that he can get a million dollars for hush money, schemes to set up Attorney-General John Mitchell to take the fall for everybody, and he openly rejects telling the whole truth, saying, "We have passed that point."

A dominant theme in the conversations is how to prevent the truth from getting out. The questions of right or wrong, or what is best for the country, just never seem to get discussed.

The transcripts will not satisfy the demand of the Congress for disclosure. The President simply failed to comply with the subpoena which required the tape recordings, not selective transcripts. Eleven of the subpoenaed tapes were missing and the President has said that he will give no more evidence on the ten remaining counts of impeachment (the transcripts touch on only 1 of 13 counts). No independent party vouched for the transcripts, and it would be a hopelessly burdensome task for the chairman and the ranking minority member of the Judiciary Committee to verify these transcripts, unaided by staff, as the President proposes. Inaudible and unintelligible portions of the tapes are numerous, and most of these omissions are statements by the President at crucial points.

The all-important question is whether the release of the transcripts will help or hurt the President. It is too early to answer that question, although the initial polls show that the people support the Judiciary Committee's demand for the tapes and strongly disapprove of the President's conduct. A number of prominent legal experts said the transcripts support an impeachment charge of obstruction of justice. The critical reaction will be in the Congress which must weigh the question of impeachment. By releasing the transcripts the President has for-

feited his personal reputation in a gamble for survival, and my guess is that he has not assured, but jeopardized, his chances of remaining in office.

### PLUTONIUM LEAK COULD HAVE BEEN LETHAL

HON. BELLA S. ABZUG

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 15, 1974

Ms. ABZUG. Mr. Speaker, in our desperate scramble for new sources of power, we have recently authorized some \$3.6 billion for the Atomic Energy Commission. On April 23 I objected to funds for atomic weapons testing and for nuclear fission powerplants, pointing out that the proposed reactors would produce hundreds of thousands of pounds of plutonium.

Scientists estimate that 1 ounce of plutonium, dispersed and inhaled, could kill everyone in the United States. "Plutonium 238 is one of the most toxic materials known, and can cause almost instant death if it is breathed," says today's Washington Post article, which I am inserting in the RECORD.

For today we learn that radioactive plutonium has leaked out of the AEC's weapons factory near Dayton, Ohio. The only thing that saved the residents of Dayton—and probably many thousands more—was that the plutonium leaked into a canal, not into the air.

An AEC spokesman said:

This comes as a complete surprise. We have no idea how the plutonium leaked out of the factory into the mud.

It is just this kind of trifling with all our lives that compels me to speak and vote at every opportunity against funding for nuclear plants and weapons.

The article follows:

AEC ADMITS OHIO LEAK OF PLUTONIUM

(By Thomas O'Toole)

Radioactive plutonium has leaked out of the Atomic Energy Commission's weapons factory in Miamisburg, Ohio, into a canal near the factory gates.

The AEC confirmed the leakage yesterday, but said it did not know how much plutonium had spilled out of the factory or how far the leakage had spread.

The AEC identified the plutonium as an isotope of the man-made metal called plutonium-238, one of the most poisonous materials known.

"Based on preliminary samples, the plutonium presents no health problems because it has been found in the sediments under water," an AEC statement said. "There have been no abnormal levels of radioactivity detected in the air, water or vegetation about the laboratory site."

The AEC said that periodic tests had turned up plutonium in two ponds adjacent to the north end of the Erie Canal and in a part of the Erie Canal itself, a local Ohio waterway not connected with the Erie Canal in New York State. The plutonium was found under the waters of the ponds and the canal when pipes were driven into the mud to take sediment samples.

"We have no idea how the plutonium leaked out of the factory into the mud," an AEC spokesman said yesterday. "This comes as a complete surprise."

The Miamisburg factory of the AEC, known as its Mound Laboratory, is located inside the city limits of Miamisburg (pop. 14,800), which itself is a suburb of Dayton. The metropolitan area of Dayton has a population of 882,000.

Plutonium-238 is one of the most toxic materials known, and can cause almost instant death if it is breathed. One scientist estimated that plutonium-238 in the lungs is about 100,000 times more toxic than cobra venom or potassium cyanide and about 10,000 times more poisonous than nerve gases.

Plutonium must be breathed into the lungs to be toxic, however. The reason is that it emits what radiologists call alpha particles, which have little power to penetrate the skin.

In the lungs, pinhead-sized plutonium dust particles can cause fibrosis of the lungs in weeks. A larger dose can destroy the lungs in a matter of minutes, making it impossible to breathe.

The AEC emphasized that the plutonium discovered outside the Miamisburg factory was found deep in the muds of the Erie Canal, not in the air or soil nearby. This meant, presumably, that the plutonium had leaked out in a liquid effluent and not through a smokestack.

The Miamisburg factory is not now making plutonium for bombs, but is producing it for the nuclear power supplies carried aloft by satellites and spacecraft. The Pioneer 10 spacecraft that flew by Jupiter and many Air Force spy satellites use these types of nuclear power supplies.

The Miamisburg leak is the second time plutonium has been found outside an AEC installation. The first was four years ago, when it was found in the soil as far as seven miles from the AEC's Rocky Flats, Colo., weapons factory.

### OUR BLUNDERING OIL DIPLOMACY

HON. CHARLES A. VANIK

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 15, 1974

Mr. VANIK. Mr. Speaker, in recent weeks, Senator FRANK CHURCH, through his diligent work as chairman of the Subcommittee on Multinational Corporations, has developed the fascinating and intricate story of how the multinational oil companies manipulated U.S. oil policy to conform to their interests. In the April 27, 1974 issue of the Nation, Stephen Nordlinger provides a good synopsis of the major findings of this hearing record. The inescapable conclusion of this sorry story is that the United States can no longer afford to conduct a laissez faire energy policy. What is best for the oil companies is not necessarily best for the Nation.

The amendment I plan to offer to the Oil and Gas Energy Tax Act next week will provide for the elimination of the foreign tax credit for taxes paid on foreign oil and gas production income. One provision of my amendment, however, will allow for these credits, if we negotiate to include them in an international tax agreement with the producing countries. The Nordlinger article underlines the importance of government-to-government negotiations in solving our energy crisis. We cannot afford to place our trust in the oil companies for these delicate negotiations.

Mr. Nordlinger's article follows:

THE "NATIONAL SECURITY" CARTEL: OUR  
BLUNDERING OIL DIPLOMACY  
(By Stephen Nordlinger)

WASHINGTON.—As the Shah of Iran, nattily dressed in a brown plaid suit and camel's hair coat, flew off in early 1971 for his annual vacation at St. Moritz, he spoke triumphantly at the airport of new opportunities being opened by the power of the Arab nations to extract huge concessions from the international oil companies. By threats and an ample amount of wheeling and dealing, he had managed to best the wily old oil negotiators of the West in what now appears to have been a major step toward the first energy crisis in the peacetime history of the United States.

The shortages and the accompanying soaring prices for fuel that plague the American motorist and home owner can be traced in large part to those pivotal negotiations in Teheran more than three years ago. The Arab nations won an additional \$10 billion for their oil, but much more important than that, they flexed their muscles and effectively cowed the companies.

Once the Arabs had proved their skill and strength at the bargaining table, they went on to achieve further and further concessions, most notably a share in the equity ownership of the companies. Then, after less than three years, the Arabs this past winter breached a five-year agreement made at Teheran by unilaterally quadrupling prices.

For this debacle, the oil companies must bear a large measure of responsibility. They had failed, in the face of mushrooming world demand, to build a production capacity sufficient to relieve the pressure on them at the negotiations. The defeat must also be attributed to the often ruthless behavior of the companies toward the Arab nations in years past. The Arabs, for the first time really sensing the full value of oil and the power of united action, were prepared to strike back.

But the heaviest blame for what transpired at Teheran must fall on the U.S. Government, which for more than twenty years had encouraged the companies to enter the waiting trap and then out of ignorance and fear undermined their bargaining position at the fateful negotiations. Teheran was the climax of a strategy in which the cause of national security, as defined by the State Department, dictated what masqueraded as a national energy policy.

In the name of national security, the government had espoused a policy that completely coincided with the short-term interests of the oil companies, but cost the American public multibillions in lost tax revenues and higher prices. The government fostered the growth of an international oil cartel that set prices and production levels and apportioned markets. Consequently, the oil companies were ill-prepared when the government failed to support them at the moment when they sought to present a united front to the Arabs—the decision again being made in the cause of national security, rather than according to a serious national energy policy, which in any case did not exist.

The maneuverings of the government and the industry have now been brought to light in days of testimony before the Senate Foreign Relations Subcommittee on Multinational Corporations, headed by Sen. Frank Church. Since early this year, scores of once-classified documents have been made public to buttress the record. The committee's staff, Jerome Levinson, Jack Blum, John Henry and William Lane, spent more than a year compiling the information.

The government's case against the international oil cartel that began developing in 1949, the granting to the companies in 1950 of tax credits that have transferred billions from the U.S. Treasury to the coffers of the Arab nations and, finally, the withdrawal of

support at Teheran in 1971 were all decisions taken in the name of national security. Ironically, the nation today appears something less than totally secure in meeting its fuel requirements. Along the way since 1949, the State Department and the Justice Department divided sharply on just where the nation's security interests lay. Even within State there was dissension over policies that eventually left a lasting mark on the world's oil production.

The international oil crisis did not develop suddenly from the imposition of the oil embargo; it stems from actions by the oil companies that were subsequently condoned and even abetted by the government. These companies became a virtual supranational government and exercised powerful control, insofar as oil was concerned over the foreign and domestic policies of the United States and the world. A close relationship developed between government officials, many enlisted straight from the oil business, and the industry itself.

A red boundary line, drawn with a pencil on July 31, 1928, has come to symbolize the power of the Seven Sisters, the seven international oil companies that over the decades have woven a tight fabric of joint, coordinated ventures. This line, which encircles Iraq as well as Saudi Arabia and other nations of the old Ottoman Empire, demarks the area in which four of these companies held sway by agreeing to curtail world crude output and limit competition in refining, marketing, and the securing of concessions.

In the early 1920s, the State Department proclaimed a so-called "open door policy" for oil exploration in the Middle East, so that American companies could secure equal rights with their British rivals in the mammoth reserves of Iraq. The companies insisted on this policy as an indispensable condition for their participation in the Middle East. However, the companies, sensing the advantages of cartel strength and fearing a possible oil glut, soon lost their enthusiasm for "open door" competition. The State Department, bowing to their new desires, abandoned a policy it had so strenuously pursued, and the Red Line Agreement came into being.

Also, in 1928, representatives of the three oil giants, Standard of New Jersey (now Exxon), Royal Dutch Shell and the Anglo-Iranian Oil Co. (now British Petroleum), gathered at an English castle, ostensibly to shoot grouse. From that meeting came a further agreement to restrict competition in the significant oil markets of the world. This agreement, precipitated by a price war in India, completed the chain of major company control from crude supply source through market distribution outlets for at least a decade and even during the dislocation of World War II. After the war, the seven companies continued their arrangements as rich new crude reserves developed in the Persian Gulf area, especially in Saudi Arabia and Kuwait.

According to testimony by David I. Haberman, an attorney in the Justice Department's antitrust division from 1953 to 1972, the companies expanded the number of interlocking, jointly owned production companies to unify control of concessions and crude output, and established a system of long-term mutual supply contracts that allowed exchanges among themselves without risk of competition from new companies.

The Federal Trade Commission in 1952 filed a 378-page report, "The International Petroleum Cartel," and the Justice Department announced a grand jury investigation that won banner headlines. But then the State Department, muttering "national security," moved in to protect the industry, and in effect took over the nation's antitrust policy. The Justice Department, by contrast, felt strongly that the country would be more secure if the cartel were broken up.

In a June 1952 memorandum, now made public by the Church subcommittee, H. G. Morison, an Assistant Attorney General, advised Attorney General McGranery that, in the absence of competition, the Navy had bought oil during World War II at prices which bore no "relationship whatever to the low cost of producing oil" in the Middle East. While the United States was being charged \$1.05 a barrel, the Arabian-American Oil Co. (Aramco) was making sales in Saudi Arabia to affiliated American companies and the Japanese at 70c and 84c a barrel. The memorandum said that the \$70 million which Standard Oil of California and the Texas Company (now Texaco) charged the Navy for petroleum products was \$38.5 million more than they charged other purchasers for equivalent products.

Despite manifold evidence of a cartel, President Truman was persuaded to pull the teeth of the Justice Department's case by reducing it from a criminal to a time-consuming civil action. The suit against Gulf, Exxon and Texaco was settled years later by consent decree; the cases against Mobil and Standard of California were dropped. According to a now declassified message sent by Dean Acheson to Morison at the Justice Department, the State Department feared that the criminal action would arouse a movement in the Middle East to nationalize the companies accused of conspiring, lead to a "decrease of political stability in the region," and discourage American companies from investing there.

Leonard J. Emmerglick, who left the Justice Department in 1954, apparently discouraged after working closely on the oil cartel case, testified that the decision to reduce the case to a civil action was taken by the National Security Council one Friday in the closing days of the Truman administration. That Sunday evening President Truman summoned Mr. Emmerglick to the living quarters of the White House and told him he had taken the potentially momentous action not on the advice of the Cabinet officers who attended the Security Council meeting but solely on the assurance of Gen. Omar Bradley that the national security called for the decision. However, documents now issued by the subcommittee indicate that the State Department determined the action. The consent decrees reached years later apparently had little effect on the activities of the companies.

Soon after scuttling the cartel case, the State Department, under John Foster Dulles, moved quickly to assure the domination by the major companies over the potentially lucrative Iranian crude supply by keeping the competition of independents out of the area. Again national security was cited, this time the threat of Soviet expansion. It was believed that the most reliable way to restore Iranian oil production after the collapse of the Anglo-Iranian Oil Co. following nationalization by Dr. Mohammed Mossadegh was to move in the major foreign and American companies.

A now declassified memorandum by Adrian S. Fisher, then legal adviser at State, said these companies lack "any particular desire" to produce this oil because of adequate supplies elsewhere, but the government's persuasion prevailed. The Justice Department finally went along with the Iranian decision, though its antitrust division strongly maintained that the agreement was totally inconsistent with the civil cartel case it was still pursuing in court. In the end, the State Department's decision killed any chance of making the cartel case stick, according to Senator Church. His subcommittee is seeking further documents which, investigators said, would link the entrance of the major companies into Iran to the termination of the criminal action. It is worth noting that, according to an internal Justice Department memorandum, the independent

oil companies had wanted a 36 percent share of the consortium, but the share was reduced to 5 percent by the State Department. Despite the majors' professed reluctance to enter Iran, it turned out to be a "good investment," a former top official, Howard W. Page, testified.

There was some significant disagreement within the State Department itself over the handling of these crucial matters. The subcommittee has made public a memorandum written at the time by a key oil adviser, Richard Funkhouser, now serving with the Agency for International Development, which stated "that the ability to accommodate to changing situations in the Middle East is best developed under an environment of free competition rather than from efforts to 'hold the line,' which seldom succeed." Every encouragement, he said, should be given to independents to move Iranian oil.

Funkhouser quoted some oil executives and economists as believing that the Anglo-Iranian Oil Co. might never have been nationalized if there had been competitors in Iran. "There is a certain safety in numbers," he wrote, adding that a monopoly is "ideally easy to nationalize." Despite this advice, the government avoided any actions that would cause giant consortiums like Aramco or the one in Iran to relinquish parts of their concessions to competitors, and thus minimize the growing possibility of substantial takeovers by the Arab nations.

Out of this period that brought the collapse of the criminal action against the cartel and the granting of a concession in Iran to the major companies came the secret decision in 1950 to treat the royalties of the Arab nations as taxes, to be credited dollar for dollar against what the companies owed the U.S. Treasury. Once more, the justification was national security.

The corrupt regime of the late King Ibn Saud of Saudi Arabia, into whose purse went an enormous share of the oil revenues from Aramco, began demanding much more money in 1949 and 1950. Sharp increases in royalties, if treated merely as business expenses, would have been a severe blow to Aramco's profits. On the advice of the company and with the approval of Dean Acheson, the Saudis in 1950 changed the royalties to a so-called "income tax." The amount paid could then be deducted from U.S. taxes.

As a result of this Treasury Department tax ruling, the four companies that control Aramco—Exxon, Texaco, Standard of California and Mobil—which had paid \$50 million in U.S. taxes in 1950, paid \$6 million in 1951; and Saudi Arabia, which had received \$66 million as royalties in 1950, got \$110 million as taxes in 1951. Aramco lost nothing by this even swap and the Treasury Department lost a good deal. From then on, the American Government began losing close to \$200 million a year in tax revenues from oil companies operating in the Middle East.

Testifying before the Church subcommittee, George C. McGee, a multimillionaire oilman and at the time of the tax-credit decision the top man on Middle East affairs at the State Department, justified this new policy by what he described as the critical contest in the Middle East "between ourselves and the Soviets." The very corruption and ineptitude of such regimes as that of Ibn Saud made them especially vulnerable to a nationalization movement that would upset the stability of the area, the McGee argument went, and could be prevented only by a constant transfusion of American money.

The National Security Council made the decision in secret; there was no consultation with Congress. On this decision as well, McGee's adviser on petroleum matters, Funkhouser, said in a memorandum that the preferable route to political stability in the

Middle East was not through tax favors but by reducing the size of the concessions held by individual companies, a move that would also promote competition. "Since many new American companies are interested in the area and financially strong enough to enter the field, continuation of oil properties in U.S. hands would be almost assured," Funkhouser said. "Middle East states prefer American companies to those of other nationalities."

In recalling the simultaneous decision by the company and the State Department to adopt the principle of the tax credit, McGee said that the solution was reached separately, although "our reasoning based on political grounds coincided with theirs." At that time Aramco was selling its entire production to Europe, but McGee said it was vital to the United States to have Saudi Arabian reserves owned by American companies "for a time of crisis."

The final chapter in the story of the symbiotic relationship of the major oil companies and the American Government began in the late 1950s and early 1960s. An excess production capacity prompted the companies unilaterally to cut the posted price of crude in the Middle East by 20¢ a barrel. This action precipitated the formation of the Arab cartel, the Organization of Petroleum Exporting Countries.

Alarmed by this development, John J. McCloy, former High Commissioner for Germany and then employed by the major oil companies, has disclosed to the Church subcommittee that he met secretly with President Kennedy to alert him to the danger posed by the Arab cartel. Subsequently he spoke to each and every Attorney General to apprise them, he said, of the unfolding situation. The companies sought nothing at the time from the government, because the ample spare production capacity available and the requests of the Arab nations for ever greater production put them in a strong position.

By the 1970s, however, the rapid rise in world demand for energy made the companies vulnerable. George T. Percy, senior vice president of Exxon, admitted to the subcommittee that the industry had failed to anticipate this surge in demand, thus exposing it to pressure from the Arabs. In Libya, the new revolutionary regime of Col. Muammar el-Quaddafi won major concessions in 1970 from Occidental Petroleum, an independent that relied on Libyan crude.

The potential showdown feared by McCloy ten years earlier, became a reality for the major companies as they approached the negotiations in Teheran in early 1971. McCloy stepped up his calls and visits to Washington. John N. Mitchell, the former Attorney General, said in a deposition for the subcommittee that McCloy, then representing twenty-three oil companies, met or talked to him four times in January 1971, as special agreements were prepared by the government and industry before the Teheran bargaining began.

At that time, two key State and Justice Department officials, James Akins and Dudley Chapman, went to New York and waited outside the door of McCloy's law office while the agreements were drawn up, thus indicating the continuing intimacy between government and industry. According to testimony, the Justice Department secretly consented to the industry-sponsored agreements: one was to allow the major and independent companies to join in a united front to bargain with the Arabs for a new global contract without fear of antitrust prosecution; the other would permit a sharing of oil in the event any company was shut down by Libya.

Although the Justice Department granted the companies the right to bargain as a bloc, the State Department withdrew its support

from the companies' desire to bargain with all the oil-producing countries at one time, including those in the Persian Gulf and Libya, so that there would be no leap-frogging price effect, with companies being picked off one by one.

At the request of the companies, John N. Irwin II, then Under Secretary of State, was sent on one day's notice to the Middle East to speak to some of the conservative nations. He had no time to prepare and, as he conceded to the subcommittee, he totally lacked any "real background" in the oil business. Quickly he submitted to threats and astute maneuvering of the Shah of Iran and Arab leaders who convinced Irwin, now Ambassador to France, that the negotiations with the Persian Gulf states and Libya must be separate. Without consulting the industry negotiators in Teheran, Irwin cabled back, according to his testimony, that the separate bargaining was necessary. His recommendation was routinely accepted by the State Department, and the industry, its position undercut, agreed to separate sessions in Teheran and later in Tripoli.

Justifying his recommendation, Irwin, true to the government's explanation for its past oil policy, told the subcommittee that his mission to the Middle East was to protect the national security, in this case against a threatened halt of production. There was no point, he suggested, in antagonizing the Arab nations. The message he brought to the Middle East—that the United States hoped that oil supplies would not be disrupted, that the companies must be cooperative and that the U.S. Government definitely would not become involved in the negotiations—strengthened the hand of the Arab negotiators. The entire Irwin mission, in fact, puzzled the Arabs, who probably expected the United States to take a tough stand. "I don't know what Mr. Irwin's visit was for," said Jamshid Amuzegar, the Iranian Foreign Minister, in an interview during the preliminary negotiations.

With the demand for oil exceeding production capacity, the Arabs were in a strong position at Teheran, yet the companies still held some cards. The Arabs needed oil revenues, on which they depended for 50 to 95 per cent of their incomes, and they relied heavily on the technical skills and other resources of the international companies. But in the wake of the Irwin mission, the companies struck the best deal they could get; it was supposed to last for five years. The agreement was hailed by the State Department as bringing "stability" to the Middle East, but within less than three years, it was torn up by the Arabs. Representatives of the industry, which had played its last trump, were summoned to "negotiation" in Vienna and the emboldened Arab nations unilaterally imposed new demands that sent the posted price of crude oil from \$3.01 a barrel last October 1 to \$11.65 in January, the present level.

The American consumer is paying handsomely for the vacuum in energy leadership in Washington over the last forty years or more. For almost all of this period, the oil companies filled the gap, virtually dictating policy in their own self-interest. This policy, when it involved international concerns, was rationalized on national security grounds. The Irwin mission that culminated the decades of neglect was doomed to fail, since it was impossible to generate an energy policy overnight.

The big oil companies cannot be left any longer to their own devices. Despite the risk of becoming embroiled in international disputes, the government, as the presumed protector of the public interest, must play a forceful role in dealing with the oil producers and the oil-producing countries.

THE LANGUAGE BARRIER

HON. CHARLES B. RANGEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 15, 1974

Mr. RANGEL. Mr. Speaker, I would like to share with my colleagues a column which appeared in the New York Post on May 4, 1974. It concerns a problem of which we are all aware. However, it reveals the proportions of this problem to be beyond most people's expectations.

There is a vast population of exclusively Spanish-speaking citizens in our Nation. Throughout American history, newly arrived ethnic groups have been cast into the "melting pot." But now, in New York City alone, this population has grown to 2 million people. We can sympathize with their disorientation. It is beyond our comprehension though, to understand the entire maelstrom of living in a strange and sometimes hostile culture.

The article below offers a rare glance at our system from the perspective of the Spanish-speaking person. It lays bare our need to adjust the criminal justice system. As the structure stands, the slightest problem becomes, for these people, an unbridgeable impasse; a simple call for help can end in tragedy and frustration. One method, suggested below to deal with the situation is to increase the number of Spanish-speaking law enforcement officers and criminal justice officers. I endorse and praise this and all other measures which would ease the injustices inherent in the lives of these newest immigrants.

The article follows:

THE LANGUAGE BARRIER

(By Jose Torres)

Luis Neco is a Puerto Rican who serves as this city's Deputy Police Commissioner in charge of the legal department. Intelligent and dedicated to improving the lot of his countrymen, he works for the benefit of those who suffer for the "crime" of not speaking English.

Neco is bilingual. He knows the handicap which shackles those in this city who are not. We discussed together a few of the many problems created by the lack of communication between Spanish-speaking people and police officers.

And it is shameful and sad. I gathered from Neco's own experiences that there are many young Puerto Ricans in jail right now because they didn't have the right—English—words to explain their predicament.

We both agreed that Puerto Ricans in this country have many problems with the law not only because of language confusion but because of a conflict of cultures.

Here are some examples:

A middle-aged Puerto Rican takes his family for a drive. Inadvertently he makes a wrong turn. A police officer approaches, asks for his license and registration.

"What have I done wrong?" the surprised Puerto Rican asks. The cop assumes the man knows what he did wrong. "Don't be a wise guy," he replies. "Didn't you see that damned 'no left turn' sign right in front of your nose?"

Now if the man were alone, he might ask the police officer to forgive the error and skip the ticket. But he is with his family. Pride and dignity require that the "master of the home" play out that role.

True, deep in our culture there is a profound respect for authority. But nothing surpasses our defense of our honor as "boss of the home," especially if the family is around.

And so, in this instance, the officer has intruded into a sensitive area of this man's culture. His "machismo" has been challenged.

So the Puerto Rican man gets into a heated argument and finally gets out of the car to deal with the cop. What began as a simple traffic violation turns into serious accusations—assault, resisting arrest, etc.

Another example: A cop walks his beat on Av. J in Brooklyn. A woman rushes hysterically toward him. "My child is dying," she yells. "My child is dying." The reaction of the cop is swift and natural. He immediately goes to help.

The same circumstances, but this time in South Bronx, and with a Puerto Rican mother who can't speak English. She yells, "Mi hijo se muere, me hijo se muere." One can assume that the reaction this time will not be the same, but I asked a non-Puerto Rican officer friend of mine.

"First of all," my friend said, "I would, automatically go for my gun because I would suspect that the lady had been attacked or that she's being chased, or that she is crazy." Meanwhile, her child is dying.

And what happens with a Puerto Rican suspect who can't speak a word of English and a police officer who can't speak a word of Spanish?

"A police officer may see a Hispanic who looks suspicious," Neco explained. "The police officer who comes in contact with him might have this suspicion resolved if the Hispanic could speak English and communicate to the officer what he was doing.

"The man is then taken to a police station to determine what recommendation is going to be made in terms of bail or if he will be released on his own recognizance, or whether a desk-appearance ticket may be issued to him. Because there is no communication, one can conjecture that he's not a likely candidate for the desk-appearance ticket." Such a ticket allows the arrested person to leave and appear at a later, stated date.

Whether a person is going to be released on his own recognizance or bailed is determined in large measure by interviewers from the Probation Dept. Lack of communication here makes the arrested Hispanic a less likely candidate for a recommendation of bail or release on his own recognizance.

The problem is that there are not enough Hispanics working in the law enforcement field. A recently launched recruitment campaign for more minority-group members for the police force might help. For only 2.2 per cent of the entire Police Dept. (784 out of 30,808) are of Spanish descent. The total Spanish population here is about 2 million.

Or, as Commissioner Neco put it: "We are at the stage now where all areas of the criminal justice system as well as the bar, the legal profession itself, have to look at the unique problems of the Spanish-speaking citizens of this city and come to grips with seeking to alleviate, if not to solve these problems."

THE COLORADO WINNER OF THE "ABILITY COUNTS" COMPETITION

HON. FRANK E. EVANS

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 15, 1974

Mr. EVANS of Colorado. Mr. Speaker, I recently had the opportunity to meet with Miss Mardona Moreland of Las

Animas, Colo., while she was in Washington attending the annual meeting of the President's Committee on Employment of the Handicapped.

For the past 2 years this 17-year-old young woman has spent much of her free time as a volunteer at the Fort Lyons Veterans Administration Hospital near her home working with handicapped veterans. She also has done much volunteer work with other handicapped people in her community.

Miss Moreland is the 1974 winner of the essay competition sponsored by the Colorado Governor's Committee to Promote Opportunities for the Handicapped.

Her winning essay describes a unique experiment she performed to gain a better insight into the many barriers faced by handicapped persons in our society. I insert the text of her essay here and commend it to my colleagues:

BARRIERS TO THE HANDICAPPED: "LET ME WALK WITH MY BROTHERS"

The above topic title is a phrase from my favorite song, *Let There Be Peace on Earth*, and I felt that it would be appropriate for my essay because I put myself into the same situations a wheelchair victim might experience during one day.

For the past two years during vacation and spare time, I have served as "Volunteer" at the Fort Lyon VA Hospital spending most of my time in the EEG, EKG, and X-Ray laboratories. Here, I have observed and tried to help patients with varied handicaps. I am also Commander of our local DAVA Junior Girls and part of our volunteer work is with handicapped children. This year as a senior in high school, I am enrolled in CAVOC (Central Arkansas Valley Occupational Center), taking prenursing training and also working part-time at the Bent County Nursing Home. Through CAVOC, I have visited and observed the handicapped youngsters at the ARKVA School for retarded children. In my nursing home duties, I am in close contact with those who are handicapped by strokes, hardening of arteries, arthritis, heart conditions, and impaired movement of limbs. I am learning much from these people and I have shared the victorious feeling they have when they make even a small come-back.

There are many barriers to the handicapped—social, mental, physical, and even architectural. To gain a better insight into such problems, I decided to put myself in a wheelchair for a day. First of all, there is much more to getting around in a wheelchair than just sitting in it and wheeling it. It takes practice and skill, and after a very short time, my arm and shoulder muscles began complaining about the strain put upon them. The attitude of people I met was unexpected. Some of them looked at me with sympathy and understanding, but the majority tried to ignore me and my problems by avoiding eye-contact, thus rejecting me as a person.

I had never before thought of architectural barriers. First I visited our local High School which is built on ground level. There were few problems here. Doors are wide enough to allow entrance and the halls are spacious so there is a minimum of problems during class changes. Rooms are structurally adjustable so it was not hard to maneuver my wheelchair into class groupings. I did find there were no adjustable table surfaces so I had to write in my notebook on my lap; black boards are too high for my use in writing long equations; and the locker shelves could not be reached. After this first experience, I decided that I could function at about 70% efficiency in classrooms. However, Band,

Phys. Ed., some aspects of Home Ec., and extra-curricular activities were limited by my disability. Confidently, I went on to visit the much older Junior High School. Here I really found myself at a loss. To follow one student's schedule, I had to go from ground floor to second floor for the first class; then down a long, narrow hallway and then downstairs again for the next class. This was the general pattern. Assembly is held in the gym with spectators seated in the balcony—reached only by stairs.

As I traveled through my day, I found other barriers. Suppose I were downtown and suddenly felt ill? There was a public telephone nearby—but I could not use it!! I could not get my wheelchair through the narrow door into the booth, nor could I reach either the coin-box or dial.

Buying groceries isn't difficult for most people. How about a wheelchair bound person? At one store, there were self-opening doors which helped me feel competent. What if there had been revolving doors or even the usual 32" doors separated by an upright divider? I might have gotten through, but I would have had another set of skinned knuckles to show for my effort. Another obstacle I found in stores which I visited was the placement of many articles. I could not reach high enough to "buy" many items; and I could not lean down far enough to pick up others without tumbling headfirst out of the chair. Light switches in many buildings were out of reach; drinking fountains and bathroom fixtures were definitely not designed for a wheelchair inhabitant. I found that automatic elevator doors (usually set to close in 7 seconds) trapped me when I tried to enter in my wheelchair. Our post-office can be reached only through the climbing of stairs; many libraries are designed with impressive stairway entrances; aisles in stores and many other public places are so narrow or so crowded that it is difficult to move through them. What if I wanted to watch a football game? Bleacher or grandstand seats are definitely out.

After a long and tiresome day, I decided to head for home. Here I had more problems. In the parking lot, my car was parked well within the defined parking lines and so was the car next to mine. But, there wasn't enough room allowed between cars for me to wheel myself into position to swing myself into my car. The occupant of the other car noticed my predicament and carefully backed out so that I had extra room. Even then, it took all my strength and effort to get into the car. Then I learned that even though I had a folding wheelchair, many cars are not designed for wheelchairs or victims. Many cars are—or can be—modified to eliminate the use of foot power for clutch, brake, and gas feed, but since this has just been "one day on the job" for me, my car was standard.

After a day like this, I have a much better understanding of the obstacles and frustrations faced by a wheelchair confinee; and I hope that in my chosen work, I will be more thoughtful of disabled persons.

Today, I have "walked with my brother", and it's terribly hard to "walk" in a wheelchair.

#### ANOTHER "GUERRILLA ACTION" AGAINST ISRAEL

**HON. LESTER L. WOLFF**

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 15, 1974

Mr. WOLFF. Mr. Speaker, another black mark of shame and outrage was written into the history books this morn-

ing in the Middle East. Another "guerilla action," another challenge to all decent human instinct. What words can react strongly enough to the mass slaughter of the schoolchildren of Maalot, Israel? What steps can civilized humanity take to eliminate the terror that these beasts have again wrought?

These events are beyond comprehension. Even to accept the label of "guerrillas" for the perpetrators is to dignify them. They are butchers—the basest form of humanity.

In view of recent history and the condemnation of Israel acceded to by our country in the United Nations, what other course is now open to the United States but for once to take a firm position of moral leadership and outraged indignation?

The children of Maalot were in no sense participants in any declared or undeclared war. They were victims of a depraved band who do a disservice to the Palestinian people. So now those nations who harbor such cutthroats must be put on notice that such acquiescence will no longer be tolerated by the community of nations—they will be brought to account. And to those who would seek to repeat such actions—they must know that retribution from the civilized world will swiftly follow.

#### LAKE BLUFF HONORS SCOUT- MASTER CHARLES MORAN

**HON. ROBERT McCLORY**

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 15, 1974

Mr. McCLORY. Mr. Speaker, having served some years ago as scoutmaster of Boy Scout Troop 42 in my home town of Lake Bluff, Ill., I have been particularly pleased to learn that Saturday, May 18, 1974, has been officially declared "Charles Moran Day" in honor of Scoutmaster Charles Moran.

Mr. Speaker, for 20 years Charles Moran has been a central figure of troop 42, of the North Shore Area Council, Boy Scouts of America. During these 20 years, the troop has flourished and membership has grown from 50 scouts to approximately 70 scouts today.

Mr. Speaker, Scoutmaster Moran is a lifelong lover of the wilderness. After serving as an Oregon lumberjack, he became a dealer in—and repairman of major electrical appliances. Today Charles Moran is the proprietor of Moran Appliances in Lake Bluff.

Mr. Speaker, in addition to training hundreds of other boys in scouting, Charlie Moran has reared his own two sons, Mike and Terry, in the scouting traditions. During this time, he has exhibited uncommon imagination, fortitude, unique skills and qualities of wholesomeness in his leadership of scouting. He has shared his experiences with the Boy Scouts, age 11 to 14 years, accompanying them on various wilderness trips across the country. With 30 or more boys and 4 or 5 adult assistants,

they have visited such places as the Everglades, Fla.; the Appalachian Mountains; Isle Royale, Lake Superior; Padre Island, Tex., and parts of Wyoming. The final wilderness trip planned by Scoutmaster Moran is scheduled to get underway on July 5, 1974, in central Wyoming. When they return, Charles Moran will look at his Trailblazer Award, his Golden Arrow Award, and his other memorabilia—with few regrets.

Mr. Speaker, although he is stepping aside as scoutmaster and will be succeeded by Dr. Joseph D. Schleicher of Lake Bluff, he will remain on the troop committee as executive director of the parents committee. Also, he will continue to operate his electrical business.

Mr. Speaker, Charles Moran has gained the respect and genuine affection of campers and noncampers of all ages and generations, and is known by all to be a thoughtful, kind, generous, and compassionate human being, as well as devoted husband of the charming and totally supportive June Moran. I am proud to salute Charles Moran for his unselfish and invaluable contribution to the development of over 1,400 scouts, who are a source of strength and pride to our Nation, and I wish him much happiness and good health in the years ahead.

#### RESOLUTION TO END DEPLETION ALLOWANCE

**HON. WILLIAM J. GREEN**

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 15, 1974

Mr. GREEN of Pennsylvania. Mr. Speaker, the Democratic Caucus today passed a resolution requiring Democrats on the House Rules Committee to make in order my amendment to the Oil and Gas Energy Tax Act of 1974. I want to thank my colleagues for supporting this resolution and my amendment which will end the oil and gas depletion allowance as of January 1, 1974. The Congress is now one step closer to meaningful tax reform.

In 1974 oil company profits are expected to be approximately \$9 billion, more than double 1973's record levels. The Ways and Means Committee bill phases out the percent depletion allowance over 3 years, with no phaseout in 1974, and provides various exemptions and exclusions that would continue for many oil producers until 1979. The bill would impose only a \$670 million windfall profits tax in 1974. My amendment will raise an additional \$2.6 billion.

Following is the text of the resolution adopted by the Democratic Caucus and my amendment to end the depletion allowance.

#### RESOLUTION OFFERED BY MR. GREEN OF PENNSYLVANIA

Be it resolved, That the Chairman of the Ways and Means Committee, and the Democratic Members of the House Committee on Rules are hereby instructed by the Democratic Caucus to seek and vote for, respectively, a Modified Closed Rule for consideration of H.R. 14462, the Oil and Gas Energy

Tax Act of 1974, making in order the attached amendment, to be offered by Mr. Green of Pennsylvania, to repeal the percentage depletion allowance for oil and gas as of January 1, 1974.

**AMENDMENT BY MR. GREEN OF PENNSYLVANIA**  
(Intended to be proposed with respect to H.R. 14462.)

SECTION 1. Section 102 is amended by striking its title and substituting therefor the following: "REPEAL OF PERCENTAGE DEPLETION FOR OIL AND GAS PRODUCTION."

SEC. 2. Subparagraph (B) of Section 102 (d) (3) is redesignated as Section 102(d) (3).

SEC. 3. Section 102 is amended by striking out those portions of subsections (a), (b), and (d) not redesignated by Section 2 hereof and by substituting in lieu thereof the following:

"(a) REPEAL OF OIL AND GAS DEPLETION. (1) Section 613(b)(1)(A) of the Internal Revenue Code is amended by striking out the words "oil and gas wells," and by substituting therefor the words "certain gas wells as defined in subsection (e)."

"(2) Section 613(b)(7) is amended by adding the following new subparagraph after subparagraph (B): "(C) oil and gas wells."

"(b) CERTAIN GAS WELLS. The following new subsection is added to Section 613 of the Internal Revenue Code:

"(e) SPECIAL RULE FOR CERTAIN GAS WELLS.—

"(1) The gas wells referred to in Section 613(b)(1)(A) are—

"(A) wells producing regulated natural gas,

"(B) wells producing natural gas sold under a fixed contract, and

"(C) any geothermal deposit which is determined to be a gas well within the meaning of section 613(b)(1)(A).

"(2) (A) The term "natural gas sold under a fixed contract" means domestic natural gas sold by the producer under a contract, in effect on April 10, 1974, and all times thereafter before such sale, under which the price for such gas cannot be adjusted to reflect to any extent the increase in liabilities of the seller for tax under this section by reason of the repeal of percentage depletion. Price increases subsequent to April 10, 1974 shall be presumed to take increases in tax liabilities into account unless the taxpayer demonstrates the contrary by clear and convincing evidence.

"(B) The term "natural gas" means any product (other than crude oil) of an oil or gas well if a deduction for depletion is allowable under Section 611 with respect to such product.

"(C) The term "domestic" refers to petroleum from an oil or gas well located in the United States or in a possession of the United States.

"(D) The term "crude oil" includes a natural gas liquid recovered from a gas well in lease separators or field facilities.

"(E) The term "regulated natural gas" means domestic natural gas produced and

sold by the producer, prior to January 1, 1976, subject to the jurisdiction of the Federal Power Commission, the price for which has not been adjusted to reflect to any extent the increase in liability of the seller for tax by reason of the repeal of percentage depletion. Price increase subsequent to April 10, 1974 shall be presumed to take increases in tax liabilities into account unless the taxpayer demonstrates the contrary by clear and convincing evidence."

"(d) EFFECTIVE DATES. (1) The amendment made by subsections (a) and (b) shall apply to oil and gas produced on or after January 1, 1974.

(2) The amendment made by subsection (c) shall apply to any taxable year beginning after December 31, 1976."

SEC. 4. Section 201 is amended by changing the title to "FOREIGN OIL AND GAS WELLS," by striking subsection (a), and by redesignating subsections (b) and (c) as subsections (a) and (b), respectively.

**BRIEF SUMMARY OF THE GREEN AMENDMENT TO H.R. 14462**

Sec. 1.—Changes the title of Sec. 102 of the bill to reflect the Green Amendment's outright repeal of percentage depletion for oil and gas.

Sec. 2. Preserves existing Committee language referring to a new election to expense intangible drilling costs.

Sec. 3. Replaces the Committee-approved 3 to 5 year phase-out of the oil and gas percentage depletion allowance with language repealing it effective January 1, 1974. Also, this section provides a transitional rule, identical to one provided in the Committee bill, preserving percentage depletion for domestic natural gas sold under a long-term contract, and it provides a very generous transitional rule for natural gas subject to regulation by the Federal Power Commission.

Sec. 4. Deletes as unnecessary the Committee's language dealing separately with percentage depletion for foreign oil and gas.

Following are the supplemental views that I filed to the Ways and Means Committee Report on H.R. 14462 (Report No. 93-1028):

**SUPPLEMENTAL VIEWS OF HON. WILLIAM J. GREEN**

**I. INTRODUCTION**

The Ways and Means Committee is to be commended for its efforts to draft legislation to tax oil and gas producers' windfall profits resulting from recent shortages and skyrocketing prices. I have supported the Committee's effort in this regard, because the high prices have created, and will continue to create, exorbitant after tax oil company profits more than double last year's record \$4.0 billion. In 1974, the estimated after-tax profit will be \$9 billion. It is essential to note, at this point, that this \$9 billion profit is on the production of oil alone. It

does not represent additional, enormous profits in refining, retailing, shipping and more. However, while the Committee took a laudable step in phasing out the percentage depletion allowance for oil and gas, it failed to go far enough. In 1974, the Committee bill would increase the taxes on the \$5 billion windfall by only \$670 million.

During the Committee deliberations, I offered an amendment to eliminate the percentage depletion allowance for oil and gas, as well as other petroleum oil industry tax subsidies. This amendment would have increased oil industry taxes by \$3½ billion. I believe this to be the proper means by which to eliminate windfall profits. It simply does not make sense to subsidize profits through tax advantages and then create new, only marginally effective, taxes to limit those same profits. Rather, the sensible approach would be to simply eliminate the tax subsidy in the first place. Thus, I cannot fully support the Committee bill as presently written, and I intend to offer an amendment to eliminate, effective January 1, 1974, the percent depletion allowance for oil and gas, the most blatant of oil industry tax subsidies. I urge all my colleagues to support my effort to remove this costly, inequitable, and inefficient tax subsidy and thereby effectively tax some of the oil companies' huge windfall profits.

**II. ANALYSIS**

**A. The committee bill raises very little revenue from the enormous profits being earned by oil producers**

In 1973, major oil producers were producing and selling oil for \$3.50 per barrel. As a result of shortages and market pressures, the present price of oil, subject to price controls, is \$5.25 per barrel. Thus, a minimum unexpected windfall of \$1.75 per barrel has been realized. These same producers are getting \$10.00 per barrel for oil not subject to price controls, for which they received \$4.00 per barrel a year ago. That's a windfall of \$6.00 per barrel. Thus, the average price has increased from \$3.90 per barrel in 1973 to \$6.50 per barrel today.

These sudden price increases will result in domestic oil profits more than double last year's record levels. According to the Joint Committee on Internal Revenue Taxation, the increase in after tax profits from 1973 to 1974 will be \$5 billion, from \$4 billion in 1973 to \$9 billion in 1974. It is this profit that the Committee bill purports to tax. Unfortunately, the Committee bill, by failing to immediately eliminate percent depletion and providing many exceptions to its excise tax on profits, taxes this \$5 billion profit by only \$670 million. In addition to failing to adequately tax 1974 windfalls, the Committee bill taxes future industry profits of some \$80 billion by only \$13 billion over a six year period. The following chart illustrates projected domestic profits and the relatively small impact of the Committee bill:

CHART I.—ESTIMATED DOMESTIC OIL PRODUCTION REVENUES AND PROFITS UNDER H.R. 14462 (ASSUMPTION IS LONG-RUN PRICE OF OIL IS \$9)

	1973	1974	1975	1976	1977	1978	1979		1973	1974	1975	1976	1977	1978	1979
Before tax profit from oil production	4.7	10.6	11.3	12.0	12.7	13.5	14.8	Additional tax from depletion phaseout with exemptions under bill	0	0.64	1.27	1.91	2.19	3.3	
Tax under present law	.7	1.6	1.7	1.8	1.9	2.0	2.2	After-tax profit under bill	4.0	8.33	8.17	8.64	8.72	9.27	9.3
Additional windfall tax under bill		.67	.79	.29	.17	.04	0								

By contrast to the Committee proposal, elimination of the costly and inefficient percent depletion allowance would result in a near normal 48 percent tax rate on U.S. oil production. The Committee recognizes the benefits of eliminating this tax subsidy by

providing for a phaseout, with certain exceptions, over three years by 1977. However, the Committee phaseout moves too slowly, and provides too many exceptions, to permit any sort of effective taxation on current windfalls. For this reason, I will seek to sub-

stitute for those provisions the immediate elimination of the percentage depletion allowance for oil and gas. The following chart illustrates the effect of my amendment on domestic oil profits:

CHART II.—ESTIMATED DOMESTIC OIL PRODUCTION REVENUES AND PROFITS UNDER GREEN PROPOSAL TO REPEAL DEPLETION  
(ASSUMPTION IS LONG RUN PRICE OF OIL IS \$9)

(In billions of dollars)

	1973	1974	1975	1976	1977	1978	1979		1973	1974	1975	1976	1977	1978	1979
Before tax profit from oil production.....	4.7	10.6	11.3	12.0	12.7	13.5	14.8								
Tax under present law.....	.7	1.6	1.7	1.8	1.9	2.0	2.2								
Additional windfall tax under bill.....		.67	.79	.29	.17	.04	0								
								Additional tax under Green proposal to repeal depletion as of January 1974.....	2.6	2.8	3.2	3.5	3.7	3.8	
								After-tax profit under Green proposal.....	4.0	5.73	6.01	6.71	7.13	7.76	8.8

**B. Percentage depletion is costly, inefficient and unneeded and should be repealed as a way of limiting windfall profits**

Our overly generous treatment of the oil industry has proved to be a highly inefficient method of encouraging increased domestic production. Recently, a Library of Congress study concluded that, rather than stimulating exploration and development, oil tax incentives such as the depletion allowance encourage producers to overdrill in already discovered oil fields. Indeed, since only 10 percent of exploratory wells strike oil, depletion benefits only one-tenth of the exploratory drilling. Thus, oil companies prefer to spend money drilling in existing oil fields and thereby be certain to receive the depletion tax subsidy.

Former energy chief Simon recognized this in a letter to the Senate Interior Committee stating that: "In the short run, changes in percentage depletion should have little effect on the rate of expenditure of discovery efforts . . . in the long run, a change in depletion should have no effect, per se, on the rate of production."

Moreover, many of the benefits from percentage depletion go to non-productive interests. A landowner receiving royalty income receives the benefits of percentage depletion even though he takes no financial risks to expand production of domestic reserves. In fact, 42 percent of depletion benefits are paid either to non-operating interests in domestic production or for foreign production.

The depletion allowance also discourages the production of cheaper and more abundant sources of energy. First of all, depletion benefits for minerals are based on the value of those minerals in the ground and not in their final processed form. Therefore, a \$7.00 barrel of crude oil gets the full benefits of the depletion allowance while a \$7.00 barrel of oil made from coal will only receive depletion benefits on the value of the original coal. Since coal costs less than oil, the bulk of the \$7.00 cost of liquified coal lies in the processing expenses. These do not qualify for depletion.

At present, a company that produces a \$7.00 barrel of crude oil gets a tax bonus of about \$1.30. A company producing the same \$7.00 barrel from coal liquification would receive a bonus from the taxpayers of only ten cents. Of course, someone who develops solar energy at an equivalent price or designs a more efficient gas engine would receive no tax incentive at all!

Considering the foregoing, the committee is correct in concluding that the depletion allowance should be ended, but I would urge that we end it immediately.

**C. The committee bill's slow phase-out of the preferred depletion allowance and its exceptions are unjustified**

The current price incentives enjoyed by the oil industry more than offset any alleged losses resulting from the elimination of depletion. For example, for a \$4.00 barrel of oil, the net benefit of the depletion allowance is less than \$1.00. Thus, if the price of that barrel were to increase to \$5.00, there would be no net loss due to the repeal of the depletion allowance. Since 1974 prices will average approximately \$6.50 a barrel, it is clear that no net loss will result from elimination of depletion. Indeed, repeal, not-

withstanding, there will be a \$1.50 per barrel price incentive. This is far more incentive than that provided by this costly tax subsidy.

With respect to the Committee bill's exemption of stripper wells from the phase-out (it permits a 15 percent deduction until 1979), it is important to note that even the Department of Treasury, through Assistant Secretary Hickman, has taken the view that, if depletion is to be ended, it should be ended cleanly with no exceptions. As Mr. Hickman pointed out, most stripper wells now in operation profited last year receiving a price of \$4.00 per barrel, and are presently "wildly successful," receiving an uncontrolled price of \$10.00 per barrel.

Applying the 15 percent depletion exemption to the first 3,000 barrels per day for all producers, as provided by the Committee bill, maintains the depletion allowance for all but 69 of the Nation's 10,000 oil producers, and the 69 largest companies will receive it for their first one million barrels per year. Moreover, there is a danger, as we have been warned by Treasury, that producers will rearrange oil ownership in such a way as to make all production subject to this exemption. Certainly, to do so would be a profitable undertaking for the companies. Thus, the Committee's 3,000 barrel exemption could result in absolutely no effective elimination of the percent depletion allowance; rather, it would result in a mere reduction from 22 percent to 15 percent.

**D. Windfall profits are not necessary in order to finance investment in the search for more energy**

In short, the present profit picture is so good, and present prices so high, that, even with the immediate elimination of the depletion allowance, the industry and outside investors can't afford not to invest in searching for new oil. America's mature capital markets, after evaluating the economic prospects of oil production, effectively respond to the capital requirements of the energy industry. Even before the current fantastic improvement in the domestic oil profits picture, energy companies had little difficulty meeting their financial requirements.

In March 1973, the Senate Interior Committee elicited responses from the F.P.C., the Department of Interior and the Treasury concerning the energy industry's capital needs. All agreed that, historically, the industry had little difficulty due to its heavy reliance on internal financing. Indeed, 71 percent of the required working capital is provided through cash earnings. Of course, current rapid price increases will greatly increase this cash flow and thereby provide new capital.

In addition, rapid increase in return on shareholders' equity will provide additional funds from outside investors. In 1973, return on equity rose 50 percent. Given historic dividend patterns, the 100 percent increase in profits for 1974 should produce a return on equity 75 percent greater than last year's record levels.

The tremendous advantage of expensing intangible drilling costs, a tax subsidy to be left untouched by my amendment, will also bolster cash flow and thereby attract capital. This is true because of the significant role the deduction for intangibles plays in increasing after tax profits. For example, the

Committee staff estimated that, at present prices, 1974 after-tax profits will increase 100 percent, to \$8 billion, if there is no re-investment of that increase and, hence, no intangible drilling cost deduction. On the other hand, 1974 after-tax profits will rise by 150 percent, to \$10 billion, if all the increased earnings are re-invested.

Based on the foregoing, then, it is clear that present price and profit projections, the resultant increase in cash flow, and the extremely generous write-off for new investment assure an adequate capital picture for the energy industry. This being the case, it is hard to imagine that the elimination of the depletion allowance, and the modest effect that will have on the profit picture, will have a negative effect on the capital investment picture.

**E. Eliminating depletion will not increase the price of gasoline**

Under previous price conditions, there may have been some danger that gasoline prices would increase as a result of eliminating the depletion allowance. To some extent, the depletion allowance may have subsidized lower gasoline prices in the past. However, under present circumstances, gasoline prices are being set by the price of oil. As long as we are paying \$10.00 per barrel for imported oil, uncontrolled domestic oil will sell for a similar price. Removing the percentage depletion allowance won't increase that price, it will merely lower the inordinate profits that result from it.

III. SUMMARY

This bill does not sufficiently tax 1974 windfall profits. I urge all of my colleagues to support my effort to repeal percentage depletion as of January 1, 1974, and thereby correct this weakness in the bill. Such a move would meet the public's demand, voiced in innumerable ways, for a just windfall tax. And it will come as no shock to the oil industry as these companies have been on notice for quite some time, through both Congressional and Presidential statements, that a stiff tax was inevitable.

Moreover, passage of my amendment will force the industry to rely on the market place, instead of the tax code, for its profits. Profits will be made if the Companies do what they are supposed to do—produce and sell more energy. And the additional revenues from my proposal could help fund tax relief programs for consumers hard pressed by high energy prices, programs for energy research and development, programs for mass transit, or programs to meet other urgent public needs.

THE BIGGEST AND BEST: VIRGIN ISLAND CARNIVAL 1974

HON. RON DE LUGO

OF THE VIRGIN ISLANDS  
IN THE HOUSE OF REPRESENTATIVES  
Wednesday, May 15, 1974

Mr. DE LUGO, Mr. Speaker, I would like to share with my colleagues an editorial description of the biggest and best spring-time celebration in the Carib-

bean, the annual carnival of St. Thomas, U.S. Virgin Islands.

This carnival combines parades, gaily decorated floats, beautiful costumes, and uninhibited behavior, with traditional modes of celebration to produce a uniquely Virgin Islands affair. It is a week of general merriment, when all personal and social barriers dissolve with the joining of hands and hearts in joyful exuberance and brotherhood. It was also a week without a single unpleasant incident.

Carnival, 1974, was exceptional because of its size and intensity, the high level of community spirit expressed by participants, and the professional work of the organizers. Carnival Committee Chairman Alfred Lockhart deserves special congratulations for his efforts.

But the most vital part of the carnival is the union of human beings in their mutual expressions of joy. It is wonderful to see visitors from all over the Caribbean, the United States, and the world, joining Virgin Islanders to dance, sing, and laugh together. Where else but in the Virgin Islands could so many different individuals spend a week together and produce such a beautiful, incident-free, joyous occasion?

All in all, an extraordinarily enjoyable week that has provided enough memories to last the whole year. I personally invite my colleagues to join us for next year's carnival, so that they can experience the truly free and beautiful hospitality of the Virgin Islands.

The article follows:

[From the Virgin Islands Daily News, Apr. 30, 1974]

#### CARNIVAL 1974: ONE OF THE BEST EVER

This year's Carnival, it seemed to us, was one of the best in several years, and we particularly noted that it seemed marked by a healthier community spirit, and that all the diverse elements of our society of the period than has been the case in recent years. Both at the Village and at Friday morning's *jouvert* we noted more visitors and residents of mainland origin partaking of the gaiety and excitement, and the result seemed to enhance the enthusiasm of the true Carnival spirit of joy and merriment.

One of the highlights of the week had to be *jouvert*, which brought thousands of people and five bands out into the streets at 5 a.m. in an enthusiastic display of spirit. In only its second year here, this institution borrowed from Trinidad seems to have become a fixture and a highly welcome addition to Carnival. For both residents and visitors alike it was a truly memorable experience.

Both the adult and children's parades this year seemed to be possibly the best ever, with costumes and floats reaching new heights of originality and colorfulness, and the numbers involved in the adult parade's *foupes* and troupes must certainly have made it the largest ever. Only the lateness of that parade's start, a chronic problem, detracted from its enjoyment, and we trust that next year, for the sake of both participants and spectators, a wholehearted and determined effort will be made to get the adults to show that they can start a parade on time, just as the children usually do.

Among those members of the community who specifically merit praise for their contribution to Carnival are the police. They seemed more in presence than we have noticed before, and that was in itself welcome. Equally important, though, their tac-

tical deployment and personal conduct were noticeably of an improved level professionally. Considering the added responsibilities that events such as Carnival put on the police, we were heartened so to see them rise to the occasion in such a commendable manner.

Carnival Committee Chairman Alfred Lockhart specifically deserves personal commendation for his dedicated efforts to make this year's Carnival what it was. In addition to him, the committee members and other officials, there were many who toiled behind the scenes, as well as those whom we saw in the parades and other events, who worked very hard to make Carnival 1974 the success that it was. They and the thousands of spectators, whose role is also essential to the creation of that intangible thing that makes the real Carnival atmosphere, deserve the thanks to the entire community.

#### "THE SPIRIT OF CUMBERLAND"

### HON. GOODLOE E. BYRON

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 15, 1974

Mr. BYRON. Mr. Speaker, as many of my colleagues now know, William C. Holbrook of Cumberland has been declared the winner of the longest glider race in the world. Because this personal achievement is so noteworthy I have submitted for the RECORD an article from the Cumberland Times which describes the adventures of Mr. Holbrook and *The Spirit of Cumberland*.

I know you join me in extending congratulations to Mr. Holbrook and his local sponsor, the Kelly-Springfield Company.

The article follows:

HOLBROOK FIRST IN NATIONAL GLIDER RACE  
It's official!

William C. Holbrook of Cumberland is the winner of the longest glider race in the world, the third annual Smirnoff sailplane derby.

The route covered 2,900 miles from Los Angeles to Washington's Dulles International Airport where a ceremony was held today by the sponsors of the race for the press and television.

Six of seven gliders in the race made it from Akron to Frederick yesterday and this morning were towed in the air the 30 remaining miles to Dulles International for the program at noon. They flew in the order they finished.

It was announced by race officials that Mr. Holbrook came in first by 45 points over his nearest rival.

To him goes a gold medal, but no cash award as it is an amateur sport. Sponsors will contribute \$6,000 to the Soaring Society of America.

At Dulles for the conclusion of the race were officials of Holbrook's local sponsor, the Kelly-Springfield Tire Company, local flying enthusiasts and his crew—his wife, Sophie, and their 19-year-old daughter, Lisa.

The officials included Robert E. Mercer, president; Richard Lowery, executive vice president; and Jerry Hess, public relations. They also met him yesterday at Frederick along with local friends.

Yesterday Holbrook came in second on the 245-mile flight from Akron to Frederick. He made the flight in three hours and 42 minutes, which was ten minutes under the three tying for first—Karl Striedieck, Pittsburgh;

Ken Briegleb, El Mirage, Calif., and Hannes Linke, Los Angeles.

One pilot, Dan Pierson of Compton, Calif., was forced to bring his glider down near Pittsburgh due to a rudder failure, but was reported to have made a safe landing.

Holbrook, when interviewed by phone this morning, said he was very excited at having won the race, but he believed his crew, his wife and daughter, were even more excited than he.

Asked what kept him going, he answered, "Well I guess it was the name of my glider, *The Spirit of Cumberland*."

He pointed out that he flew more miles than any other pilot in the three years the derby has been held.

Poor weather caused Holbrook and the six other pilots to land short in Missouri and also on the St. Louis to Indianapolis when again the weather forced them down.

Subtracting this distance, Holbrook flew a total of 2,714 miles out of a possible 2,900 miles.

He remarked that yesterday's route from Akron to Frederick took him over Bedford Springs Hotel, and he then talked by radio to his friends at the Cumberland Municipal Airport.

This is the second May in a row that Holbrook has set a mark in gliding. Last May he broke the world's record for distance flown in one flight when he made the trip from Lock Haven, Pa., to Hansonville, Va., and return, a distance of 83 miles.

#### ENDING OIL TAX PRIVILEGES

### HON. FRANK J. BRASCO

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 15, 1974

Mr. BRASCO. Mr. Speaker, among the major highlights of every congressional session are the anguished, angry cries for tax reform voiced by most progressive Members of the House and Senate. As one such Member, I have engaged in what has proven to be an exercise in futility for the entire length of my stay in Congress. Each year the cumulative outcry has been louder and each year it has been futile.

Simultaneously, the people of the Nation have gotten more frustrated, until this year the entire business has been capped by the worst revelations yet: the oil industry's tax evasions, their extraordinary profits, and the energy crunch imposed on the consuming public by their activities.

At last enough Americans have been hurt enough in a personal sense for Congress to feel the pinch. So at last we have some action at the top, mainly in the House tax-writing committee, Ways and Means. It is to the credit of that body that they have acted promptly since the energy crunch, and have produced a true oil tax reform bill.

The legislation taking form in that committee, we are informed, would raise the taxes of American oil companies by more than \$16 billion over a 6-year period, which is a good beginning. Under its provisions, the oil depletion allowance would become a thing of the past, perhaps one of the most overdue reforms in tax history. With oil prices going through everybody's roof, there is no reason whatsoever for a further tax in-

centive of this type. Many oil wells in this country have been written off more times than the Lost Battalion.

In addition, the proposed measure is supposed to tax excess oil profits and raise taxes on U.S. companies drilling overseas. Here is perhaps the most vital reform element in the entire bill, because previous tax allowances have made it lucrative for oil companies to concentrate their exploration efforts abroad, insuring that their domestic exploration endeavors would be cut accordingly.

Regrettably, natural gas producers, who in most cases are the major oil companies, would retain their present 22-percent depletion allowance.

According to what is known now, the new proposal would extract \$13.3 billion in extra taxes from 1974 to 1979 from the major oil corporations. This would come from their domestic operations, while an additional \$2.8 billion in Federal taxes would come from their overseas activities.

For years, whenever any effective tax reform measure affecting big oil made its way through the Congress, the oil industry mounted a massive lobbying effort against it, and usually with enormous success. We can expect a repetition of that endeavor this time, and must prepare for that eventuality.

One element in the equation, however, has changed. The people of this country have finally become aware of what big oil has been perpetrating upon them all this time. They now know that the average citizen pays more tax proportionately than the average oil company does. They know now that the accumulated tax preferences constitute the worst single tax scandal in American history. They now know that the only reason this situation has been allowed to continue and worsen is because Congress has not seen fit to close the gaping loopholes in the tax laws. And the recent energy crunch has brought these lessons home to them in a direct, personal manner.

All the self-serving, tax-deductible advertisements in the major media would not undo the realization in the public mind that this is in fact the true state of affairs. Most of all, the average person now knows that for every penny the oil companies evade in tax, the Internal Revenue Service must collect from the mass body of American taxpayers.

That leaves the initiative squarely up to the Congress. When that bill comes to the floor, there will be an up-or-down vote on whether or not every Member of this body will stand by the oil industry, which can be described as a parasite on the body politic of this country, or for the average taxpayer. To put it in any other terms is to deliberately obfuscate the issue.

When the oil lobbying establishment talks about incentives and foreign taxes, we can respond that their massive, tax-sheltered profits are the best incentive in the world for further exploration. We can also respond that every penny in foreign tax that they pay is written off, dollar for dollar, against their domestic Federal taxes. The facts are at last largely on the public record, and the people of

this country have a right to know where the Congress stands on this. If the President then chooses to veto any such congressionally-approved bill, as he did the measure we passed rolling back oil prices, then the people of the Nation will know exactly who has done what to whom.

We have a spectacular opportunity here to act in the public interest. Such a vote would set a precedent for closing still other tax loopholes, which are equally scandalous. This includes the millionaires of the Nation who pay no taxes at all. If true tax reform were enacted by Congress, and there is no reason why this should not be the case, we could effectively and swiftly lower the tax burdens now carried by the vast majority of Americans.

If Congress chooses to refuse such an opportunity, the American people have a right to know who is responsible.

#### OIL SHALE LEASE FAILURE PRESENTS OPPORTUNITY FOR A FEDERAL OIL CORPORATION

### HON. CHARLES A. VANIK

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 15, 1974

Mr. VANIK. Mr. Speaker, the Department of the Interior yesterday held a lease sale for the fifth tract of land offered in the Federal prototype oil shale leasing program. This tract, the first to be offered in the State of Wyoming, holds recoverable reserves of at least 168 million barrels of oil according to figures in Interior's final environmental impact statement on the prototype program.

Not a single bid was received for the tract.

No bids were received on this tract despite intense industry interest in the previous four tracts. The first two, in Colorado, brought bids that far exceeded the Department of the Interior's expectations—but still amounted to a return to the public of less than 6 cents per barrel in the first lease, and less than 17 cents per barrel—of estimated, in-place resources—in the second lease.

The third lease, the first in Utah, unexplainably brought almost 31 cents per barrel despite presenting more difficult mining problems than the previous leases. Equally unexplainable, the fourth lease returned to the 17-cent-per-barrel level.

The fact that not one company bid on Tuesday's tract indicates several things. Since the second Wyoming oil shale tract is of even poorer quality than today's, it probably means that that tract will go unsold as well.

Perhaps most importantly, the lack of a lessee in this fifth prototype lease invalidates what Interior has continually assured us is a "prototype" operation—a program that will test all the most efficient means of commercial oil shale extraction while guaranteeing a "fair" return to the public and environmental rehabilitation of the affected lands.

None of the leaseholders have an-

nounced intentions to recover shale oil with any other method than above-ground retorting of the ore. What does this do to the Department of the Interior's claim that the prototype program is a carefully planned program to develop all reasonable recovery methods. Will we ever see large-scale application of the in situ recovery techniques?

Mr. Speaker, the lack of bids on the Wyoming tract makes available an opportunity that we might not have had otherwise; it gives the Federal Government a perfect chance to establish its own oil shale corporation. Such a corporation, perhaps confined specifically to development of these "W-a" tract lands, could put to the test the concept of a Government oil entity, created to foster competition in the industry and provide a "yardstick" for comparisons with private industry prices and costs.

Beginning in 1859 with the first commercial recovery of oil in our country, the oil industry has sought to prevent any direct Government activity in their industry. Government control or regulation or competition would not serve the consumer's best interests, they said. "We must leave the oil business in the hands of 'free enterprise,'" they have contended. Yet the industry has accepted hundreds of billions of dollars in tax and quota subsidies from the Federal Government.

We have seen that leaving the oil business to the oil industry has resulted in unprecedented problems: Soaring prices, monopoly control, neglect of the public's interest, and abuse of the consumer are all symptoms of the illness that plagues this most important area of our domestic energy supplies. It is hard to imagine how a poorer job could be done.

This opportunity to create a Government oil corporation should not be passed by. It is an opportunity long awaited by many Members of Congress.

#### HARVEST OF DEATH

### HON. LESTER L. WOLFF

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 15, 1974

Mr. WOLFF. Mr. Speaker, the Daily Journal of Elizabeth, N.J., recently printed an editorial entitled "The Harvest of Death—Congress Should Cut Off Aid to Turkey If Poppy Growing Is Resumed." I would like to take this opportunity to applaud the Daily Journal's editorial page director, Theodore Jacqueney, for supporting our most recent congressional efforts that urge the President to immediately begin serious, high-level negotiations with the Turkish Government so that the ban on opium cultivation will not be removed. If these negotiations prove fruitless, the concurrent resolution offered by Representative RANGEL and myself, would direct the President to exercise his power under the Foreign Assistance Act to cut off all aid to Turkey. The Daily Journal's editorial is inserted below:

**HARVEST OF DEATH: CONGRESS SHOULD CUT OFF AID TO TURKEY IF POPPY GROWING IS RESUMED**

Instead of getting exercised by penny-ante problems like the contents of the junior high school library shelves, people concerned seriously about the plague of drug addiction in these United States should direct their outrage to the impending decision of the Turkish government to renew widespread opium poppy cultivation next fall.

Until the Turks ended poppy growing two years ago—after heavy U.S. pressure and \$35 million in "compensation"—80 per cent of the heroin ravaging the streets of America originated in Turkey. Law enforcement agencies have observed that heroin traffic slowed appreciably this year, with the Turkish ban receiving much of the credit. Within Turkey, however, many politicians increasingly urge the ban be overturned. The Turkish foreign minister was quoted recently as saying that farmers for whom opium growing was "a way of life" have "undergone severe poverty" because they can no longer grow as a cash crop the pretty flowers that can be fabricated into deadly drugs.

Well, slavery was another "way of life" that kept white southern farmers fat and contented before the Civil War. Slavery was no less abominable an economic system of exploitation and degradation of human beings than the system opportunistic Turkish politicians seek to impose upon the inhabitants of American urban areas. We must raise our voices against them loud and clear.

Some members of Congress propose cutting off U.S. military and economic aid to Turkey if they lift the poppy ban. The leaders of this move are New York Democrats Charles Rangel and Lester Wolff.

New Jersey's congressmen should join in this effort.

**SOCIAL SECURITY TAX**

**HON. DAN DANIEL**

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 15, 1974

Mr. DAN DANIEL. Mr. Speaker, last month we met our tax obligations to the United States, and in the Commonwealth of Virginia we have just completed a like duty. According to the Tax Foundation, just a little over a week ago, we stopped working to meet our myriad tax obligations, and started to earn the sums required for our food, shelter, and clothing. Given the rapid escalation of inflation, only the very fortunate among us will find any days this year left over which can be credited to life's comforts or—more importantly—savings for either the proverbial "rainy day" or for our later years.

One of my constituents, Mr. Ray Mabe of Danville, Va., has written me about taxes generally and specifically about the effect the escalation of social security tax is having on young couples in low- and medium-income brackets. I am inserting his letter in the RECORD in order that it may be read by the Members:

DANVILLE, VA.,  
March 1974.

HON. DAN DANIEL,  
Congress of the United States,  
Washington, D.C.

DEAR MR. DANIEL: I am writing in hope that you will read this letter to the Congress

and also in the hope of avoiding another crisis in this country. The crisis to which I refer is that facing the taxpayers.

We all go to work and work hard to make a living, and these days it's tough because of rising inflation and taxes and paying more for everything we get from food to gasoline. And now the House has approved an 11 per cent increase to Social Security people, which they will get next month.

How are we going to keep paying these outrageous increases in Social Security?

I believe Social Security is one of the cruelest aspects of our society today. Why? If you place money in the bank, you do so in confidence that it may be withdrawn with interest, but I cannot be guaranteed that I will receive the money that I have contributed to Social Security. I feel that the program should be changed. What is the purpose of both wife and husband paying Social Security if they only get the benefit of one?

My wife and I both work, and we both pay Social Security taxes. Yet when we retire she can only receive what she paid in or what she would get as my dependent. We could both die before retirement, and our children, depending on how old they are, would get nothing. Many of us taxpayers feel this is not fair.

Since Congress is so intent on Social Security legislation, I think it is the only honest way of doing things to see that families that pay double taxes can leave it to their children. We are forced to pay money into something which neither we, nor our children, may receive the benefit from.

If something is not done, there is going to be a rebellion by the taxpayers. Although I may be just one taxpayer, unless I get some relief from Congress in order to pay these ever-increasing payments to Social Security (which may be all for nothing), I shall request my employer to stop deducting Social Security taxes from my pay. I believe that I should have this right, as I must authorize any deductions from my pay.

Maybe the government will put me in jail; but it will have to support my family, and this will be just another headache for the government. It may also make the taxpayers aware of the fact that something must be done.

I work in the grocery business and I have had one 12-cents-an-hour raise in over a year. The people on Social Security have had five increases in the last two years, and I have had to pay the increases due to the freezing of wages in the grocery business.

My employer signed a contract with our union to pay wages as follows: January 16, 1972—\$3.455; January 14, 1973—\$4.005; and on July 15, 1973—\$4.275. They have not had to pay the increases due to the freezing of wages in the grocery business. We are supposed to be making \$4.275 per hour now, but I am making only \$3.50. Quite a difference, isn't it? Congress allows the business to appeal our wage increases, but we cannot appeal an increase in Social Security. We just have to take another cut in pay and try to make it.

I don't know what the increases are actually, but I have heard a person on Social Security can get \$355 a month, and this is tax-free money. Now I make \$560 a month, and that is taxable. After taxes and Social Security are taken out I draw \$385.32. That's a difference of only \$30 net, and I have children to raise.

Gentlemen, I know all of you have heard the old saying, "Go to the well too often, and it will dry up." Well, you and I both have seen this in our lifetimes. With the environmental people stopping our nuclear plants because they are dangerous, stopping coal-burning generators because they are bad for the environment, this has led to using other fuels such as gas and oil, and now we are about out of both.

Well, Members of Congress, this Social Se-

curity "well" is just about dry now. I cannot afford to pay any more increases because before too long I won't have any money for myself.

I know these people are having a hard time, but what about me? I am the one footing their bill. It is taking away from me to give to them and you keep my wages frozen. That's killing me, and all the other taxpayers in the nation. Gentlemen, I beg you please, no more increases in Social Security and Welfare. Leave our wages free of controls; otherwise, we won't be able to pay the increases you keep proposing. As I said before, your well has run dry, and a taxpayer revolt could only cause another crisis which surely would hurt our country more than anything else could.

If you legislate to give a cost of living increase in Social Security, why not make the same law apply to our wages by the same amount. I think this is a good idea don't you?

Thanks again, Dan and Congressmen; I wish I could meet all of you someday, but I guess that is just about impossible.

Sincerely yours,

RAY MABE.

**CONGRESSMAN ROGER ZION RECEIVES UNIQUE DISTINCTION**

**HON. WILLIAM G. BRAY**

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 15, 1974

Mr. BRAY. Mr. Speaker, I believe the following editorial from a recent edition of the Lawrence County, Ind., Daily Times-Mail, speaks for itself. It is a fitting tribute to our colleague, ROGER ZION; he speaks for his people, and, as the editorial makes clear, the people agree:

**UNIQUE DISTINCTION**

Eighth District Congressman Roger Zion has received a unique distinction which should endear him to the masses of people who feel that it's high time we get ecologists and environmentalists under control before they throw the country into utter chaos.

Zion was chosen for membership in the Environmental Action's "Dirty Dozen" for his record on voting on national issues the organization considered important. Environmental Action, a political lobby in Washington, said Zion voted wrong on 15 of 16 legislative issues. The organization urges his defeat at the polls this year.

Indiana congressmen scored very well. They captured three positions in the Dirty Dozen list. That's 25 per cent. Indiana has more congressmen on the list than any other state. Other Hoosiers on the list are William Hudnut and Earl Landgrebe, both Republicans. It might be interesting to note that 10 of the 12 men on the list are Republicans and the other two are Southern Democrats.

In our way of thinking, being opposed by Environmental Action is something akin to being opposed by communists or socialists. It's something of a kiss of death in reverse. The men who had the best records of voting "wrong" are those who demonstrated that they are pro-industry, pro-labor, pro-energy, and who are opposed to shackling business, industry and agriculture with unrealistic regulations which cause great loss of jobs, profits, food and energy in a time of crisis.

Environmental Action said that Zion and Landgrebe have won membership on the Dirty Dozen list three times.

Here are some of the issues on which Environmental Action says Zion voted wrong:

1. He voted against extracting \$700 mil-

lion from the highway trust fund for spending on mass transit. The trust fund consists of money paid in federal gasoline and diesel fuel taxes.

2. He voted for an amendment which would have cut a U.S. pledge of money for international environmental research from \$40 million to \$5 million.

3. He voted against use of public funds to help pay for legal aid for women seeking abortions.

4. He voted against shifting authority over nuclear power plants from the Atomic Energy Commission to the states.

5. He voted in favor of use of nuclear power to release natural gas from tight rock formations in the Rocky Mountains.

6. He voted against spending \$4.7 million in federal funds for research to find sources of energy as alternatives to atomic energy.

7. He voted against transferring standard-setting authority in handling of farm pesticides from the Department of Agriculture to the Occupational Safety and Health Administration (OSHA).

8. He voted to tone down somewhat the Environmental Protection Agency's authority over so-called hazardous chemicals.

9. He voted against a proposal to forbid construction of the Alaskan oil pipeline across national forests, national refuges or national wilderness land. He also voted against an anti-Alaskan-pipeline amendment, and another amendment which would have compromised the pipeline project. In other words, Zion voted against any further delays in the pipeline project.

10. He voted against using federal funds to subsidize mass transit operating expenses.

11. He voted to reduce from \$45 million to \$5 million for an ecology-related educational program.

12. He voted in favor of extending from 1975 to 1977 deadline for compliance with the 1970 clean air act as contained in the emergency energy act.

13. He voted in favor of a measure which would have required building designers to promote efficient energy use in homes, commercial and industrial buildings. (Zion was recorded by Environmental Action as voting correctly on this issue.)

14. He voted against an amendment which would have shifted emphasis away from nuclear fuel for electric energy production.

By winning listing on the Dirty Dozen, Rep. Zion demonstrated that in his opinion the nation went much too far, too fast and often without facts in the fields of ecology and environment. We heartily agree.

#### PREVENTING THE ABANDONMENT OF RAILROAD LINES

**HON. JOHN M. ASHBROOK**

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 15, 1974

Mr. ASHBROOK. Mr. Speaker, I have introduced a bill—House Joint Resolution 1008—to prevent the abandonment of railroad lines. The bill will prohibit the abandonment of railroad lines until June 30, 1976, thus allowing a national transportation policy to be put into effect.

In the absence of a finalized railroad service plan and at a time that the Federal Government is heavily subsidizing railroad transportation, I oppose abandonment of railroad lines serving many millions of Americans. Railroad freight lines are vitally important to hundreds of medium-sized and small-sized com-

munities in our country. In our own 17th Congressional District, existing railroad service plays an important role in agriculture and industry. My bill will put a moratorium on railroad line abandonments until June 30, 1976.

Recently the Secretary of Transportation released a report which called for the elimination of numerous railroad lines in Ohio. I am opposed to this wholesale elimination. The "Evaluation of the Secretary of Transportation's Rail Services Report" which was prepared by the Rail Services Planning Office points out a number of weaknesses in the report of the Secretary of Transportation including a lack of complete data. There are a number of other shortcomings and problems with the Secretary of Transportation's Rail Services Report. I urge the Secretary to revise his findings to make sure that necessary rail service is continued.

My bill preventing the abandonment of railroad lines will allow further public involvement in this matter. Also it will give the Congress a chance to pass on the Department of Transportation's final rail plan without being faced with accomplished rail line abandonments that would be difficult and expensive to reopen. The text of the resolution follows:

H.J. Res. 1008

Whereas the national transportation policy of the United States has as an objective the development and preservation of a national transportation system by rail; and

Whereas the transportation requirements of the United States will double within the next ten or twenty years; and

Whereas the development and preservation of a national transportation system by rail is therefore a matter of the highest priority; and

Whereas the continued development and preservation of a national transportation system by rail is essential to the continued economic viability of communities throughout our Nation; and

Whereas such a system is essential to the continued existence of industries located throughout our Nation; and

Whereas the United States is threatened with wholesale abandonments of railroad lines serving such communities and industries throughout the United States; and

Whereas railroad lines once abandoned cannot be reactivated except at enormous cost; and

Whereas our Nation's future transportation demands may require the reactivation of abandoned rail lines at public expense; and

Whereas there presently exists no considered, uniform national or regional means of dealing adequately with present and future rail transportation needs of the United States and certain railroad carriers which seek to abandon vast portions of their systems because of present financial considerations; and

Whereas such abandonments may well be contrary to our Nation's national transportation policy of development and preservation of a national transportation system by rail: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Interstate Commerce Commission shall not authorize the abandonment of any line of railroad pursuant to the provisions of section 1 (18)-(20) of the Interstate Commerce Act, as amended, prior to June 30, 1976.

#### FORGIVE THEM

**HON. HENRY P. SMITH III**

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 15, 1974

Mr. SMITH of New York. Mr. Speaker, in a year of energy shortages, inflation, unemployment, Watergate, and many other important issues, little attention has been given to the rising controversy surrounding patent reform. However, more and more interest is being generated in the question and philosophy of patent reform.

For the benefit of my colleagues who wish to start to become knowledgeable about the issue of patent reform, I submit an article by Mr. Arthur R. Whale, president-elect of the American Patent Law Association, entitled "Forgive Them—"

The article follows:

FORGIVE THEM—

(By Arthur R. Whale)

Increasingly in recent years, technology has become an instrument of national policy. The exploration of space, concern for the environment, the energy crisis, the GNP, the balance of trade, the foreign use of U.S. technology by multinational corporations—all involve technology and its utilization, and all have profound political and economic overtones. The patent system, which implements a constitutional provision for promoting the development and utilization of technology, should therefore assume new importance in the world of today. But, incredibly, just when it's needed most, the system is in mortal jeopardy.

The patent philosophy is simply the idea of the "head start." Give a man the chance for the right to prevent others from using his invention for a limited period, and he will more likely devote his time, talents and money to developing new inventions for market; in this way he can reasonably hope to recover costs and earn a profit before others take a ride free on his efforts. Indeed, the protection afforded by patents may be indispensable to the individual inventor and small company in competition with large companies for the marketing of new and better products. And given the incentive of the prospects for patenting, large companies are more inclined to invest in expensive research facilities and programs where the chances for success are relatively low but where the potential profit from a successful venture is relatively high.

But a strange thing is happening. Although only about 1/2% of all patents are litigated, and the federal district courts invalidate less than half of those, some courts lash out at patent owners, the Patent Office, patent lawyer and the patent system in general with unseemly vengeance. One court recently summed up the prevailing antipatent attitude in these words: "... monopolies—even those conferred by patents—are not viewed with favor." Strangest of all, however, is the fact that distrust of patents has been fed from a wellspring of antipatent sentiment in one branch of the same Government that grants the patents.

The matter of greatest present concern is that the Congress will succumb to the active antipatent lobby within the Government. There is legislation pending in both the Senate and the House which in important respects would seriously hamper the patent system in its proper functioning to meet the constitutional objective. The danger is the greater because the bill on which the

Senate is concentrating is a so-called "Administration" bill.

Patent legislation is, of course, highly technical. Our busy congressmen can't be expected, in any great numbers, to study the various bills and evaluate their potential for ill or good. Moreover, from the political standpoint, this "Administration" bill has what could be an unbeatable triad of support. It was written in the Antitrust Division of the Department of Justice, it has the support of Senator Hart (a prominent Democrat ostensibly knowledgeable in patent matters as a member of the Patent, Trademark and Copyright Committee of the Senate), and it has the comforting appeal to Republicans of bearing the official stamp of the Administration. There is a clear and apparent danger that such a bill will pass the Congress.

The Administration bill is S.2504 (H.R. 10975). It embodies the *antitrust philosophy of patents* expressed in the judge's words referred to above. Instead of being fashioned to promote the development and utilization of technology through making patents reasonably available at reasonable costs to inventors, it is designed to assure the subservience of patents to antitrust. It does this by making patents extremely difficult to get, narrow in scope, difficult to enforce, and unmercifully expensive.

This approach precipitates a paradox. It is nowhere written that the patent system must serve the ends of antitrust. Quite the contrary, the Constitution ascribes no special purpose to the "monopoly" of the patent. Indeed, our patent laws were with us a hundred years before the first antitrust laws.

It is no less a paradox that the Administration chose the antitrust approach of the Department of Justice to patent legislation over that favored by the Department of Commerce, in which the Patent Office resides. The Administration did this following the embarrassing confrontations of the Department of Justice and the Department of Commerce at Senate Subcommittee hearings on patent legislation in 1971, decreeing thereafter that a single voice would speak for the Administration on patent matters. However, choosing the Department of Justice as its voice on patent legislation was like putting a vegetarian in charge of the meat market!

The Antitrust Division of the Department of Justice has occupied itself unduly with patent matters in recent years. Through luncheon speeches and published statements it has repeatedly displayed its distrust for patents and expressed its parochial, antitrust-oriented views as to what the laws of patent utilization should be. And recently the Department of Justice launched a major effort on behalf of legislation that would require the compulsory licensing of privately owned patents of Government contractors in the energy field. The Administration, speaking this time through the Department of Commerce, has firmly opposed such legislation as seriously diminishing the incentives needed to attract competent contractors and to stimulate private investment in technological development. It is this same Department of Justice that now would rewrite the substantive law of patents. And it is this same Administration that has made the Justice bill its own.

While professing that S. 2504 would counter the "emerging pattern of influence by large and established corporations," the Department of Justice has written a patent bill that would price patents out of the reach of many deserving applicants. The cost increase in the operation of the Patent Office under the Administration bill was estimated by the Department of Commerce to be possibly as high as \$31 million annually. This would mean an increase of 43% over the current Patent Office budget. Such increases would almost surely be passed along to applicants for patents. And these increases do not

include the enormous increase in attorneys' fees that would follow the added services required by S. 2504.

One might say that S. 2504 is a "lawyer's bill" in the sense that it would generate more fees for more lawyers than any patent legislation ever proposed. But the overwhelming majority of patent lawyers and organizations within the Patent Bar are opposed to S. 2504 in the Senate and H.R. 10975 in the House simply because technically and practically they are bad bills.

There is also pending in the Senate S. 2930, introduced recently by Senator Buckley of New York. Its counterpart in the House is H.R. 11868, introduced last fall by Representative Smith of New York. This proposed legislation is known as the "Patent Law Modernization Bill." It was presented for introduction by the American Patent Law Association and is the result of long and intensive efforts by committees of that Association and of the Patent, Trademark and Copyright Section of the American Bar Association. Their approach was to create a practical and workable continuum from the present law that would bring important changes without losing the direction of the decisional law as to basic premises. Its implementation would logically evolve from today's Patent Office, thereby minimizing the added cost that in the Administration bill would reach debilitating proportions.

In viewing the Bar sponsorship of S. 2930 and H.R. 11868, it is well to remember that the patent profession brings a broad representation of points of view on how to structure an effective patent system. The active Patent Bar includes the "prosecutors" of patents and the defenders of patents, as well as counsel for individual inventors, small companies and large companies. The important point is that *there are no vested interests guiding the Patent Bar in designing its proposals for patent law reform.* The efforts of the Bar are simply the efforts of lawyers knowledgeable in the problems of the patent system and in the practicalities that are essential for their solution.

In the brief period since the introduction of the Patent Law Modernization Bill (S. 2930 and H.R. 11868), support has been expressed by many professional associations, industry groups, companies and individuals concerned with improving the patent system. This bill is seen as progressive without overkill, reasonable in cost and complexity and attentive to the role of the patent incentives in the development and utilization of technology for the problems of today.

Senator Hart predicted last fall, when he introduced a patent bill drafted in the Senate Monopoly Subcommittee, that the subject of patents would not attract the interest of many Congressmen. He said: "[i]f we were measuring the 'potential boredom rate' of various topics for conversation on a scale of 1 to 100, patents would probably get a 99." If, indeed, the subject of patents has such a narcotizing effect, we might get a bad patent bill like S. 2504 by default. On the other hand, the importance of the patent system to many of our national issues may create more interest in patents than Senator Hart supposes. And there lies the hope for a closer look at the problems inherent in S. 2504 and H.R. 10975—and at the redeeming features of S. 2930 and H.R. 11868.

#### THE BIG BROTHER SYNDROME

HON. FRANK J. BRASCO

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 15, 1974

Mr. BRASCO. Mr. Speaker, many years ago, George Orwell wrote his now

classic "1984," in which every phone is tapped, every person watched, and every action scrutinized. Computers and television screens as well as hordes of police joined helicopters and a swarm of other technological sophisticated devices in controlling the lives of all members of that futuristic society.

While we admired the book as a classic and made it required reading in ump-teen schools and universities, most Americans laughed a bit nervously and told themselves that such a reality was, of course, impossible. Regrettably, that has turned out to be mass delusion. "1984" is on schedule, in Orwell's as well as calendar terms, and we shall fall prey to it unless the Nation rises to the challenge laid before us.

Consider some of the evidence we have had laid before us in recent months and years. Credit bureaus are collecting masses of evidence on millions of Americans, usually without their knowledge. Such information is passed on for a price, often emerging as erroneous, marking people for life.

States and other jurisdictions which acquire massive lists of names and addresses sell the lists to professional list houses, which in turn sell the lists to direct-mail operations. Unsolicited mail and telephone sales pitches are so common as to be virtually commonplace in every area of the land.

The Federal Government has been shown to be invading the private lives of millions of Americans, as groups and individuals. We have all been appalled at exposes of the activities of the Federal Bureau of Investigation during the Watergate scandals. Raw files are compiled on millions of people and leaked to those with power. The FBI, as a recent ABC News special showed, maintains a private national computer network, complete with files on "security risks" who conceivably would be forcibly detained in some national crisis.

The intelligence activities of the U.S. Army have become widely known, and we are beginning to understand just what the CIA and NSA have been doing with the secret multibillion-dollar budgets voted them over the years.

Computer networks are springing up around the country, usually in the name of efficiency and good business practice, and they all exchange information of one sort or another. Time sharing on computers can easily become data sharing, for security between computers is even more primitive an art than the ABM.

Mail covers are used by the Federal Government. Dossiers are compiled on enemies, whoever they might be at a given time.

What it all boils down to is that for political, strategic, economic, or just plain contrary reasons, the personal lives of millions of citizens are being invaded without their knowledge. Often such facts are used against them, and they are given no chance to know who is doing what to them and for what reason. Government is actually leading the way, setting a standard that is being widely emulated by industry. The most sophisticated technology available is being brought to bear on this situation, compounding the problem and accelerating the pace of the

syndrome. Its cumulative effect inhibits individuality, creates fear, stifles dissent, and stultifies society.

Of late there has been a significant amount of concern expressed here in the Congress over this state of affairs. Legislation has been introduced by a number of my distinguished colleagues, and I have joined in sponsorship of much of this legislation. Much of it is still pending. Much of it should be passed and brought to the floor of the House for a vote, which many of us who support these measures would appreciate.

Before the end of this Congress we can and should make sure that the following bills and proposals have become law:

Individuals to be apprised of records held by Federal agencies and have certain rights of access.

A Federal privacy board should be created to regulate personnel information practices.

A code providing standards of fair information practices should be created.

Bills governing illegal financial disclosure by financial institutions should be passed.

Practices of distributing, selling, or otherwise making available lists of names and addresses of individuals should be prohibited.

Bills to protect political rights and privacy of individuals and organizations and to define authority of the Armed Forces to collect, distribute, and store information about civilian political activity should be passed.

We must legislate to protect Federal employees against unwarranted Government privacy invasions.

Use and dissemination of criminal arrest and other law enforcement records, especially related to the National Criminal Identification Center programs, should be controlled.

A Select Committee on the Right to Privacy should be created.

We must restrict wiretapping, prevent transfer of personal income tax records, limit mandatory decennial census questions, and prohibit unsolicited phone calls for commercial purposes.

Congress has the will and the votes to pass these. We know the problems and we have but to act.

#### THE CASE FOR A FEDERAL OIL AND GAS CORPORATION—NO. 33

**HON. MICHAEL HARRINGTON**

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 15, 1974

Mr. HARRINGTON. Mr. Speaker, when the Arab nations imposed their oil product boycott on the United States as an economic weapon in their October war with Israel, Americans began to realize their outside dependence in energy matters.

There is no longer any question that the United States cannot continue to

depend so heavily on the Arab states for its energy needs.

We all realize that increased private research and investment must be encouraged to trigger development of domestic fuel resources and alternative sources of energy.

I believe, however, that we should not allow ourselves to stop there. In those same months when American dependence on outside fuel sources was dramatized, the American people also learned of the influence—indeed the dominance—of the major oil companies in the energy business. Besides realizing that the oil companies accrued outrageously high prices at the expense of American consumers struggling to conserve fuel and minimize the increase in their fuel costs, we have learned of the oil companies' far-reaching influence extending into many aspects of our economic and political system.

There is, however, an alternative to continued major company domination, an alternative which would insure adequate fuel supplies without high prices and the inherent dangers of either public or private monopoly.

The Federal Oil and Gas Corporation, a proposal that has steadily gained supporters and respectability within academic, government and industry circles, would be such a step.

A Federal Oil and Gas Corporation would help decrease American dependence on the Arab nations for fuel, and would provide a needed competitive spur in an already uncompetitive industry.

We cannot allow the opportunity to deal with the energy crisis in general and with American dependency in specific to pass. Energy is a critical resource in an industrial society with a high standard of living.

I would like to bring to the attention of the Congress an article by the Washington Post's Jim Hoagland detailing Kuwait's plans to take over more than half of the part-American owned Kuwait Oil Company. The article underscores our energy dependency and emphasizes the need for American energy independence.

Mr. Hoagland's article follows:

**KUWAIT TAKEOVER OF OIL FIRM IS SET**

(By Jim Hoagland)

BEIRUT, LEBANON—In a display of Arab oil militancy, Kuwait's Parliament voted today to take over 60 per cent of the American and British owned Kuwait Oil Co., the second-largest producing firm in the Arab world.

The move is certain to increase pressure on other Arab oil producers to go after larger shares of ownership in Western firms and will probably cause yet another rise in wholesale petroleum prices, oil industry experts here said.

The Kuwait action comes as Saudi Arabia, the world's largest exporter of petroleum, has expressed new interest in negotiations for majority control of the Arabian American Oil Co., Aramco which is producing 8.5 million barrels of oil a day.

The Kuwaiti government, which had staked its prestige on the outcome of today's vote, barely won approval for the proposed 60 per cent takeover. The motion passed with the minimum 32 votes in favor, two against and 19 abstentions.

A majority in the 50-man Parliament and 12-man Cabinet was required for approval.

Radical Kuwaiti parliamentarians had pressed for an immediate 100 per cent nationalization and earlier had succeeded in blocking the government's bill. Dissenting deputies issued a statement saying their "battle for control of the oil has not finished but just begun."

The agreement sets Kuwaiti government ownership of the oil company, formerly owned jointly by Gulf Oil Corp. and British Petroleum, at 60 per cent until 1979, when new negotiations presumably will begin.

Petroleum and Finance Minister Abdel Rahman Atiqi emphasized during the debate on the bill that Kuwait had the right to take complete ownership whenever it desired, by terminating the company's concession.

Atiqi also stressed that Kuwait and other oil producers would continue to set their own prices unilaterally and that Kuwait could continue to control the company's production level. Kuwait is currently producing about 2.6 million barrels a day.

In arguing against complete takeover now, Atiqi said Kuwait needed more time to develop local expertise in all phases of the industry. He also pointed out that Kuwait is increasingly making its own direct investment abroad and should not set precedents that other countries might imitate by nationalizing Kuwait interests.

Gulf and British Petroleum agreed to accept \$112 million as compensation for the partial takeover.

The accord replaces a 25 percent participation agreement that was signed by Atiqi last year. Under the old agreement, which the government withdrew rather than submit to a restive Parliament for required ratification, Kuwait would not have obtained majority control until 1982. The Kuwait government announced in January its intention to seek 60 per cent ownership.

The participation concept, which Saudi Arabia, Qatar and Abu Dhabi had also accepted was overtaken by Iraq's complete nationalization of most Western oil interests, Iran's negotiated 100 per cent takeover of its Western firms, and Libya's 51 per cent seizure of most American firms.

The extent of the Kuwait price rise that the new agreement will bring remains unclear because of Saudi Arabia's pledge to bring down the prices that oil producers charge to Western companies. The prices have quadrupled since the October war.

Kuwait will have the right to sell 60 per cent of the total production on the open market to the highest bidders, or to return all or part of it to the companies at "buy-back" prices, which are expected to be about 30 per cent higher than the current "posted" prices that the government charges the companies.

The companies will get the remaining 40 per cent at the posted price, which is currently \$11.53 per barrel, meaning an actual tax-paid cost of about \$7. The companies presumably will set the price they charge purchasers by averaging the two prices, bringing a rise of at least one dollar on a barrel of Kuwaiti crude.

Oil industry sources said a key test of Saudi Arabia's intentions on the price issue, which has stirred sharp conflict in the Organization of Petroleum Exporting Countries, could come later this month if the Saudis go ahead with plans to stage a sale of about half a million barrels a day on the open market.

Last year, the Saudis set their own price on their part of Aramco's output and offered it on a take-it-or-leave-it basis. There is speculation here that the Saudis might bring their direct sale price down to \$9 a barrel.

ST. MARY'S CHURCH, NEWINGTON, CONN., 50 YEARS OF COMMUNITY SERVICE

## HON. WILLIAM R. COTTER

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 15, 1974

Mr. COTTER. Mr. Speaker, just recently I received a history of St. Mary's Parish in Newington, Conn.

I read this 125-page history with interest and I would like to take this opportunity to summarize it for my colleagues since it shows the history of a church that has played a significant part in the history of the town of Newington.

Over 50 years ago, on June 6, 1920, the first Catholic Church in Newington was blessed and dedicated. This small church was called St. Mary's Mission. Before this church was established, Catholic residents of Newington had to travel great distances to attend Mass. This new church was placed on land provided by Thomas Garvan and had room for 200 parishioners.

By September 1924, St. Mary's Mission had grown to such a size that it was officially recognized as a Parish and St. Mary's received her first priest, the Reverend Edward H. Shaughnessy.

By the late 1920's it was apparent that the little church at St. Mary's Mission could not handle the increased number of parishioners. It was apparent that there was a need for a more permanent structure. By November 22, 1931, the new church of St. Mary's was dedicated by the Bishop of Hartford. The new church was a Georgian structure which had a seating capacity of 450.

Perhaps one of the most touching stories about St. Mary's Parish was the Daniel Shea Memorial Bell. Daniel Shea was a World War I veteran who was not only blind, but confined to bed in the VA hospital at Newington. Dan Shea used his meager savings in order to buy a bell for the church so that he could hear it ring from his hospital bed. On January 12, 1936, the bell was dedicated and Dan Shea's aged father, Maurice, rang the bell for the first time.

Dan Shea lived for only 8 months to enjoy hearing the sound of his bell, but the ringing of the bell continued each Sunday for many years.

In 1939, Father George Clark was named pastor of St. Mary's and he continued in that capacity until 1956.

During these years the parish continued to grow. Parish organizations such as the choir, guild, men's club, credit union, Knights of Columbus, Catholic Ladies of Columbus, St. Mary's Home and School Association, the Legion of Mary, the parish advisory council, the adult education program, and other groups were formed to meet the needs of the parishioners of St. Mary's Parish. In 1956, Father Joseph Buckley took over the reins of the parish and by September 1958, the new St. Mary's Junior High School was opened and on November 2, 1958, the school was officially dedicated

and the first class graduated in June of 1960.

Today, St. Mary's Junior High School has the distinction of being the first Catholic junior high school to have an all lay faculty.

Throughout the years, the parishioners of St. Mary's have given of themselves to keep St. Mary's a viable parish. During the 1950's and 1960's the new school, new convent, new rectory, and the new church were built.

It is perhaps the new church, however, which symbolizes the vitality of this parish. I have gone to this church on a number of occasions and I am always impressed with its physical beauty and the spirituality of its parishioners.

The year 1974 is the golden anniversary of St. Mary's Parish. As I read the parish history, I could not help but be inspired by the dedication and love of the clergy and the parishioners who have made this parish such an inspiration.

I hope that this brief sketch of the history of St. Mary's will give my colleagues an understanding of the accomplishments of this parish. At a time of transition and turmoil, events such as the golden jubilee of St. Mary's takes on special significance.

For the benefit of my colleagues I am enclosing an article which appeared in the Hartford Times last Sunday. I know you will join with me in hoping that the next 50 years are as full of accomplishment as the first 50 years of St. Mary's Parish.

The article follows:

### BELL'S RING WILL STIR OLD MEMORIES

(By Jim Coulter)

NEWINGTON.—When the bell at St. Mary's church rings this afternoon to call the parishioners to the High Mass climaxing the year-long Golden Jubilee Celebration, a special parish legacy, intermittently interrupted for a period of time, will be reinstated.

The ceremonies this afternoon at 4:30 p.m. will include the rededication of the parish bell—originally donated to the church by a blind amputee war veteran who could tell when the Sunday masses would begin by the tolling sounds of the bell.

The bell, which has been in storage, will be officially rededicated in a new tower built on the same spot where the original St. Mary's Church was first dedicated in 1920.

The donor was a World War II disabled veteran named Dan Shea, who was confined to the Administration Hospital.

He became acquainted with the parish in 1933 through the Rev. James P. Timmins, hospital chaplain and St. Mary's administrator who used to give him Holy Communion.

Since intense physical pain and severe transportation problems prevented Shea from attending mass except at special holidays such as Christmas and Easter, he decided to save his meager government checks to purchase a bell for St. Mary's to let him know when the masses would begin on Sundays.

"Dan conceived the idea of giving a bell to St. Mary's church, which he knew to be his neighbor, though he had never seen it. A bell would ring out the summons to mass, and if he knew when Mass was going on, he could 'attend' in his own way from his bed," wrote Mrs. Marjorie Albert who recently authored a Jubilee book of the history of the parish.

"On Sunday evening, January 12, 1936, more than two thousand people attempted to enter St. Mary's Church for the blessing of

the bell. Hundreds had to be turned away nearly half an hour before the ceremonies began at 7:30 p.m.," Mrs. Albert wrote. "Two monsignori and several priests were present in the sanctuary while the lay audience included officers of the Newington Veterans Administration Hospital, town and city officials, representatives of veterans organizations, and visitors from Mr. Shea's hometown of Holyoke, Mass. Occupying the front seat and accompanied by Major Bannigan was Maurice Shea, 72-year-old father of the disabled veteran," she wrote.

Silently waiting across the road in the Hospital for the bell to toll was Dan Shea, whose gift made the occasion possible.

"Every Sunday after that, Dan's bell was rung five minutes before each Mass, to summon parishioners to church, and to let Dan know mass was about to begin," Mrs. Albert wrote.

"Although this tradition was carried on for years, Dan lived only eight months to enjoy it," she continued. He died Sept. 15, 1936, and was buried in his hometown of Holyoke.

The bell was later housed in a tower built onto the newly-constructed church during the World War II years, but was deactivated when the present church was constructed in 1967. It has been stored away since that time, but will be rededicated at the 50th Anniversary celebration of the parish this afternoon.

Other stories of the founding and growth of St. Mary's are also told in the Golden Jubilee book authored by Mrs. Albert.

St. Mary's which was the first Catholic church ever built in Newington, was originally dedicated in 1921. Since no priests were assigned, the town was regarded as a mission and was administered by St. Bridgid's parish in Elmwood.

The church was built on property owned by a local paper mill owner, Thomas P. Garvan, who also financed the construction. Prior to that, local Catholics had to spend Sunday morning traveling to and from the church in Elmwood, and "without breakfast if you wanted to receive Holy Communion," Mrs. Albert wrote.

As the congregation grew over the years, the original church was replaced by a bigger structure, and a rectory and school were eventually added. As other Catholic churches were built in town, parish lines were formed. The latest St. Mary's church was completed in 1967, and stands to the rear of the original structure, built to the side of what is now Willard Avenue.

At present, some 1,800 families are listed as parishioners of the church.

A year-long series of events have taken place to commemorate the 50th anniversary Golden Jubilee of Newington's oldest Catholic church.

In conjunction with the anniversary, a History Committee headed by Mrs. Albert compiled the book. "The most difficult part of the task was the research," she commented.

Longtime parishioners were looked up and interviewed at first, but conflicting stories were often told to the committee. Numerous old photographs lent by parishioners often settled the differences of opinion, but the best source of information turned out to be the research department of the Catholic Transcript, a weekly newspaper.

The committee began its task last June. "A chapter which was already written frequently had to be redone as new information was received while the printing deadline fast approached," she said.

Mrs. Albert said the book was written because no parish history was recorded before, and because she wanted "to pay adequate tribute to the past and present priests and administrators."

FATHER MIKE MARKS 25TH  
ANNIVERSARY

HON. JOSEPH M. GAYDOS

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 15, 1974

Mr. GAYDOS. Mr. Speaker, the parishioners of the Ascension of Our Lord Church and the residents of the city of Clairton, Pa., recently honored a man who has achieved an outstanding reputation as a spiritual and community leader in western Pennsylvania.

I was privileged to attend the event and witnessed the esteem and respect accorded the Reverend Monsignor Michael Hrebin by the members of his church, the citizens of his community, and his family and friends. The occasion was the observance of Monsignor Hrebin's 25th anniversary of his ordination into the priesthood.

Father Mike, as he is affectionately known to many, is truly a unique individual. His interests are many, his energy boundless, and his endeavors too numerous to list. He is a man of genuine warmth and friendliness, who can easily instill faith and trust in those filled with

doubt and suspicion. He is, to those who know him, an inspiration.

A native Pennsylvanian, Monsignor Hrebin was raised in Forest City, Pa., where his father was a cantor at St. John's Church. Father Mike was a member of the church choir and an altar boy. With this background, in addition to the influence of seven other cantors in his family, it is not surprising that he became well accomplished in the principles of ecclesiastical chants at an early age. At the age of 16, he became a cantor himself at St. John's Church in Lyndora, where he also organized a choir. Two years later he entered St. Procopius Seminary in Illinois, where he directed the Byzantine Choir and served as assistant organist in the Latin Rite liturgical services.

He was ordained on May 8, 1949, at St. Mary's Church in Whiting, Ind., and his first appointment was as assistant pastor at the Holy Ghost Church in Cleveland, Ohio. A year later, he was assigned to St. Michael's Church in Gary, Ind., and in 1952 returned to western Pennsylvania as pastor of the Holy Spirit Church in Pittsburgh. On November 1, 1959, Father Mike came to Clairton, where in May 1970, he was elevated to Monsignor by Pope Paul VI.

As the pastor of Ascension Church,

Monsignor Hrebin launched a major renovation and building program that has made the church's social hall the center for parish, diocesan, and community activities. He has cultivated and strengthened many spiritual programs within the parish and in areas of ecumenical affairs. Monsignor Hrebin was a founder of the annual Clairton Mayor's Prayer Breakfast and a member of the city's human relations commission.

His interest in music has never waned. As a priest, Father Hrebin organized and directed the 200-voice Midwest Byzantine Catholic Chorus and also has directed the 500-voice Western Pennsylvania Byzantine Catholic Chorus. He also arranged the music for the first English Mass celebrated by the Most Reverend Bishop Fulton Sheen in 1955 at Mount St. Macrina.

Mr. Speaker, on behalf of my colleagues in the Congress of the United States, I take this opportunity to extend our formal congratulations to Monsignor Hrebin on the 25th anniversary of his ordination. As a personal friend of this remarkable man, I join the members of Ascension Church, the citizens of Clairton, and his family in wishing that God grant Father Mike many more years in His service.

## HOUSE OF REPRESENTATIVES—Thursday, May 16, 1974

The House met at 12 o'clock noon.

The Chaplain, Rev. Edward G. Latch, D.D., offered the following prayer:

*Therefore, my beloved brethren, be ye steadfast, unmoveable, always abounding in the work of the Lord; forasmuch as ye know that your labor is not in vain in the Lord.—I Corinthians 15: 58.*

Almighty God who has made and preserved us as a nation and whose creative spirit ever summons us to new frontiers of thought and action we pause in Thy presence as we turn another page in the chapter of our lives together as Members of Congress. Under the guidance of Thy Spirit we would greet the sunrise of another day.

May these hours be rich in the revelation of Thy presence and resplendent with the realization of Thy power to sustain us as we face the demanding duties of these disturbing days. Make our hearts centers of good will and move in our minds with wisdom as we seek to solve the problems that confront our Nation.

Give to us an increasing desire to minister to the needs of our people and to keep our Nation safe for democracy and secure with liberty and justice for all. In the spirit of Christ we pray. Amen.

### THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Without objection, the Journal stands approved.

There was no objection.

### MESSAGE FROM THE PRESIDENT

A message in writing from the President of the United States was communicated to the House by Mr. Marks, one of his secretaries, who also informed the House that on the following dates the President approved and signed bills of the House of the following titles:

On May 7, 1974:

H.R. 11793. An act to reorganize and consolidate certain functions of the Federal Government in a new Federal Energy Administration in order to promote more efficient management of such functions.

On May 10, 1974:

H.R. 8101. An act to authorize certain Federal agencies to detail personnel and to loan equipment to the Bureau of Sport Fisheries and Wildlife, Department of the Interior; and

H.R. 9492. An act to amend the Wild and Scenic Rivers Act by designating the Chattooga River, N.C., S.C., and Ga., as a component of the National Wild and Scenic Rivers System, and for other purposes.

On May 14, 1974:

H.R. 9293. An act to amend certain laws affecting the Coast Guard.

### MESSAGE FROM THE SENATE

A message from the Senate by Mr. Arrington, one of its clerks, announced that the Senate had passed with amendments in which the concurrence of the House is requested, bills of the House of the following titles:

H.R. 12412. An act to amend the Foreign Assistance Act of 1961 to authorize an appropriation to provide disaster relief, rehabilitation, and reconstruction assistance to Pakistan, Nicaragua, and the Sahelian nations of Africa; and

H.R. 12799. An act to amend the Arms Control and Disarmament Act, as amended,

in order to extend the authorization for appropriations, and for other purposes.

### PERMISSION FOR SPEAKER TO DECLARE A RECESS ON TUESDAY, MAY 21, 1974

Mr. O'NEILL. Mr. Speaker, I ask unanimous consent that it be in order for the Speaker to declare a recess on Tuesday, May 21, 1974, subject to the call of the Chair, for the purpose of receiving in this Chamber former Members of the House of Representatives.

The SPEAKER. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

### SCHEDULE FOR CONSIDERATION OF APPROPRIATION BILLS

(Mr. MAHON asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MAHON. Mr. Speaker, on recent occasions the majority leader has made reference to the heavy floor schedule the House will have in June in considering the appropriation bills. For the benefit of Members and others, I wish to state the tentative schedule for considering the appropriation bills.

Thus far this session the House has cleared the following appropriation measures:

Urgent supplemental for veterans;  
Second supplemental for fiscal year 1974;

Legislative appropriation bill for 1975; and