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 IX—Continued								
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	292.3	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 Retc	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
Humbolt 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 Cty/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 Csrt	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
REGION X								
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 Consrt	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 Sno. Consrt	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 Consrt	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

1. Columns 1 and 2: Actual 1973 Dollars. Slots are computed by dividing dollar amounts by $423, the average cost per slot.

2. 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.

3. 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.

4. 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 Constitution 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 ATTONEY 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, directing 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 defendant 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 Heinish, 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 rougly 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 althogether. 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 ie ex parte McCardle, 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. McCardle, 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 McCardle's appeal. Then there was the 1871 decision of *United States* v. *Klein*, 76 U.S. (13 Wall.) 128, in which the Court ignored McCardle and refused to give effect to a congressional exception to its jurisdiction. So McCardle 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 interpreting 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 reenforces 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-Mecklenberg 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 fundamentaly 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 statutorially 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 unnecessary 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 then 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 responsiblity 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 entitled "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 skullduggery 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 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 obliging 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 Massachusetts (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 vitiated.

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 probusing 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 probusing 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. ROTH) 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 discussing 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 desegragation. 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 histoy 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 Desegregation in 10 Communities." One of the conclusions reached after studying these communities is the following:

There is a sharp contrast between the reaction of commnuities 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 lawyertalk. 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 $1\frac{1}{2}$ 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 $1\frac{1}{2}$ 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 commonsense 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 program, 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 Senater 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 educators 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 1 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 1 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 1 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 1 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 1 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 effects 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 target-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. INOUYE), 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
Benteen	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	Metcalf	Taft
Griffin	Mondale	Tunney
Hathaway	Moss	Weicker
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 develp 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.

(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 as 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 observed 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 Seecurity 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 OASDL 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: [1]

"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

[1] 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 possible 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 nonpayment 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 problem 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 6⅔ 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, Brooke, 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 professioanls and the corollary availability of good hospitals, nursing homes, home health agencies and other facilities or organizations in their own communties.

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: [2]

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

[2] 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 representing 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 Behavioural 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. MONTOYA, 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 fomr 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 noncontiguous 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 "reopener" provision.

This is an invitation to massive relitigation, 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 colleagues 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 Congress 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 definance 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 established 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 for 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 reiterates 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 antibusing 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 accidential. 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 questions 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 discrmination 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 consideration 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 inner 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 unconstiutional 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 fall; 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, Congress 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 demogogic 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 Education Opportunity Act of 1972" stood by itself and did not, like earlier and present antidesegregation 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-Macklenburg 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 abolute 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 bussed 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-

dressing 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 respective 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–839a), 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 predominently 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 compulsory 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 recommened 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 operaton. (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 at 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 interpert 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 tihs 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 wher 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 nondiscriminatory 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.[1]

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 Claus 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 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); *Durousseau 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 recial imbalance in the schools?"[2]

"Mr. HUMPHREY. I do."[3]

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."[4]

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 clasisfication 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-

[1] 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," Voume II, Section 501, Page 593–596.

[2] Senator Byrd was evidently referring to Title IV, instead of Title VI.

[3] Congressional Record, Volume 110, Part 10, Page 12,714, June 4, 1964.

[4] Congressional Record, Volume 110, Part 10, Page 13,821, June 15, 1964.

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 undoubted 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 northwes. 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 apparently 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 Education 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 in 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 implead 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 amendmeent 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 redress 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 people 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. KENNELY. 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 indaquate 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 antidesegregation 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 manhours 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 boldly, directly, and consciously 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 antidesegregation 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 ghettoes 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 demagogs, 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 demagogs 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 multiracial society when they do all their learning in uniracial 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 guarante 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 reality 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 demogoguery 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."

Ronard 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 drawn 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 desegration.

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 occured," 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 hold 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 RAGE—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 reassessment 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 Nonviolent 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 lies 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 rehetoric, 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 employes 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."

[From Ebony magazine, May 1974]

WHATEVER HAPPENED TO SCHOOL DESEGREGATION?

(By Alex Poinsett)

In May 1954, the grade schools of Topeka, Kan., were segregated. Today, 20 long and tumultous 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, however, 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 psychically 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 "resegregate" 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 citzenship . . . 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 tenaciousy held to the faith that the ultimate soluion 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 east 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 systems, 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 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 women 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.

Apparenly, 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 "resegregation" 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 peeking 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 consolidated 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. *Milliken*), 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 somebody 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 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 women 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 qustions. 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 delineating 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 nonaccusatory opinion. This he did, and on May 12, five days before the decision was rendered, Frankfurther, 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 plantiffs 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 nonviolent movement.

Less than a monthr 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, 1944, 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 preeident 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 at all."

The court under Chief Justice Earl Warrent 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 idiocy.

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 McCardle 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 allned 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 critized 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 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 litle 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 unlkely 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 direction 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 Tokepa'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 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 benefitted 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 predominately 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 fleeing 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 percent 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 1¾ 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 acceptaole 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 1¾ 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 impove school buildings to meet the HEW requirements.

Spence and Craig emphasized the intention 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 busing is the only way acceptable to HEW, then 2-way busing 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 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 BUSING

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 busing will be determined by the number of children volunteered for busing 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—Ingalis, 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 asignment 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 applecart 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 environment. 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 cosponsor 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 fictitional 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 1974. 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 mealymouthed 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 letter 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-Mecklenberg Board of Education, 402 U.S. 1 (1971), limits are applicable 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 skullduggery 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 taxridden 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 Tallahatche. There they brutalized and multilated 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 nonviolent 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 nonviolent 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 Alamaba, 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 disadadvantaged 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, 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 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 broblem 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 surburban 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, freeswinging 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 happeing 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.[1] 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.[2] 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.[3] 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 decree 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.[4] 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."[5]

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 eased 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."[6] 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.[7]

We also suggested an outside limit of Sept. 1, 1965, in answer to Question 5.[8] 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."[9]

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.[10] 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.[11] However, I cannot recall whether this was argued in the *Brown* case.

1953 TOPEKA DECISION

Although we vigorously dencunced 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." [13] 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 foreseen 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, ar 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 antisegregation 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*,[14] the case which upheld separate but equal railroad cars, had to be overruled, The *Civil Rights Cases* of 1883,[15] which held the Civil Right 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 inmigration 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)[16] that the time had come for black Americans to claim Charles Sumner's legacy.[17] 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

[1] 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."

[2] 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?

[2] 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 construe the Amendment as abolishing such segregation of its own force?

[3] 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?

[4] 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?

[5] On the assumption on which questeions 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 (195C); Sipuel v. University of Oklahoma, 332 U.S. 631 (1968).

(4) Missouri ex rel. Gaines v. Canada, 305 U.S. 337 (1938).

[6] At page 190.

[6] At page 10.

[7] At page 24.

[8] At page 29.

[9] At page 2.

[10] At page 4.

[11] Clemons v. Board of Education of Hillsboro, 288 F. 2d 853 (6th Cir.) cert. den. 350 U.S. 1006 (1956).

[12] Dove v. Parham, 282 F. 2d 256, 259 (8th Cir., 1966).

[13] It appears that the first time a court used the word "disestablish" with reference to the requirements of Brown was in Parham 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."

[14] U.S. 537 (1896).

[15] U.S. 3 (1883).

[16] Pearson et al. v. Murray, 182 A. 590 (Court of Appeals, Md., 1936).

[17] Charles Sumner argued the case of Roberts v. City of Boston, 5 Cush. (Mass) 198 (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. Erhlichman, 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 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 taxridden 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-Kliendienst 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. INOUYE), 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
Aiken	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, Harry F., Jr.	Huddleston	Scott, William L.
Byrd, Robert C.	Hughes	Sparkman
Cannon	Humphrey	Stafford
Case	Jackson	Stennis
Chiles	Javits	Stevens
Church	Johnston	Stevenson
Clark	Kennedy	Talmadge
Cook	Long	Thurmond
Cotton	Magnuson	Tower
Cranston	McClellan	Tunney
Curtis	McClure	Weicker
Dole	McGee	Williams
Domenici	McGovern	Young
Dominick	McIntyre	
	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. INOUYE), 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 "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	Metcalf	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, William L.
Byrd, Harry F., Jr.	Gurney	Sparkman
Byrd, Robert C.	Hansen	Stennis
Cannon	Haskell	Talmadge
Chiles	Helms	Thurmond
Cook	Hollings	Tower
Cotton	Hruska	Young
	Huddleston	

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. INOUYE), 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 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, William L.
Bible	Fannin	Sparkman
Brock	Griffin	Stennis
Buckley	Gurney	Talmadge
Byrd, Harry F., Jr.	Hansen	Thurmond
Byrd, Robert C.	Helms	Tower
Cannon	Hollings	Young
Chiles	Hruska	
Cook	Huddleston	
	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	Metcalf	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 myself 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. INOUYE), the Senator from Massachusetts (Mr. KENNEDY), 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.

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	Weicker
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 determined 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	1	2			1			5
New Mexico	2	1	3	2			2		10
New York	1		1						2
North Dakota	3	3	2	1	2	2		2	15
Ohio	2								2
Oklahoma	5	2	5	2	3	1			13
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 percentage of total	Total entitlement
ALASKA				
Alaska Dept. of Ed	21,119	16,617	78.68	$24,727,591
Hoonah Public Schools [1]	270	97	35.93	70,435
King Cove City School Dist	81	22	27.16	15,975
Bristol Bay Boro School Dist. [1]	264	69	26.14	50,103
Dillingham City School Dist. [1]	316	101	31.96	73,340
Nome-Beltz Reg. High School	315	135	42.86	98,028
State total	22,365	17,041		25,035,474
ARIZONA				
Maricopa Co. Accommodation S. D	515	515	100.00	221,527
Indian Oasis S. D. No. 4 [1]	934	934	100.00	401,760
Fort Huachuca Accommodation Schools [1]	1,847	1,847	100.00	794,487
Mt. Lemmon Accommodation S. D	103	46	44.66	19,786
Yuma Co. S. D. No. 27 [1]	1,143	622	54.42	267,553
Litchfield S. D. No. 79	1,124	309	27.49	132,916
Northern Yuma H. S. D. [1]	556	184	33.09	79,147
Grand Canyon S. D. No. 4 and 3	178	127	71.35	54,629
Tuba City E. S. D. No. 15 [1]	1,134	1,107	97.62	476,176
Grand Canyon H. S. D. [1]	76	65	85.53	27,959
Tuba City H. S. D. [1]	371	361	97.30	155,284
Union E. S. D. No. 62 [1]	116	58	50.00	24,948
Peach Springs S. D. No. 8 [1]	115	105	91.30	45,165
Valentine S. D. No. 22	35	18	51.43	7,742
Moccasin S.D. No. 1	20	10	50.00	4,301
Dysart S.D. No. 89 [1]	2,734	702	25.68	301,965
Chevelon Butte S.D. No. 5	20	20	100.00	8,603
Page High Sch. Dist. No. 8	563	281	49.91	120,872
Page Elem. Sch. Dist. No. 8	1,446	835	57.75	359,175
Window Rock S.D. No. 8 [1]	2,156	2,084	96.66	896,432
E.S.D. No. 2 [1]	988	987	99.90	424,558
Keams Canyon E.S.D. No. 25 [1]	361	361	100.00	155,284
McNary Elem. S.D. No. 23	101	87	86.14	37,423
Alchesay H.S.D. No. 2 [1]	242	240	99.17	103,236
Ganado S.D. No. 19 [1]	1,294	1,209	93.43	520,051
Kayenta E.S.D. No. 27 [1]	814	814	100.00	350,142
Chinle C.S.D. No. 24 [1]	2,803	2,803	100.00	1,205,710
Puerco E. S. D. No. 18 [1]	582	300	51.55	129,045
Young Sch. Dist. No. 5 [1]	289	223	77.16	95,923
Rice S. D. No. 2 [1]	1,015	903	88.97	388,425
Sacaton E. S. D. No. 18 [1]	802	762	95.01	327,774
Apache Co. H. S. D. No. 9 [1]	757	200	26.08	86,030
Fort Thomas Elem. S. D. No. 7 [1]	347	254	73.20	109,258
Fort Thomas H. S. D. No. 7 [1]	117	79	67.52	33,981
Alpine S. D. No. 7	39	11	28.21	4,731
Monument Valley H. S. D. No. 5 [1]	365	365	100.00	157,004
Navajo Compressor Stat. S. D. No. 5 [1]	29	29	100.00	12,474
Horse Mesa Accom. Sch. & Unor. Terr. [1]	20	7	35.00	3,011
State total	28,161	19,864		8,544,499
ARKANSAS				
Gosnell S. D. No. 6	1,364	1,205	64.65	518,150
CALIFORNIA				
Two Rock U.S.D. [1]	151	88	58.28	37,853
Reservation S.D. [1]	14	10	71.43	4,301
Herlong S.D.	296	117	39.53	50,327
Coffee Creek S.D.	26	10	38.46	4,301
Alpine Co. Unif. S.D.	109	32	29.36	15,789
Center Jt. S.D.	1,160	673	58.02	289,490
Wheatland S.D.	2,542	2,151	84.62	925,252
Wheatland U.H.S.D.	862	591	68.56	423,912
Travis Unif. S.D.	3,420	3,326	97.25	1,641,081
Monterey Peninsula Unif. S.D.	17,799	5,166	29.02	2,548,956
Atwater S.D.	3,400	1,077	31.68	463,271
Chawanakee E.S.D.	40	40	100.00	17,206
Big Creek Elementary S.D.	185	126	68.11	54,198
Ocean View S.D.	2,142	660	30.81	283,899
Adelanto S.D.	1,864	1,452	77.90	624,577
China Lake Jt. S.D.	2,500	2,387	95.48	1,026,764
Muroc Unif. S.D.	3,894	2,763	70.96	1,363,291
Central U.S.D.	2,181	1,625	94.51	698,993
Seeley U.S.D.	483	205	42.44	88,180
San Pasqual Valley Unif. S.D. [1]	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
Lompoc Unif. S.D.	12,167	3,113	25.59	$1,535,985
State total	55,907	25.857		12,218,525
COLORADO				
El Paso Co. S. D. No. 8	3,196	1,876	58.70	806,961
Ignacio United S.D. No. 11 Jt.[1]	918	443	48.26	190,556
Air Academy S.D. No. 2	4,466	1,700	38.07	789,123
State total	8,580	4,019		1,786,640
CONNECTICUT				
Town of Groton Bd. of Ed	8,722	2,769	31.75	1,710,632
IDAHO				
S. D. No. 193	3,925	1,725	43.95	742,008
ILLINOIS				
Highwood Highland Park S. D. No. 111	1,416	428	30.23	311,160
North Chicago S. D. No. 64	3,451	1,965	56.94	975,249
Community H. S. D. No. 123	1,304	392	30.06	419,612
Rantoul City S. D. No. 137	3,481	1,770	50.85	926,595
Rantoul Twp. H. S. D. No. 193	1,537	421	27.39	368,484
Mascoutah Comm. Unit. S. D. No. 19	3,511	1,905	54.26	945,470
State total	14,700	6,881		3,946,571
INDIANA				
Maconaquah Sch. Corp	3,788	1,375	36.30	658,460
KANSAS				
Unif. S.D. No. 475	6,412	2,719	42.40	1,270,316
Unif. S.D. No. 437	3,127	1,397	44.68	652,678
Unif. S.D. No. 27	2,368	2,366	99.92	1,105,395
State Total	11,907	6,482		3,028,390
MAINE				
Limestone School Dept	2,400	1,699	70.79	730,824
Town of Winter Harbor Sch. Comm	193	93	48.19	40,003
State Total	2,593	1,792		770,828
MASSACHUSETTS				
Town of Ayer Sch. Committee	3,413	2,030	59.48	1,540,973
Bourne Sch. Committee	3,230	1,169	36.19	1,046,839
State Total	6,643	3,199		2,587,812
MICHIGAN				
Oscoda Area Schools	4,121	1,717	41.66	834,530
Rudyard Twp. S.D. No. 11	2,221	1,593	71.72	774,261
Forsyth S.D. No. 7	3,314	2,130	64.27	1,035,265
State Total	9,656	5,440		2,644,057
MINNESOTA				
Redlake I.S.D. No. 38[1]	909	893	98.24	449,143
I.S.D. No. 77[1]	135	135	100.00	67,899
Unorg Territory S.D.[1]	92	92	100.00	46,272
State total	1,136	1,120		563,315
MISSOURI				
Knob Noster Redrg. S. D. R. 8	2,043	1,206	59.03	555,278
Belton S. D. No. 124	4,300	1,101	25.60	506,933
Waynesville Reorg. S. D. R. 6	4,902	3,030	61.81	1,395,102
State total	11,245	5,337		2,457,314
MONTANA				
Jt. S. D. No. 8[1]	358	109	30.45	46,886
Browning E. S. D. No. 9[1]	1,267	952	75.14	620,028
H. S. D. No. 9[1]	378	236	62.43	198,320
Elmo E. S. D. No. 22[1]	33	24	72.73	13,814
Babb S. D. No. 8[1]	71	55	77.46	31,295
Heart Butte S. D. No. 1[1]	160	160	100.00	105,044
Lakeside S. D. No. 3	109	32	29.36	13,764
Jt. H. S. D. No. 8[1]	121	40	33.06	26,640
Dixon S. D. No. 9[1]	68	22	32.35	13,730
Gardiner S. D. No. 4[1]	102	46	45.10	42,923
S. D. No. 21	116	84	72.41	49,649
Lame Deer S. D. No. 6[1]	304	258	84.87	125,496
Glasgow E. S. D. No. 1	1,415	443	31.31	196,948
Harlem E. S. D. No. 12[1]	392	170	43.37	81,108
Harlem H. S. D. No. 12[1]	183	76	41.53	59,461
Brockton S. D. No. 55[1]	139	103	74.10	79,821
Box Elder E. S. D. No. 13[1]	141	93	65.96	48,653
S. D. No. 2[1]	50	49	98.00	29,918
E. S. D. No. 27[1]	306	170	55.56	83,303
E. S. D. 17 H.[1]	1,091	333	30.52	$149,510
Blaine Co. S. D. No. 5[1]	203	171	84.24	130,079
S. D. No. 2[1]	136	62	45.59	29,750
Frazer H. S. D. No. 2[1]	46	20	43.48	19,174
Poplar Pub. Grade S. D. No. 9[1]	593	304	51.26	151,601
Poplar H. S. D. No. 9[1]	241	82	34.02	58,675
S. D. No. 57	44	35	79.55	25,469
Box Elder H. S. D. No. 6[1]	86	66	76.74	71,677
H. S. D. No. 2[1]	140	92	65.71	73,481
Brockton H. S. D. No. 55[1]	31	21	67.74	20,852
Edgar S. D. No. 4[1]	55	25	45.45	25,100
Elem. S. D. No. 87	257	247	96.11	170,247
State total	8,636	4,580		2,792,432
NEBRASKA				
Winnebago S. D. No. 17[1]	307	231	75.24	149,119
Macy S. D. No. 16[1]	364	285	78.30	183,978
Santee S. D. C. 5[1]	48	46	95.83	29,694
S. D. of the City of Bellevue	10,170	3,932	38.66	2,538,263
State total	10,889	4,494		2,901,056
NEVADA				
Mineral Co. S. D.	1,674	697	41.64	299,814
NEW HAMPSHIRE				
City of Portsmouth Bd. of Ed	5,332	1,496	28.06	891,765
NEW JERSEY				
Boro. of Lakehurst Bd. of Ed	791	259	32.74	206,047
Boro. of Eatontown Bd. of Ed	2,346	1,119	47.70	739,558
Bd. of Ed. N. Hanover Twp.	2,037	1,606	78.84	911,629
No. Burlington Co. Reg. S. D.	2,239	1,097	49.00	953,490
Pemberton Twp. Bd. Ed	7,277	2,041	28.05	1,623,717
State total	14,690	6,122		4,434,443
NEW MEXICO				
Dulce I. S. D. No. 21[1]	595	527	88.57	226,689
Jemez Springs Mun. S. D. No. 31[1]	612	265	43.30	113,989
Bernalillo Mun. S. D. No. 1[1]	2,772	1,179	42.53	507,146
Cuba I. S. D. No. 2[1]	1,080	519	48.06	223,247
Alamogordo Mun. S. D. No. 1	8,875	2,334	26.30	1,003,970
Tularosa Municipal S. D. No. 4[1]	1,484	464	31.27	199,589
I. S. D. No. 22[1]	4,479	3,610	80.60	1,552,841
Gallup McKinley Co. Bd. of Ed.[1]	12,177	6,791	55.77	2,921,148
Bloomfield Mun. S. D. No. 6[1]	1,909	567	29.70	243,895
Magdalena Mun. S. D. No. 12[1]	609	312	51.23	134,206
State Total	34,592	16,568		7,126,725
NEW YORK				
U. F. S. D. No. 14, Town of Fire Island	78	23	29.49	50,487
Central S. D. No. 1, Town of Peru	3,996	1,613	40.37	1,199,539
State Total	4,074	1,636		1,250,027
NORTH DAKOTA				
Riverdale Pub. S. D. No. 89	268	160	59.70	84,465
New Town Pub. S. D. No. 1	746	216	28.95	92,912
Lincoln S. D. No. 38	152	61	40.13	26,239
Grand Forks Pub. S. D. No. 1	10,552	2,667	25.27	1,440,446
Minot Pub. S. D. No. 1	9,023	2,543	28.18	1,373,474
Solen Pub. S. D. No. 3[1]	346	213	61.56	119,757
Ft. Totten S. D. No. 3[1]	31	31	100.00	13,334
Ft. Yates Pub. S. D. No. 4[1]	369	286	77.51	123,022
Twin Buttes S. D. No. 37[1]	79	62	78.48	26,669
Couture S. D. No. 27[1]	835	269	32.22	155,710
Ingebretson S. D. No. 28[1]	115	74	64.35	31,831
Mandaree Pub. S. D. No. 36[1]	213	207	97.18	89,041
White Shield Pub. S. D. No. 85[1]	197	77	39.09	33,121
Nekoma School District No. 36	120	52	43.33	22,367
Oberon SD No. 16	107	34	31.78	14,625
State total	23,153	6,952		3,607,019
OHIO				
Mad River Twp. Local S. D.	7,604	1,932	25.41	831,049
Hamilton Local Bd. of Ed	3,324	902	27.14	387,995
State total	10,928	2,834		1,219,045
OKLAHOMA				
Dahlonegah D. S. D. No. 29[1]	101	64	63.37	27,529
Bell D.S.D. No. 33[1]	223	125	56.05	53,768
Lost City D. S. D. No. 17[1]	197	97	49.25	41,724
Ryal D. S. D. No. 3[1]	66	45	68.18	19,356
Skelly D. S. D. No. 1[1]	110	45	40.91	19,356
Rocky Mountain Dep. S. D. No. 24[1]	100	30	30.00	12,904
Maryetta D. S. D. No. 22[1]	199	56	28.14	24,088
Wickliffe D. S. D. No. 35[1]	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
OKLAHOMA—Continued				
Wolf D. S. D. No. 13	46	23	50.00	$9,893
Justice D. S. D. No. 54 [1]	72	48	66.67	20,647
Vamoosa D. S. D. No. 8 [1]	115	46	40.00	19,786
Broxton I. S. D. No. 68 [1]	159	65	40.88	27,959
Carnegie I. S. D. No. 33 [1]	827	207	25.03	89,041
Boone D. S. D. No. 56 [1]	67	48	71.64	20,647
Little Axe D. S. D. No. 7 [1]	198	59	29.80	25,378
Stony Point D. S. D. No. 124	62	16	25.81	7,232
Canton I. S. D. No. 15	438	130	29.68	55,919
Burns Flat I. S. D. No. 7	435	168	38.62	72,265
State total	3,458	1,290		555,243
OREGON				
Hebo S. D. No. 13 J	100	36	36.00	23,234
Petersburg S. D. No. 14 C	106	36	33.96	29,490
Jefferson Co. S. D. 5 9 J	2,082	632	30.36	451,658
Three Lynx S. D. No. 123	66	66	100.00	42,595
Bonneville S. D. No. 46	72	24	33.33	19,660
State total	2,426	794		566,639
RHODE ISLAND				
Town of Middletown Sch. Comm	4,255	1,402	32.95	861,332
Town of N. Kingstown Sch. Dept	6,555	1,832	27.95	1,098,851
State total	10,810	3,234		1,960,184
SOUTH DAKOTA				
Todd Co. I. S. D. [1]	1,784	1,213	67.99	$638,790
Douglas I. S. D. No. 3	3,158	2,421	76.66	1,274,947
Shannon Co. I. S. D. No. 1 [1]	1,448	1,325	91.51	697,771
Eagle Butte I. S. D. No. 3 [1]	858	594	69.23	312,812
White River I. S. D. No. 29 [1]	424	148	34.91	77,939
McLaughlin I. S. D. No. 21	619	169	27.30	88,998
Smee I. S. D. No. 41	189	171	90.48	90,052
C. S. D. No. 3 [1]	98	37	37.76	19,484
State Total	8,578	6,078		3,200,796
TEXAS				
Del Valle I. S. D. No. 91	3,916	1,001	25.56	430,580
Killeen I. S. D.	13,215	3,703	28.02	1,592,845
Flour Bluff I. S. D.	2,972	744	25.03	320,031
San Vincente C. S. D. No. 2	14	14	100.00	16,166
Randolph Field I. S. D.	1,344	1,288	95.83	$1,097,221
Lackland I. S. D.	867	865	99.77	736,876
United Cons. I. S. D.	2,171	596	27.45	256,369
Ft. Sam Houston I.S.D.	1,521	1,421	93.43	1,210,521
State total	26,020	9,632		5,660,512
UTAH				
San Juan Co. S. D. [1]	2,494	1,176	47.15	505,856
Daggett S. D.	188	75	39.89	32,261
State total	2,682	1,251		538,117
VIRGINIA				
Co. Sch. Bd. of Prince George Co.	4,629	1,326	28.65	570,373
WASHINGTON				
Oak Harbor S.D. No. 2 1	5,128	1,646	32.10	735,729
Diablo S.D. No. 15 [1]	40	12	30.00	5,363
Dupont Fort Lewis S.D. No. 7	1,150	998	86.78	446,026
Cape Flattery S.D. No. 4 [1]	622	218	35.05	97,441
Anderson Island S.D. No. 24	43	36	83.72	16,091
Taholah S.D. No. 77 [1]	145	105	72.41	46,932
Queets Clearwater S.D. No. 21 [1]	79	30	37.97	19,613
Mill A. S. D. No. 31	90	30	33.33	13,409
Mt. Adams S. D. No. 2 9 [1]	878	427	48.63	190,860
Medical Lake S. D. No. 326	2,334	1,416	60.67	632,923
Inchelium S. D. No. 7 [1]	179	64	35.75	28,606
Nespelem S. D. No. 14 [1]	165	93	56.36	41,569
Wellpinit S. D. No. 49 [1]	177	154	87.01	68,834
Keller S. D. No. 3 [1]	30	19	63.33	8,492
Columbia S. D. No. 2 6	214	57	26.64	25,477
Clover Park S. D. No. 4	13,153	3,364	25.58	1,503,640
State total	24,427	8,669		3,881,103
WISCONSIN				
Flambeau S. D. No. 1 [1]	369	181	49.05	108,293
WYOMING				
S.D. No. 14 [1]	344	270	78.49	$297,972
Ft. Washakie C.S.D. No. 21 [1]	229	203	88.65	224,039
S.D. No. 38 [1]	311	238	76.53	251,466
State total	884	711		773,468
National totals	387,443	182,651		109,549,761
Districts on this listing		229		

[1] 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 overall 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	[1] 100
Civilian "A" children	90	[1] 100
Military "B" children	50	[2] 50
Civilian "B" children with parent working on property in county	45	[2] 50
Civilian "B" children with parent working on property out of the county, but in State	30	[2] 50
Civilian "B" children with parent working on property in another State	0	[2] 50

[1] Under appropriations acts the "A" category is limited to 90 percent of the local contribution rate.

[2] 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. 1559, 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)

[1] 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 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 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" impaction from federally connected activities. Severe category A impaction is a rate of 25 percent or greater. Most districts with severe category A impaction 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 impaction 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 impaction 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