The PRESIDING OFFICER. The time of the Senator has expired.

Mr. PELL. I yield 2 additional minutes to the Senator.

Mr. BYRD of West Virginia. It gets into many situations which present practical problems, and I think it would handcuff the local authorities who are trying to deal with these practical problems and who are not attempting to make assignments on the basis of race or color, necessarily.

Mr. GORE. Mr. President, will the Senator yield?

Mr. BYRD of West Virginia. I yield.

Mr. GORE. The Senator and I both have had some experience in the educational field. The Senator brings up the question of the disciplinary problem, the incorrigible child who is assigned to a special school.

Mr. BYRD of West Virginia. Yes.

Mr. GORE. There is the other situation of the precocious child, who, left in a normal classroom, himself becomes a problem because of his precocity. Then there is the slow learner. We do not like to talk too much about that, but there are those who need to be placed in schoolrooms with children of their comparable intelligence quotient.

I do not think the Senate wants to get into the business of measuring this sort of thing. It would apply not only to a city like Washington, but also to a city like Memphis and to a city like Nashville, Tenn., and even to some of the rural counties.

Mr. LONG. Mr. President, will the Senator yield?

Mr. BYRD of West Virginia. Mr. President, I have the floor, have I not?

The PRESIDING OFFICER. The Senator from West Virginia has the floor.

Mr. BYRD of West Virginia. I merely want to say that I hope the able Senator will withdraw his amendment. I think the defeat of this amendment could be misinterpreted by the people throughout the Nation and could do damage to a cause which he hopes to serve by his amendment.

Mr. ERVIN. I was going to ask unanimous consent to withdraw that amendment and send to the desk another amendment which meets all the objections that have been voiced against it, except the one about the incorrigibles, and I think that would be best left to State law.

I ask unanimous consent that I be allowed to withdraw this amendment, notwithstanding that the yeas and nays have been ordered, and propose another amendment.

Mr. JAVITS. Reserving the right to object, and I shall not object, just by way of getting a little idea from the Senator from North Carolina of the situation, we understand that the Senator from North Carolina's amendments are probably the only ones—we do not know—with one exception on this side of the aisle. I wondered what the Senator's design was. I ask this only because the minority leader is standing by because we have asked him to do so. We would like to give him a little information as to the number of amendments the Senator proposes to offer.

Mr. ERVIN. I propose to withdraw this amendment and offer another, and I will agree to a 5-minute time limitation on the other one.

Mr. JAVITS. Could the Senator give us an idea of the number of amendments he proposes to call up—just an idea?

Mr. ERVIN. I think this is the last amendment I will offer.

Mr. JAVITS. I have no objection.

Mr. ERVIN. Mr. President, I ask unanimous consent that I be permitted to withdraw the amendment that I proposed a moment ago.

The PRESIDING OFFICER. Is there objection? The Chair hears none and it is so ordered.

Mr. ERVIN. I now offer the following amendment, and I will read it:

No department, agency, officer, or employee of the United States shall have jurisdiction or power to deny to any child the right to attend the public school nearest his home which is operated for the education of children of his age and ability and which is open to him under State law.

The PRESIDING OFFICER. Will the Senator send the amendment to the desk?

The clerk will read the amendment.

The ASSISTANT LEGISLATIVE CLERK. The Senator from North Carolina (Mr. ERVIN) proposes an amendment—at the end of the bill, add the following:

No department, agency, officer, or employee of the United States shall have jurisdiction or power to deny to any child the right to attend the public school nearest his home which is operated for the education of children of his age and ability and which is open to him under State law.

Mr. LONG. Mr. President, will the Senator yield?

Mr. ERVIN. I yield.

Mr. LONG. Mr. President, I commend the Senator for his amendment. I hoped very much that the Senator would not relent in his desire to do what he was trying to do, and that is to preserve for the children and parents of this Nation one of their most precious rights, at least one right that once existed, which should certainly be the right of all parents, under the usual circumstances, to send their children to the school nearest their homes. That is something everybody can understand.

As I understand it, the way the Senator has now modified the amendment, it meets all the problems that have been raised by the Senator from Tennessee, the Senator from West Virginia, and others. It is a simple matter that if, under State law and by the procedures of the local school board, a child would ordinarily be assigned to the school nearest his home, then that child shall be entitled to go to that school. That preserves the right of the Federal court to put as many other children as they want to in that school, provided those children do not prefer to go to the school nearest their homes.

So that it gives the right—speaking of a typical situation—for the Federal courts to put all the Negro children they want to in the white schools, provided the Negro children are willing to go. But it does not give them the right to impose upon the Negro children and the white children when neither wants it that way.

I say to the Senator that this is a precious right that anybody who has ever been confronted with the problem understands, and it is a precious right that anyone who even contemplates being confronted with the problem can understand—that if a child wants to go to the school nearest his home, he ought to have that right.

I applaud the Senator for considering the arguments and for modifying his amendment so that there can be no doubt about what he seeks to do to preserve to the parents and the children of this Nation a right that has been theirs even before there was a Constitution, and a right that we thought the Constitution was here to protect, not to destroy.

Mr. TALMADGE. Mr. President, will the Senator yield?

Mr. ERVIN. I yield.

Mr. TALMADGE. I compliment the Senator for offering his amendment. I would point out that it is in accord with a decision of the Fifth Circuit Court of Appeals that was handed down the day before yesterday.

I hold in my hand a clipping from yesterday afternoon's Washington Star, captioned "Court Backs Neighborhood School Concept," by the United Press. It reads as follows:

One of the nation's second-highest courts says there's nothing legally wrong with a true neighborhood school system.

The U.S. 5th Circuit Court of Appeals in New Orleans yesterday defined such a system as one in which pupils are assigned to the school nearest their homes without exception.

"Under the neighborhood assignment basis in a unitary system, the child must attend the nearest school whether it be a formerly white school or a formerly negro school," the court said.

The observation came in a ruling that Grange (Orlando) County, Fla., was not strictly adhering to such a basis, which would desegregate 8 of the 11 all-black schools in the county. The other three black schools "are the result of residential patterns," the court said.

Now, Mr. President, of course, in many areas of the South the Department of Health, Education, and Welfare and sometimes the courts have been assigning children to different schools.

Mr. BYRD of West Virginia. Mr. President, will the Chair please insist on order in the Senate. There are too many conversations going on. The Senator has a right to be heard. If only one Senator wishes to listen to him, he has that right. I hope that the Chair will enforce the rules of the Senate with respect to order and decorum.

The PRESIDING OFFICER. The Senate will please be in order.

Mr. TALMADGE. Mr. President, they have been assigning students to schools arbitrarily and capriciously. In some instances, they have been required to travel 20 to 30 miles in a school bus, which sometimes takes 2½ to 3 hours a day, when frequently they would live within the shadow of the nearest school.

I received a letter from a woman in my State a few days ago, which I have placed in the RECORD on two separate

occasions, which is one of the saddest tales I have ever received in my public career.

This particular lady happens to be the wife of a serviceman in the Air Force who is now assigned to Taiwan. In her effort to help support the family, she is a nurse in a doctor's office, with an income of $65 per week. She has six children. The youngest is 7 years of age and the oldest is 15 years of age.

The six children have been assigned to five different schools in La Grange, Ga. The total distance to deliver the children to those five different schools is 11.5 miles. If she carries them by automobile, it would be a round trip of 22 to 23 miles. If she sends them to school in cabs, the cab fares would be from $22 to $23 a week out of her $65 a week salary.

No school buses are provided in La Grange, Ga. So think of the impossible situation this woman is having trying to educate her children.

It is a travesty. It is a monstrous proposition.

If something like that were going on outside the South, Members of the Senate would not put up with it for 15 minutes.

To think that in a free society there could be a woman with six children of school age, these children having to go to five different schools.

It is a perversion of freedom as we know it in our republican form of government.

Mr. President, I hope that the Senator's amendment will be approved, and that the Senate can demonstrate to the world that it is not going to have our schoolchildren shuttled about as if they were commodities in interstate commerce instead of human beings. It should be stopped.

Mr. ERVIN. Mr. President, I modify my amendment further by inserting the word "court" between the words "No" and "department," so as to read:

No court, department, agency, officer, or employee of the United States shall have jurisdiction or power to deny to any child the right to attend the public school nearest his home which is operated for the education of children of his age and ability and which is open to him under State law.

Mr. JAVITS. May I ask the Senator, does this require unanimous consent?

Mr. ERVIN. No; it does not require that.

The PRESIDING OFFICER. The yeas and nays have not been ordered.

Mr. JAVITS. I want to know what the Senator has done here. Perhaps the Chair could advise me how the amendment has been drafted which the Senator just read, and how does it differ from the one he sent to the desk.

Mr. ERVIN. Let me say to the Senator from New York that I restored the word "court." In other words, here is the way it will read.

Mr. JAVITS. I will save the Senator's breath on that. He just put the word court back in?

Mr. ERVIN. Yes; in other words, the amendment will read:

No court, department, agency, officer, or employee of the United States shall have jurisdiction or power to deny to any child the right to attend the public school nearest his home which is operated for the education of children of his age and ability and which is open to him under State law.

The PRESIDING OFFICER. The Senator has a right to modify his amendment. The amendment is so modified.

Mr. JAVITS. Mr. President, will the Senator from Rhode Island yield me 5 minutes?

Mr. PELL. I yield 5 minutes to the Senator from New York.

The PRESIDING OFFICER. The Senator from New York is recognized for 5 minutes.

Mr. JAVITS. Mr. President, it seems to me—and I would like to speak rather deliberately here because I think I see what is happening—that this is not congenial either to the bill or to the policy of the United States, no matter who interprets that policy.

Mr. President, the amendment now seeks to ride on the feeling that people have for neighborhood schools in order to do precisely what the last amendment sought to do and failed, which is to negate the efforts of the courts to deal with de jure segregation.

The fact that the Senator felt it necessary to restore the word "court", it seems to me very clearly indicates that.

Obviously, we will limit materially the opportunity of the court to write a decree. The court will be latched to the fact—any court—that whatever is the school nearest the child's home, that school is the one the child must go to, without any regard to any other consideration. That is what the amendment would make Federal law, unless there were some kind of redistricting system of a State—which we know nothing about—and which may be a subject of contest in litigation. But litigation regarding a new school district, by this amendment, including busing, if that should be necessary, or a change in busing patterns, is immediately inhibited on the part of a court.

Mr. President, we have to make up our minds which way we are going. This is a totally new body of amendments. As I said before, with respect to the Stennis amendment, that was clearly set forth, but I think I understand the drift of the pending amendment. We are now considering as effectively as we can with respect to racial imbalance—that is what it is—the question of de facto segregation as we are de jure segregation. Express representation was made to us all that there would be no effort to abate our national purpose in respect of school segregation by virtue of unconstitutional laws of one kind or another.

Now, lest everyone thinks that situation stopped in 1954 because the Court made a decision, I should like to refer my colleagues to the case of Green against the School Board of Virginia decided in 1967 in which the Court said in its decision:

One statute, the Pupil Placement Act, not repealed until 1966, divested the court both of authority to assign children to particular schools and placed authority in a State placement board.

Mr. President, what are we inviting by this amendment, if not exactly that?

Are we not now starting on that road which can really lead to disrespect for law in this country and start back rather than broadening our jurisdiction and making for uniformity and fairness and equity?

Are we not, in another guise, in another concatenation of all this, starting us on the road back from the enforcement of segregation which is against the Constitution and against the Civil Rights Act of 1964?

It seems clear to me that the entire amendment is exactly designed toward that end. We are sought to be entrapped, as it were, by a certain appeal to the invidious—I withdraw that, I strike it—we are sought to be drawn in along this road by, first, the popular feeling which so many parents and people share that they do not like busing, and now by a popular feeling, which so many people share, for the neighborhood schools

But, Mr. President, we are Senators. We are not just hitting and running. We are not thinking of these things for the first time.

We have to operate an enormously complex system of Government. And we realize that simplistics like this will not work.

Mr. MONDALE. Mr. President, will the Senator yield?

The PRESIDING OFFICER. The time of the Senator has expired. Who yields time?

Mr. PELL. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator from Rhode Island has 55 minutes remaining.

Mr. PELL. Mr. President, I yield 5 minutes to the Senator from New York.

Mr. JAVITS. Mr. President, I yield to the Senator from Minnesota.

Mr. MONDALE. Mr. President, could the Senator from New York give a few examples or an example as to how this amendment, if it were agreed to, could be used to frustrate the eliminating of discrimination?

Mr. JAVITS. Mr. President, I have three examples of things which have actually been done to frustrate the discrimination.

This is another way of dealing with the problem. In some school districts, separate buses have been operated by race—for example, one bus for all the white children and one bus for all the black children.

In some school districts buses have been operated in such a manner as to transport children, black and white, to the nearest school which has a majority of his race.

Here is the last example. It has been established that a school had been deliberately located in a district by the school board for the purpose of segregation.

This is an affirmative action preventing action by the school board itself. It is binding on the local school board and the court.

That is a very sharp case in point.

Talk about Federal control of education, which has been one of the sacred cows, we are circumscribing the power and authority of every school board.

Mr. MONDALE. So that if the Federal courts in seeking to eliminate discrimination decided that the necessary remedy included school busing different from that which the school board was resorting to, there could be occasions when this amendment would prohibit the school board from pursuing the order, if it were issued.

Mr. JAVITS. And what about the pedagogy? We have in New York—and I am sure other Senators have the same situation in their States—the so-called 600 schools. They are schools for especially difficult children. They may have to leapfrog a school to get there. I certainly would not want to put a child that I know would be an absolute disaster to a school into the school because of the amendment.

State law would not deal with it. Perhaps the school board itself has decided that in the best interest of the child that is how it should be handled. It may be that a court in order to bring about a constitutional mandate has intervened.

It is a very unusual way of bringing about compliance with the law. There are some schools in which there are certain grades. It would knock out or reduce that option as far as the courts are concerned. I think it is a question that we must wrestle with. I know that there is very deep feeling about the neighborhood schools.

The question is how can we best encourage this? Can we best encourage it in this way which, it seems to me, gives an enormous advantage, instead of obtaining highly dubious results, if we get them at all. Of course, there are other considerations. There is the consideration of how we run our courts and how we use our money which, I am sure everyone will agree, results in giving the advantage in the overwhelming majority of cases to the neighborhood schools.

Mr. MONDALE. Mr. President, it strikes me that in many cases those of us who have spoken out against discrimination of local schools have been charged with being against the neighborhood school concept and for busing.

Is not the case that, almost by definition, when we sort our children not on the basis of geography or proximity to a school, but on the basis of color that in most cases it would require more busing and do more violence to the neighborhood school children than otherwise.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. PELL. Mr. President, I yield an additional 5 minutes to the Senator from New York.

The PRESIDING OFFICER (Mr. SAXBE in the chair). The Senator from New York is recognized for an additional 5 minutes.

Mr. JAVITS. I think it does. And we are all men and we know very well that school buses are designed and the whole tendency of the school boards is that they are intended to patronize the neighborhood school.

We do not have to use a law for that. What we have to do is to be careful and not compel them by whatever measures we adopt to unduly disrupt the neighborhood school.

They want them. They are elected people. They are not going to be defeated.

So, it is patterned for a purpose. And the purpose is to skin the decrees in another way than the previous amendment. That is what it comes down to.

I hope very much that Senators are sophisticated enough to see through the facade.

I am not finding fault. I think the Senator should dress up his amendment in the best way he can in an effort to get it agreed to.

It seems to me so obvious that under the guise and color of our feeling for neighborhood schools, again we are going to be asked to disapprove an effort to desegregate schools which had been segregated for a long time.

I do not think it is wise or provident for us to become a party to the effort. We know these things. We could bring up any number of a large variety of issues. We could follow our sentiments and say that, whether legal or illegal, nothing that is pornographic should be distributed in the United States. We are told that everyone could vote for it, that it was a worthy objective. But, would a Senator be worthy of his name if he did not inquire what this was all about, what it was confined to, whether it included certain classifications? Perhaps some people might think that Shakespeare or Chaucer are pornographic.

They have a right to their opinion. I have served in the House of Representatives and I have served in the Senate. In the other body, that is a very popular thing. The theory has been that no Member can vote against it.

I voted against it, and so did the majority. We are not children. And the people did not send us here to be children.

This is another way of starting on the road back in an effort to deal with unlawful segregation in public schools. I hope that we will not be taken in by it.

Mr. ERVIN. Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. PELL. Mr. President, I yield 5 minutes to the Senator from Tennessee.

The PRESIDING OFFICER. The Senator from Tennessee is recognized for 5 minutes.

Mr. GORE. Mr. President, I am not certain of the meaning and implication of the words the distinguished Senator from North Carolina has added to his amendment, "which is open to him under State law."

I call to the attention of the Senate that the pending amendment is not limited to busing. This is much broader.

I have voted on every occasion accorded me to deny the authority for the Federal Government to require transportation by bus of public school students in order to achieve racial balance.

I voted on every occasion when I had an opportunity to prohibit the use of U.S. funds for that purpose. I submit that the pending amendment appears to be much broader. I do not wish to try to undo or repeal the decision in the case of Brown against Board of Education. I am not at all sure that the adoption of the pending amendment would not seek, insofar as statutory law would so accomplish, to do just that.

If it were provided by statute that no Federal official or agency or court shall have authority to interfere with the assignment or in any way affect the assignment or right of assignment for any purpose whatsoever so long as such school was opened under State law, then it would seem to me to strike at the very principle of Brown against Board of Education. This, I do not wish to do.

It may be that my interpretation is not well founded but surely this would be a very far-reaching amendment for the Senate to adopt with very limited debate and with the amendment not even printed in its present form. I am not prepared to vote for the amendment under present conditions.

Mr. BYRD of West Virginia. Mr. President, will the Senator yield to me minutes?

Mr. PELL. I yield 5 minutes to the Senator from West Virginia.

Mr. BYRD of West Virginia. Mr. President, I wish to associate myself with the views which have been expressed by the Senator from Tennessee. Let me reiterate what I have said many times. I am against segregation, because that is no longer the law of the land. It has not been the law of the land since the 1954 Supreme Court decision. At the same time I am not in favor of going one centimeter beyond what the law of the land requires. So I am against forced integration. The 1954 decision in the Brown case does not require forced integration; no Federal statute requires it. So I agree with the intent of the Senator from North Carolina, but I am afraid I cannot support the amendment as it is written.

I do hope the Senator will withdraw the amendment. If it is the intent of the Congress to restrict or limit the jurisdiction of appellate courts we can do so under the Constitution. I think we should do that if it is what we want to do. But I am concerned about the use of the word "court" in this amendment.

I would be willing to vote for the amendment if it dealt only with departments, agencies, officers, or employees of the United States, and so forth; but I am not willing to vote for the amendment with the word "court" therein.

The antibusing amendment on which we voted a while ago, which was rejected had the word "court" therein. I voted for that amendment, but I believe the defeat of that amendment is going to be misinterpreted in this country and that it will be misinterpreted by the courts of the country. I think the sentiment of this body is against forced busing or forced assignment of pupils on the basis of race or color. I think that had the antibusing amendment been drawn differently the outcome might have been favorable.

I hesitate to support amendments, the defeat of which will be misinterpreted and which will do damage to a cause which the Senator from North Carolina seeks to serve and which I seek to serve.

I say that if we want to get at the courts there are two ways. First, it can be done by the kind of appointments that

are made to the Court. This is the prerogative of the President of the United States and it is the responsibility of the Senate to confirm or reject appointments. The President of the United States is attempting to meet his responsibility by restructuring the Court, and I think he is not only going to balance the Supreme Court but also that he is making an effort to balance Federal district courts and circuit courts. That is one way to deal with the courts. The other way I have already alluded to, and that is by restricting or limiting the appellate jurisdiction of the courts. If we want to do that, let us do it, and I would be for it.

But I do not think we should resort to the verbiage in this amendment. I hope the Senator will strike the word "court" or withdraw the amendment, and let us fight the battle another day when we might win.

Mr. GORE. Mr. President, will the Senator yield?

Mr. PELL. I yield 5 minutes to the Senator from Tennessee.

Mr. GORE. Mr. President, I concur with the Senator but I wish to ask the Senator about something the able Senator said. I wish to call to the Senator's attention that when you reinsert the word "court" and then add the words at the end of the paragraph "and which is open to him under State law" you certainly bring into question a constitutional question, settled by the case of Brown against Board of Education.

Mr. BYRD of West Virginia. I think that is so. I wish to say that I am for the neighborhood-school concept as strongly as is any Senator who represents a Southern State. I do not represent a Southern State, but I think this is the wrong way to go about achieving the objective the Senator seeks. I want to defend the neighborhood-school concept, but I am afraid we are doing the neighborhood-school concept an injustice today if this amendment is defeated, as I fear it will be. I hope the amendment will be withdrawn.

The PRESIDING OFFICER. Who yields time?

Mr. GRIFFIN. Mr. President, will the Senator yield to me for 2 minutes?

Mr. PELL. I yield 2 minutes to the Senator from Michigan.

Mr. GRIFFIN. Mr. President, I take this time merely for a point of clarification to understand what is pending before the Senate, because as a result of advice by the staff I may not understand what amendment is before the Senate. I had understood the word "court" had been stricken, or that the amendment had been modified by striking the word "court".

I wonder if the Senator from North Carolina can enlighten me?

Mr. ERVIN. I have modified the amendment to put the word "court" back in because that is the thing exercising most of this power denying children the right to return to neighborhood schools.

Mr. GRIFFIN. I thank the Senator from North Carolina.

Mr. ERVIN. This amendment is simple. It is designed to keep any agency of the Federal Government, including courts, from denying to any child the right to attend a neighborhood school if he is permitted by State law to attend that school.

Mr. President, I am perfectly willing to yield back the remainder of my time and vote on the amendment.

The PRESIDING OFFICER. Does the Senator from Rhode Island yield back the remainder of his time?

Mr. BYRD of West Virginia. Mr. President, will the Senator yield to me 1 additional minute?

Mr. PELL. I yield 1 minute to the Senator from West Virginia.

Mr. BYRD of West Virginia. Mr. President, again I say I am against forced segregation. If we leave the word "court" in this amendment we are hamstringing, straitjacketing, and handcuffing the courts in many instances where they might have to act contrary to the verbiage of the amendment in order to uphold the Supreme Court decision in the 1954 case.

I hope the Senator from North Carolina will withdraw his amendment. Otherwise I am going to be constrained to move to table the amendment when all time has expired on the amendment in order that the defeat of the amendment will not be interpreted throughout the land as putting the Senate in the position of opposing the neighborhood school concept. I think that would be a misconception of the true sentiment in this body.

Mr. COOK. Mr. President, will the Senator yield to me?

Mr. PELL. I yield 1 minute to the Senator from Kentucky.

Mr. COOK. Mr. President, I wish to associate myself with the remarks of the Senator from West Virginia. I voted for the last amendment and I wish the word "court" were not in there. I think a number of other Senators would have voted for it if it had not been.

Mr. BAKER. Mr. President, will the Senator yield to me for 1 minute?

Mr. PELL. I yield 1 minute to the Senator from Tennessee.

The PRESIDING OFFICER. The Senator from Tennessee is recognized.

Mr. BAKER. Mr. President, I wish to associate myself with the remarks of the distinguished Senator from Kentucky and the distinguished Senator from West Virginia. I voted against the previous amendment, and I did so largely on the basis that I was fearful that the inclusion of the word "court" would be interpreted as an encroachment on the jurisdiction of the court and in violation of the Constitution.

Mr. ERVIN. I beg the Senator's pardon. Yesterday I had printed in the RECORD 31 citations where the Supreme Court has held that, under the provisions of the Constitution, Congress has the right to limit jurisdiction, if Congress sees fit.

Mr. BAKER. And if the distinguished Senator from North Carolina will recall, he and I had much the same colloquy when we dealt with the one-man, one-vote decisions of the Supreme Court of the United States. At that time I made the point that I agree that the Constitution does provide that Congress may prescribe the jurisdiction and the applicable scope of the conduct of the inferior and appellate courts and the appellate jurisdiction of the Supreme Court, but it cannot do so if the prescription of a procedural matter infringes on generic and basic constitutional rights. I fear that your amendment would have had this effect, and I voted against it.

Without going into the extended debate that the distinguished Senator from North Carolina, a distinguished jurist, and I had more than a year ago on this point, it is sufficient to say that I would hope, for my part, in order to avoid any misunderstanding as to what Congress means on the issue of busing, that he would remove the word "court" from all three amendments. Then if he brought up amendment No. 492 again, rather than vote against the amendment, as I previously did, I would vote for it.

Mr. ERVIN. I appreciate that statement of the Senator from Tennessee.

As a matter of fact, Mr. President, the relief I am trying to get for the freedom of the American people cannot be gotten unless the word "court" is in there. I would like to have a vote on this amendment. I am sorry the Senator from West Virginia says it curtails the court by this language. If the Senator wants to say the courts shall not be deprived of denying the right of schoolchildren to attend neighborhood schools, he can do so, but that is the only way this provision will give them protection.

In the McCardle case a man was denied his freedom of speech guaranteed by the first amendment in the writing of editorial. Then they undertook to deny the right of a citizen not to be tried by a military tribunal, which the Supreme Court held was unconstitutional. He was denied his constitutional rights. Yet after that decision was made by the Supreme Court, the Congress passed a law to take away from the Supreme Court jurisdiction in which it had already ruled.

Despite my admiration for the Senator from Tennessee, I believe his view on that point is erroneous.

Mr. BAKER. Mr. President, will the Senator yield me 1 minute?

Mr. PELL. Mr. President, I yield 1 minute to the Senator from Tennessee, and then I am prepared to yield back the remainder of my time.

Mr. ERVIN. Mr. President, I may say to the Senator from Tennessee that I will offer the entire busing amendment with the word "court" stricken out as an amendment after this amendment is disposed of.

Mr. BAKER. Mr. President, I am delighted to hear that. I sincerely hope the Senator will. I think we are in danger of confusing the public as to what Congress means. I want the RECORD to show that I am opposed to busing for the purpose of achieving racial balance, but I do not think we can circumscribe the constitutionally-based decisions of the Supreme Court by statute. Therefore I hope the Senator will offer the amendment without the word "court" in it, and I shall vote for it.

The PRESIDING OFFICER. All time on the amendment has been yielded back.

The question is on agreeing to the amendment.

Mr. GRIFFIN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. GRIFFIN. 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 North Carolina. The yeas and nays have been ordered.

Mr. BYRD of West Virginia. Mr. President, with great respect for the able Senator from North Carolina, I move to table the amendment, and I do so to prevent what otherwise would be a misconstruction of the action of the Senate on that amendment. I do it with reluctance, but I move to table the amendment, and I ask for the yeas and nays.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on the motion to lay on the table the amendment of the Senator from North Carolina. The yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. BYRD of West Virginia. I announce that the Senator from New Mexico (Mr. ANDERSON), the Senator from California (Mr. CRANSTON), the Senator from Connecticut (Mr. DODD), the Senator from Alaska (Mr. GRAVEL), the Senator from Oklahoma (Mr. HARRIS), the Senator from Indiana (Mr. HARTKE), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Minnesota (Mr. MCCARTHY), the Senator from Montana (Mr. METCALF), the Senator from New Jersey (Mr. WILLIAMS), and the Senator from Texas (Mr. YARBOROUGH), are necessarily absent.

I further announce that, if present and voting, the Senator from Oklahoma (Mr. HARRIS), and the Senator from New Jersey (Mr. WILLIAMS), would each vote "yea."

Mr. GRIFFIN. I announce that the Senator from Colorado (Mr. DOMINICK), the Senators from Oregon (Mr. HATFIELD and Mr. PACKWOOD), and the Senator from Illinois (Mr. SMITH) are necessarily absent.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The Senator from Vermont (Mr. AIKEN), and the Senator from Arizona (Mr. GOLDWATER) are detained on official business.

If present and voting, the Senator from Vermont (Mr. AIKEN), the Senator from Colorado (Mr. DOMINICK), the Senator from Oregon (Mr. HATFIELD), and the Senator from Illinois (Mr. SMITH) would each vote "yea."

The result was announced—yeas 58, nays 24, as follows:

[No. 49 Leg.]

YEAS—58

Allott	Griffin	Pastore
Baker	Hansen	Pearson
Bayh	Hart	Pell
Bellmon	Hughes	Percy
Boggs	Inouye	Prouty
Brooke	Jackson	Proxmire
Burdick	Javits	Randolph
Byrd, W. Va.	Jordan, Idaho	Ribicoff
Cannon	Magnuson	Saxbe
Case	Mansfield	Schweiker
Church	Mathias	Scott
Cook	McGee	Smith, Maine
Cooper	McGovern	Spong
Cotton	McIntyre	Stevens
Dole	Miller	Symington
Eagleton	Mondale	Tydings
Fong	Montoya	Williams, Del.
Fulbright	Moss	Young, Ohio
Goodell	Muskie	
Gore	Nelson	

NAYS—24

Allen	Fannin	Murphy
Bennett	Gurney	Russell
Bible	Holland	Sparkman
Byrd, Va.	Hollings	Stennis
Curtis	Hruska	Talmadge
Eastland	Jordan, N.C.	Thurmond
Ellender	Long	Tower
Ervin	McClellan	Young, N. Dak.

NOT VOTING—18

Aiken	Gravel	Metcalf
Anderson	Harris	Mundt
Cranston	Hartke	Packwood
Dodd	Hatfield	Smith, Ill.
Dominick	Kennedy	Williams, N.J.
Goldwater	McCarthy	Yarborough

So the motion to lay on the table was agreed to.

Mr. ERVIN. Mr. President, I send an amendment to the desk and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The BILL CLERK. The Senator from North Carolina (Mr. ERVIN) for himself and others proposes an amendment—at the end of the bill, add an additional title and section appropriately numbered and reading as follows:

No department, agency, officer or employee of the United States shall have power to require any State or local public school board or any other State or local agency empowered to assign children to public schools to transport any child from one place to another place, or from one school to another school, or from one school district to another school district to alter the racial composition of the student body at any public school.

Mr. MANSFIELD. Mr. President, will the Senator yield?

Mr. ERVIN. I yield.

Mr. MANSFIELD. Mr. President, if I may have the attention of the Senate, with the approval of the author of the amendment and the managers of the bill and the leadership on the Republican side, I ask unanimous consent that there be a time limitation of 20 minutes on the amendment, the time to be equally divided between the distinguished senior Senator from North Carolina (Mr. ERVIN) and the distinguished Senator from Rhode Island (Mr. PELL).

The PRESIDING OFFICER. Is there objection?

Mr. MANSFIELD. And amendments thereto.

Mr. COOPER. Mr. President, reserving the right to object——

Mr. HOLLAND. Mr. President, I understood it was to be addressed just to this amendment.

Mr. MANSFIELD. All amendments to this amendment.

Mr. HOLLAND. I make no objection.

Mr. COOPER. Mr. President, reserving the right to object, I want to ask three questions of the Senator from North Carolina which may determine my vote.

Mr. JAVITS. We have time on the bill.

Mr. President, how much time remains on this side on the bill?

The PRESIDING OFFICER. 90 minutes.

Mr. MANSFIELD. There is plenty of time.

The PRESIDING OFFICER. Without objection, the time limitation is agreed to.

The Senator from North Carolina is recognized.

Mr. ERVIN. Mr. President, I ask for the yeas and nays on the amendment.

The yeas and nays were ordered.

Mr. ERVIN. Mr. President, a number of Senators who voted against my antibusing amendment because of the intrusion of the word "court," have suggested that I offer an amendment with the word "court" eliminated. This is precisely what the amendment would do:

No department, agency, officer, or employee of the United States shall have power to require any State or local public school board or any other State or local agency empowered to assign children to public schools to transport any child from one place to another place, or from one school to another school, or from one school district to another school district to alter the racial composition of the student body at any public school.

It is identical with the other amendment except it does not apply to the courts.

Mr. PASTORE. Mr. President, do I understand correctly that the words here, "officer, or employee of the United States" do not mean to include a judge?

Mr. ERVIN. Yes.

Mr. PASTORE. Is that correct?

Mr. ERVIN. Yes.

Mr. PASTORE. In other words, this is applicable only to the executive department—officers and employees of the executive department?

Mr. ERVIN. That is right.

Mr. PASTORE. Then the way the amendment is worded does not mean to include a judge as an officer of the United States, not according to the amendment?

Mr. HOLLAND. The Senator stated it correctly by his explanation.

Mr. PASTORE. Should it not read, then—

No court, department, agency, or officer, or employee of the executive department . . .

Why does not the Senator add that in there?

Mr. ERVIN. Yes. Mr. President, I modify my amendment so as to read:

No department, agency, or officer, or employee of the executive department of the United States shall have power to require any State or local public school board or any

other State or local agency empowered to ...ign children to public schools to transport ... child from one place to another place, ... from one school to another school, or from one school district to another school district to alter the racial composition of the student body at any public school.

Mr. President, if no other Senator wishes to speak on it, I am perfectly willing to yield back the remainder of my time.

The PRESIDING OFFICER. The Chair would ask the Senator from North Carolina, is he modifying his amendment and, if so, that can be done only by unanimous consent.

Mr. ERVIN. Mr. President, I ask unanimous consent to modify my amendment as already stated.

Mr. JAVITS. Mr. President, may we know what the modification is?

Mr. ERVIN. I have modified it by inserting on line 2 the words "executive department" between the words "the" and "United States." That makes it clear that it does not refer to any Federal judge.

The PRESIDING OFFICER. Is there objection to the request of the Senator from North Carolina?

The Chair hears none, and the amendment is modified accordingly.

Mr. COOPER. Mr. President, I should like to address questions to the distinguished Senator from North Carolina.

Mr. ERVIN. I am happy to yield to the Senator from Kentucky for that purpose.

...r. COOPER. The Civil Rights Act o... 964, title IV, section 407 provides—and I am sure the Senator has knowledge of this section—

Provided, That nothing herein shall empower any official of a 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.

The language of the amendment is strikingly similar to the language I have read except the words "racial balance" is used in the 1964 act, and "racial composition" is used in the Senator's amendment. Is there a distinction in the terms?

Mr. ERVIN. HEW attempted to make a distinction between racial balance and say that racial balance, when it ordered busing, was not done to achieve racial balance but to achieve a unitary school system. Those semantics nullified the intent primarily expressed by Congress in the 1964 Civil Rights Act.

Mr. COOPER. But the language is so similar. In fact, the words, "from one school to another school or from one school district to another school district," is the same language as used in the 1964 Civil Rights Act.

Mr. ERVIN. Except Judge Wisdom rendered a peculiar decision in a Jefferson County case, in which he said that it only prohibited transportation across dis... t lines, which was not true, but th... the interpretation he put on it. That is the reason I put in the words, "from one school to another school, or from one school district to another school district."

Mr. COOPER. I believe, if this amendment should be adopted, that it would more clearly express the sense of Congress about the busing of students in the cases we intended. But in certain cases where the issue was the desegregation of a school, the courts have held that in such cases, busing, while not the only remedy, may be required. This amendment could not alter the ruling of the Supreme Court. Do you agree?

Mr. ERVIN. It does not have anything to do with the ruling of the Supreme Court. It merely puts a limitation upon the executive branch.

Mr. COOPER. That was the intention of the 1964 Civil Rights Act.

Mr. ERVIN. I think my amendment brings this in line, except that the 1964 act provides that the Court's jurisdiction required it, as well as any officer of government. It was nullified in Judge Wisdom's opinion, because of the fact that the Senator in charge of the bill at the time, Senator Humphrey, reported a case against a school in Gary, Ind., and by some strange legal, judicial legerdemain he said that might apply only to southern schools and not to northern schools.

Mr. COOPER. Would the Senator consider this an element of the requirement? Assume that HEW looks over the plans of a school district in State A and finds that, in its view, they are not sufficient. HEW can, and I do not know whether by persuasion, coercion, or withholding of funds, compel the district to provide for busing from one school to another. Does the Senator think that was intended under the 1964 Civil Rights Act?

Mr. ERVIN. No. I think it was intended to be outlawed under the 1964 Civil Rights Act, because that was in clear harmony with the decision of the Brown case which said that children should be assigned to schools without regard to race.

Mr. COOPER. I think the Senator would agree with me, and this is very important, that if the courts take jurisdiction and determine that a plan is insufficient in accomplishing desegregation, then I do not believe that we can stand in the way of the court's decision, by acts of Congress.

Mr. ERVIN. Mr. President, I yield back the remainder of my time.

Mr. JAVITS. Mr. President, will the Senator from Rhode Island yield me 5 minutes.

Mr. PELL. I yield 5 minutes to the Senator from New York.

The PRESIDING OFFICER. The Senator from New York is recognized for 5 minutes.

Mr. JAVITS. Mr. President, I think the Senate should know what this means, and it should judge whether it wishes to do it. But it should know what it does. From what I have heard, we have not heard yet what it does. We have heard what it does not do—to wit, bind the court.

What is does do is to prevent a situation where HEW is withholding funds to a school district to segregate—that is, de jure segregation. We are not talking about racial imbalance or de facto segregation. This is where HEW is withholding funds. This amendment would prevent HEW from demanding or requiring that there be busing in order to deal with that segregation, that they will have to eliminate it from their instructions. That is the title which the distinguished Senator from Rhode Island (Mr. PASTORE) handled so well on the floor.

It has been charged that, although HEW does not mandate it because it cannot; nevertheless, impliedly it mandates it because it says "This is a district, and we will not give you the money unless you do it."

I do not know, yet, whether it will operate that way, but it may prevent the HEW from making that kind of requirement. By omitting the word "court" in this amendment, we accept the fact of a de jure situation here, as it refers only to segregation and to some change in busing.

I described a number of those situations before. And the HEW says that very rarely by additional busing, but often by some change in the system is this accomplished.

What this would mean would be that the HEW would not be as responsive then to releasing the money as it could be. And it would have to wait until there is a court proceeding and a court decree.

HEW is involved. They would simply have to wait until a court decree is issued or perhaps HEW would act, if not expressly, by implication.

Mr. PASTORE. Mr. President, will the Senator yield?

Mr. JAVITS. I yield.

Mr. PASTORE. Mr. President, as I read the amendment as modified the amendment, in my humble opinion, is no different in effect from section 401 already in the bill.

We are saying here "racial composition" instead of "racial balance." To me it means the same thing, unless someone can make a distinction between the two. I should like to have that distinction made.

As I read this, the court still has jurisdiction to decree this, because we have left it open. We have made sure that this does not bind the court.

The court can still operate under this to declare that any segregated school is unconstitutionally set up. We have taken care of that insofar as the Department is concerned. It has the ability to withhold financial assistance. They cannot decree this. But under section 421, they can act. And that is the point I am making.

Mr. JAVITS. Mr. President, the Senator agrees with me, I am sure, that the amendment which has the words "racial composition" really differs from the words "racial balance."

Mr. PASTORE. I do not think there is any difference.

Mr. JAVITS. All I can say is that we are not making the legislative record. The Senator from North Carolina is. But I think the courts could construe this and put a restraint on HEW.

The result would be adverse rather than favorable to those whom, I think the proponents of the amendment, is seeking to help. It would result in defer-

ring the matter for a longer time until there is a court decree.

Mr. PASTORE. The only trouble as I see it, from a pragmatic point of view—and I say this kindly—the way this is amended, if he used the words "racial balance," he would not get it. It is already in the law.

I think it stands out that the Senator from North Carolina would like to have his name on a civil rights amendment, and this is all it amounts to.

Mr. JAVITS. Mr. President, I hope the Senator is right. Neither he nor I can write the legislative record. We are not authors of the amendment. I think we ought to understand very clearly precisely how this would operate. It would operate as an inhibition on the HEW to exercise its authority.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. PELL. Mr. President, I yield 1 additional minute to the Senator from New York.

The PRESIDING OFFICER. The Senator from New York is recognized for 1 additional minute.

Mr. JAVITS. Mr. President, this is a matter of first impression, but certainly it may result in a much longer delay than now. It will be necessary to wait if we cannot correct the conditions in any other way. HEW's hands are tied. They would have to wait for a court to enter a decree as to busing. That is the way I see it.

Mr. PELL. Mr. President, I yield myself 2 minutes.

The PRESIDING OFFICER. The Senator from Rhode Island is recognized for 2 minutes.

Mr. PELL. Mr. President, I would like to ask the Senator from North Carolina a question. Is it either the purpose or the intent of the amendment to inhibit the Department of Health, Education, and Welfare in its effort to desegregate schools that are presently segregated?

Mr. ERVIN. Mr. President, the distinguished senior Senator from Rhode Island says that the only intent and purpose of this is to clarify the Civil Rights Act of 1964. It would have no relation to anything in the past. It is only prospective in operation. Congress passed a law and told the Department of Health, Education, and Welfare they could not do it before, and they paid no attention to it.

Mr. PELL. Mr. President, the question I would like to press is whether the Senator would accept the understanding of my senior colleague.

Mr. ERVIN. Mr. President, the senior Senator from Rhode Island, as I understood his remarks, pointed out the fact that we had prohibited busing by HEW, and had undertaken to do that in the 1964 act. I think that is clearly correct. But HEW has not paid any attention to that.

Mr. PELL. But my question is of a more positive nature. Is it the purpose of the amendment to inhibit or discourage HEW from moving ahead in the general field of desegregation?

Mr. ERVIN. They can move in any way they wish, outside of requiring busing.

The amendment is plain. It says:

No department, agency or officer, or employee of the Executive Department of the United States shall have power to require any State or local public school board or any other State or local agency empowered to assign children to public schools to transport any child from one place to another place, or from one school to another school, or from one school district to another school district to alter the racial composition of the student body at any public school.

That is as plain as it can be. They can use any other method except busing.

Mr. JAVITS. Mr. President, I think the intent of the Senator from Rhode Island is to inquire of the Senator from North Carolina whether there is any conceptual difference between the use of the words "to achieve racial balance" in section 407(a) of the Civil Rights Act of 1964, and the Senator's use of the words "racial composition" in his amendment.

Mr. ERVIN. Mr. President, the purpose of that is to prevent the Department of Health, Education, and Welfare from engaging in a semantic argument that they are not trying to effect or achieve racial balance, but are trying merely to get a unitary school system. They have just perverted and distorted the meaning of Congress. I thought that we should write something that they could read and understand.

Mr. JAVITS. But it is not the intention to change the substantive import of the words used in section 407(a) of the Civil Rights Act.

Mr. ERVIN. The purpose is to prohibit them from transporting pupils or requiring them to be transported to affect the racial composition of any student body.

Mr. PASTORE. Mr. President, I am looking at the bill reported by the committee. That has not been challenged. The Senator is adding a new title and not amending this section. Page 150, section 422, reads as follows:

No provision of any law which authorizes appropriations for any applicable program (or respecting the administration of any such program), unless expressly provided for therein, shall be construed to authorize any department, agency, officer, or employee of the United States to exercise any direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any educational institution, school, or school system, or over the selection of library resources, textbooks, or other printed or published instructional materials by any educational institution or school system, or to require the assignment or transportation of students or teachers in order to overcome racial imbalance.

That last is the important part. How does the amendment change this?

Mr. ERVIN. If we pass this, it will be the third law of that character that we have passed. And HEW has flagrantly violated the other two laws by saying that they are not seeking to overcome racial imbalance in the South, but are establishing a unitary system. Whatever that means, they do not say.

Mr. PASTORE. Is the Senator trying to protect the dual system of schools?

Mr. ERVIN. I am trying to prevent the busing of children by HEW.

Mr. PASTORE. Even if it means a dual system?

Mr. ERVIN. I am trying to prevent the busing of children for any purpose.

Mr. PASTORE. Mr. President, would the Senator answer my question. Does he mean even if it means a dual system? If he does mean that, I am against the amendment.

Mr. ERVIN. I do not know what the term means.

Mr. PASTORE. A dual system means that a black child cannot go to a white school and a white child cannot go to the black school.

Mr. ERVIN. I am trying to forbid the HEW from requiring the busing of children.

We have twice passed laws to prevent this; and they say we are not trying to achieve racial balance; we are trying to achieve the unitary school system. They do not pay any attention to what Congress says.

Mr. GORE. Mr. President, will the Senator yield?

Mr. ERVIN. I had yielded back my time.

Mr. PELL. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. There is no time remaining on the amendment.

Mr. PELL. I yield to the Senator 5 minutes on the bill.

The PRESIDING OFFICER. The Senator is recognized.

Mr. GORE. Mr. President, I appreciate the generosity of the distinguished Senator.

I have opposed two, and perhaps three amendments offered by the distinguished Senator from North Carolina today. I wish to support this one.

I see no difference between racial composition and racial balance. Balance or imbalance constitute composition. But if it is for the purpose of either I do not believe that a Federal official of the executive branch should have the authority to force the transportation of children. This does not affect the right of the child to go to any school, the right of a child to be admitted to any school; it does not affect Brown against Board of Education.

As I understand the Senator's amendment, and I support it on this basis, it is directed singly, purely, and solely at the power of an official of the Federal Government, the executive branch of the Federal Government, to require transportation of children in order to achieve racial composition.

Do I correctly state it?

Mr. ERVIN. That is all.

Mr. GORE. On that basis I ask the Senate to agree to the amendment. It is already the law. It is in the bill. I see no harm in putting it in again.

Mr. PASTORE. Mr. President, will the Senator yield?

Mr. GORE. I yield.

Mr. PASTORE. Then you understand racial composition in the proposed amendment to mean nothing more than racial balance, and it is already in section 422; is that correct?

Mr. GORE. I do not know how the English language distinguishes between racial balance or imbalance and racial composition.

Mr. PASTORE. I maintain the same thing but I was in doubt as to whether or not the proponent of the amendment made the same interpretation.

Mr. GORE. He just responded to me affirmatively; he sought only to deny the power of an official of the executive branch of Government to require transportation of public school students for the purpose of achieving racial composition. That is how I understand it.

Mr. PASTORE. You understand that to be the same as racial balance or imbalance?

Mr. GORE. I do.

Mr. JAVITS. Mr. President, I yield myself 3 minutes.

The PRESIDING OFFICER. The Senator is recognized for 3 minutes.

Mr. JAVITS. Mr. President, I am sorry. I would like to be complacent about this matter but I cannot be because the Senator from North Carolina could very easily undo all of our doubt by changing the word "composition" to "balance" and he will not do that. He will not do that because he believes this would include any measure to deal with unlawful and unconstitutional segregation of schools, which involves busing.

Do we need to have his fingers stuck in our eyes? It is clear, of course, he is not going to agree to make that change. It is not his intention. He is honest about it. He construes racial balance to mean what he says. The courts do not construe it that way.

The Senator from North Carolina wants it to mean de jure segregation. He practically told us so. That is what he wants and that is what he means. We have voted against this before. Now, the word "court" is stricken out.

I care as little about formulation of words as anyone, but if the Senator will tell us that all he is doing is what we did before and it is repeating, he could tell us that, but he does not. He is being honest. He said he wants a new concept of busing to cure segregation, de jure and de facto.

Mr. President, I hope the Senate will reject the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

Mr. COOPER. Mr. President, will the Senator yield to me 2 minutes on the bill?

Mr. JAVITS. I yield to the Senator from Kentucky.

Mr. COOPER. Mr. President, I suggested more time on the amendment because I think we all want to find out if there is a distinction between the terms "racial imbalance" and "racial composition."

Take, for example, a city in a county in Kentucky segregated under a State law which was called the Day law, and which was passed in 1866, long before the 1954 decision. But then, the decision of Brown versus Board of Education changed that. Would the Senator's amendment prohibit or prevent busing directives by the courts in that county?

It is essentially the same question the Senator from New York asked. Would the amendment prevent the application of the Brown case?

Mr. ERVIN. No, it would not.

Mr. COOPER. Then, is the Senator saying racial imbalance is the same?

Mr. ERVIN. The Brown case says no State can deny a child admission to any school on the basis of race. Congress intended clearly in the 1964 civil rights bill to prevent the busing of students by HEW to change the racial composition of a school. That is why they put it in there.

The reason I offered this amendment is that it effectuates the intent of Congress in 1964. The Civil Rights Act of 1964 said plainly that desegregation of schools should mean sending children to school without regard to race and that desegregation should not include the assignment of children to overcome racial imbalance; and that you should not bus children to overcome racial imbalance.

I introduced this amendment to clarify the congressional intent so that HEW can read it and understand what it is doing, and not trying to alter racial imbalance. The only way to do this, it appears, is to pass a law saying that busing cannot be used to alter the racial composition of any school.

Mr. COOPER. Suppose we have a segregated school district and there is no way to desegregate except to provide buses to move children from one school to another so as to obtain desegregation. Where the school district refuses to do it, the only recourse, then, would be to go to court. Is that correct?

Mr. ERVIN. It was made clear by former Senator Humphrey in a colloquy with the Senator from West Virginia:

> Mr. BYRD of West Virginia. Can the Senator from Minnesota—
>
> He was the floor manager—
>
> assure the Senator from West Virginia that under title VI schoolchildren may not be bused from one end of the community to another end of the community at the taxpayers' expense to relieve so-called racial imbalance in the schools?

He said, "I do."

Mr. JAVITS. Mr. President, I yield myself 1 minute.

It seems to me that what is happening here, though it is semantic and hard to break through, is that the Senator from North Carolina has always believed that the Department of HEW had no power in any way to order busing even to secure desegregation. Now he wants us to legislate his belief as to what that meant, because he has been after them and they do not agree with it, and nobody else who is pro-Civil Rights Act of 1964 does. He has been after them to change that view. Now the idea is to change it by this amendment, because the Senator is too honest a judge and a lawyer to say, "All I mean by racial composition is racial balance," and it is not the same thing.

So the only way we can get to the bottom of this issue is to reiterate the words we use today by using the same catenation of words that we used in the previous provision, which are contained in section 407(a) of the Civil Rights Act of 1964.

Mr. PASTORE. Mr. President, I move on page 2, line 2 of the Ervin amendment to strike the words "alter the racial composition of the student body at any public school.", and insert "in order to overcome racial imbalance of the student body at any public school."

Mr. ERVIN. Mr. President, I would like to ask the Senator from Rhode Island if that means they can bus children for the purpose of altering the racial composition in school.

Mr. PASTORE. They cannot bus schoolchildren in order to overcome racial imbalance of any student body of any school. That brings me in line with the distinguished Senator from Tennessee.

The PRESIDING OFFICER. Who yields time?

Mr. JAVITS. Mr. President, I would like to ask the Chair a question, because we have a question on the time. I yield myself 1 minute on the bill.

As I understood the unanimous-consent request, it was amended to include 20 minutes on any amendment to the amendment, just as we had 2 hours on the bill. Under those circumstances, if the Chair rules that is so, the Senator from Rhode Island would have 10 minutes and whoever was vested with the time in opposition would have 10 minutes. Is that correct?

Mr. PASTORE. Mr. President, will the Senator yield?

Mr. JAVITS. I yield.

Mr. PASTORE. An objection was interposed by the Senator from Florida because he misunderstood.

Mr. HOLLAND. Mr. President, I withdrew that objection, whether it is in the record or not.

Mr. President, may I be heard on a point of order?

The PRESIDING OFFICER. First, if there is no objection, there will be 10 minutes on each side on the amendment.

Mr. JAVITS. Mr. President, does the Senator from Florida wish me to yield?

Mr. HOLLAND. Yes, on a question of privilege; my objection was based on my understanding that the 20-minute limit was to be applied to all amendments. I think the wording of the distinguished majority leader made it possible for that understanding to be had by some of us. When I found it applied only to the amendment to the pending amendment of the Senator from North Carolina, I immediately withdrew my objection, so that the request for the unanimous consent made by the distinguished majority leader was agreed to as made by him.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. PASTORE. Mr. President, I think we have talked this matter out. I think we all understand it. If the opposition—if there is opposition—is willing to yield back its time, I am willing to yield back my time. I think we have all made our positions clear.

Mr. ALLEN. Mr. President, will the Senator yield for a question?

Mr. PASTORE. I yield.

Mr. ALLEN. I would like to ask the Senator from Rhode Island if the effect of his amendment is not to readopt the provisions of the second phase of the Scott amendment. Specifically, is not the Senator's purpose to limit the prohibition against busing or transportation of students confined to the purpose of overcoming racial imbalance, which means de facto segregation?

Mr. PASTORE. I do not understand it as such. I think it is clear that what I am saying in my amendment is exactly

what it says in section 422 of the bill reported to this body by the committee. The committee has handled the matter. The words are clear that any agency, officer, or employee of the United States cannot exercise any direction, supervision, or control over the curriculum, and so forth, or to require the assignment or transportation of students or teachers in order to overcome racial imbalance.

Mr. ALLEN. There again, if the Senator will yield, the term "racial imbalance" as treated by the Department of HEW refers to de facto segregation only. It does not refer to de jure segregation. So the effect of the amendment offered by the Senator from Rhode Island is to say that there shall be no busing to overcome de facto segregation, thereby freezing into the amendment the protection for de facto segregation, but leaving the prohibition nonexistent as regards de jure segregation.

Mr. PASTORE. Of course, that is the Senator's interpretation, and he is at liberty to interpret it any way he wants to; but it was my understanding it is the fundamental premise of the law that there cannot be busing of students unless the court orders it, and the word "court" was left out. That is all it amounts to.

Mr. ALLEN. But the Senator is confining that prohibition against busing only to de facto segregation by use of the term.

Mr. PASTORE. I do not see the difference between overcoming racial imbalance and changing the composition of the classroom.

Mr. ALLEN. Perhaps the Senator does not, but there is a vast difference.

Mr. PASTORE. That is the Senator's interpretation, but we have made the legislative history today.

Mr. ERVIN. Mr. President, I understood the Civil Rights Act of 1964 put a prohibition on the busing of students for the purpose of overcoming racial imbalance, and that Congress meant by that that children should not be bused for the purpose of altering the racial composition of a student body. We had the reference to "racial imbalance" twice in acts we passed, and HEW has paid no attention to those acts. It is three times counting the 1964 act.

Would the Senator consider amending his amendment so as to provide "in order to overcome racial imbalance of the student body at any public school by altering the racial composition of such student body"?

The only reason why I phrase it that way is that the Civil Rights Act of 1964, an amendment to the law that was passed by the Congress in 1965, and a provision which was put in the HEW Appropriation Act all prohibited transportation to overcome racial imbalance. HEW said those provisions did not mean what the Senator from Rhode Island and I think they meant.

Mr. JAVITS. Mr. President, will the Senator yield to me?

Mr. PASTORE. I yield.

Mr. JAVITS. I think the Senate ought to understand what we mean, and that to achieve racial balance is an affirmative act, to attempt to mix the school population.

Affirmative acts are not dealt with, are neither required nor prohibited, by the Constitution. It is the negative act which is involved; and the negative act would be a change in the racial composition.

How are you going to desegregate a segregated school if you do not change its racial composition? That is exactly what the Senator from North Carolina is after. So we had better understand each other. He does not want any Government agency, to wit, HEW expressly or impliedly, to require by withholding funds or otherwise any changes in a de jure situation. That is what it is all about.

We are either for that or against that. But we kid ourselves if we believe that it means something other. Why he changed the words is because he wanted to change them. He wants to accomplish another, different, broader, purpose. In my judgment, it is the very purpose that we dealt with before. We do not want to abet, abort, or regress de jure segregation policies. What we want to do is bring about greater fairness in the country by going after segregation wherever it is, in whatever form. I am for that. The Senate has decided it.

But let us not assume that these words do not mean what the Senator from North Carolina wants them to mean. He wants a change. He left out the word "court," and, as I explained before, all that means is that HEW will not deal with these questions itself; it will have to wait for a court to pass on it, which will only mean a delay in the money leaving HEW, because HEW may not lend any money to a segregated school district. If it may not in any way help desegregate that district, that means it must, according to law, sit with its arms folded until the court acts. That is what I said before.

Mr. GORE. Mr. President, will the Senator yield?

Mr. JAVITS. I yield.

Mr. GORE. I wonder if the Senator is not exercising——

Mr. JAVITS. I am not a bit exercised.

Mr. GORE. Exercising semantic gymnastics here. As I understand the constitutional ruling; it is that there shall not be discrimination because of race, color, or creed. If an official of the executive branch of the U.S. Government is empowered to require of a child or the parents of a child that that child be transported in order to achieve a racial composition, then is not that child being forced to accept transportation because of race? It seems to me that discrimination can work both ways with respect to the individual as well as with respect to the school, with respect to the wishes of a child or a parent not to be transported, as well as the wish to be transported. What is the difference in discriminating against him one way, by forcing him to ride a bus, or discriminating against him in denying him the right to ride a bus?

The PRESIDING OFFICER. The 10 minutes of the Senator from Rhode Island has expired.

Mr. ALLEN. Mr. President, I ask unanimous consent that the Senator be granted an additional 10 minutes.

Several Senators addressed the Chair.

Mr. PASTORE. Mr. President, will my colleague yield me time so that I may ask a question?

Mr. PELL. Mr. President, I yield 5 minutes on the bill to my senior colleague.

Mr. PASTORE. Mr. President, will someone explain to me, where you have a classroom of 100 children, and 75 of the children are white, and 25 of the children are black, if you cannot transport to change that imbalance, and there is an imbalance, then what is the difference in saying that you cannot alter the composition of that situation? Tell me what the difference is. If you cannot change the imbalance that exists, how in the name of heaven do you change the composition any other way? If you cannot change the imbalance, and the imbalance is 75 whites against 25 blacks, what is the difference in saying that you cannot transport those students in order to change the composition of that classroom, which is still composed of 75 whites and 25 blacks? Does it not mean the same thing?

I do not know what we are quibbling about, unless it means that it is perhaps a little more satisfying to use one word as against another word. But the law is the law, and we passed it in 1964.

I think it is plain to all of us what we are trying to do here. In my humble opinion, if you do not correct an imbalance, you are not changing the composition; and if anyone can twist those words around to mean anything different, I have not studied English.

Mr. ERVIN. Mr. President, I am in full agreement with the Senator from Rhode Island that we intended by the 1964 act to do the same thing I am trying to do here, but HEW just does not understand those words, and I am trying to clarify them.

If the Senator from Rhode Island would add the words "by altering the racial composition of such student body," I would accept his amendment, or modify mine to conform.

Mr. EAGLETON. Mr. President, will the Senator from Rhode Island yield time to me, so that I may address a question to his senior colleague?

Mr. PELL. I yield the Senator from Missouri 1 minute on the bill.

Mr. EAGLETON. I ask the senior Senator from Rhode Island (Mr. PASTORE) if the purpose of his amendment is to conform the Ervin amendment to the language and the intent of section 422 in the existing bill, and to similar language as previously used in the 1964 Civil Rights Act.

Mr. PASTORE. Precisely.

Mr. EAGLETON. I thank the Senator.

Mr. PASTORE. And that is all I am seeking to do.

Mr. EAGLETON. I support the Senator's amendment.

Mr. PASTORE. The Senator from North Carolina has the idea, because, administratively speaking, the departments have not lived up to the concept of the bill, that if he changes the wording he will change the concept. But that

is an administrative endeavor we are talking about. Insofar as the intent of the law and the letter of the law are concerned, I do not see the difference.

The PRESIDING OFFICER. Who yields time?

SEVERAL SENATORS. Vote.

Mr. ERVIN. I have not yielded back my time. Do I have some time remaining?

The PRESIDING OFFICER. No; the time on the bill is under the control of the Senator from New York (Mr. JAVITS) and the Senator from Rhode Island (Mr. PELL).

Mr. PELL. How much time does the Senator require?

Mr. ERVIN. Two minutes.

Mr. PELL. I yield the Senator from North Carolina 2 minutes on the bill.

Mr. ERVIN. I agree with the Senator from Rhode Island that there is no difference between the meaning of the words "racial imbalance" and the words "racial composition"; but unfortunately, we have passed three time statutes about racial imbalance, and HEW pays no attention to them.

The reason I prefer the other expression is that it is so plain that even HEW can understand it. So for that reason, if the Senator from Rhode Island will agree to add "by altering the racial composition of the student body of any school," I will accept his modification of my amendment.

Mr. PASTORE. Mr. President, I am getting a little tired of this, but I concur, if the Senator will readjust his amendment to amend the basic act, as reported, on page 151, by adding, after the words "in order to overcome racial imbalance" the words "and/or alter the racial composition of such student body."

Just add those words to the language of the bill.

Mr. ERVIN. Yes, I would certainly do that.

Mr. PASTORE. Is there any objection to that?

Mr. JAVITS. Yes, and I will tell you why. [Laughter.]

The PRESIDING OFFICER. The Senate will be in order.

Mr. JAVITS. Mr. President, I yield myself 5 minutes on the bill.

We are not engaged in games here. We are engaged in very serious business. The words "racial balance" have acquired a meaning by the way in which they have been applied, just as the words "racial composition" acquire a meaning from the debate here.

Mr. President, the words "racial balance" obviously imply a negative concept, to change something which is not illegal. There can be racial imbalance which is not illegal, but States may desire to change it, or they may consider it illegal for their States. Under the Constitution, there is no requirement that there be an affirmative racial balance in a school, or in a class, or anything else.

But the Constitution does say that you may not segregate children because of their color. Therefore, if it is necessary to deal with transportation in order to unscramble those eggs—and it very often is—then you must deal with it, and then you do change the racial composition by busing or transportation, because you are doing something affirmative in order to implement the prohibition of the Federal Constitution.

The Senators who are arguing for this understand very well what they are doing, and I understand it. What they are trying to do is to say that under no circumstances, even in the case of segregation, which is in violation of the Civil Rights Act and the Constitution, shall HEW in any way be a party to endeavoring to bring about busing or any other means of transportation to change that racial composition, even though it is the result of unlawful segregation. I cannot be for that. They admit that is what they are trying to do.

What they have tried to do—and I beg the Senate to listen to me—is to get the HEW to agree with them on what they now interpret the words "racial balance" to be—to wit, racial balance means that you cannot touch a school. If it is all black, it stays all black. If it is all white, it stays all white. The HEW has not gone that far. It says:

> Racial balance is a very different concept. That is a positive act in which, for one reason or another, we want to mix a certain percentage of blacks with a certain percentage of whites or change that percentage.

But that does not satisfy our friends, they come in with a new concept, because they want to accomplish another concept, and I am not going to be a party to it. If I stand alone, that is just too bad.

I am not at all confused about what is going on. The idea is to prohibit any other than a court from having anything to do with changing the racial composition, even if it is all black, even if it is unconstitutionally in violation of the law, of any school.

Mr. ALLEN. Mr. President, will the Senator yield?

Mr. JAVITS. I yield.

Mr. ALLEN. I should like to ask the distinguished Senator from New York if it is not correct that the effect of the suggested amendment of the distinguished Senator from Rhode Island to forbid busing to overcome racial imbalance would be to prevent busing to overcome de facto segregation and de facto segregation alone.

Mr. JAVITS. That is exactly correct.

Mr. ALLEN. And is it not also correct that the prohibition against busing to change the racial composition would prohibit busing to overcome de facto and de jure segregation?

Mr. JAVITS. That is exactly correct. We agree thoroughly. That is exactly what I am contending.

I just want the Senate to know precisely what it is doing. Senators may be for it; Senators may be against it. But at least they should know what they are doing. Therefore, I concluded from that that all it is going to do is to make more slow the ability of HEW to release money in segregated situations because it is going to have to wait for a court to act. It will be unable to do anything itself where it involves transportation. If the Senate understands that, that is fine; and if the Senate wants it that way, I do not agree. I do not think it is desirable for any school district, South or North.

Mr. PASTORE. Mr. President, will the Senator yield?

Mr. JAVITS. I yield.

Mr. PASTORE. Did we not cross that bridge yesterday, when the Senate adopted the Stennis amendment?

Mr. JAVITS. I do not think so.

Mr. PASTORE. Oh, yes. They had de jure in there; they had de facto in there; they had the whole business in there. The only thing they left out was the old kitchen sink. [Laughter.]

It was done yesterday. The Stennis amendment went all the way.

Mr. JAVITS. The Stennis amendment dealt with the uniformity of enforcement, but the Stennis amendment did not deprive the HEW of any means by which it could bring about enforcement of the law itself.

As a matter of fact, I point out to the Senator from Rhode Island that if one really wanted to go all the way with the Stennis amendment, even the prohibition against busing to establish racial balance should be omitted from this bill.

Mr. PASTORE. Mr. President, will the Senator yield?

The PRESIDING OFFICER. The time of the Senator has expired. He has 5 minutes remaining.

Mr. JAVITS. I yield myself 2 additional minutes.

I yield to the Senator.

Mr. PASTORE. The trouble here is that the interpretation is a little different—the interpretation I have been giving it, and the way I understand it—and that is the reason why I am agreeing to it. I have been an ardent supporter of civil rights. The Senator knows that.

Mr. JAVITS. There is no question about it.

Mr. PASTORE. I voted against the Stennis amendment because he would not take out the last 10 words, and I said that publicly.

All I am saying now is that, so far as I am concerned, I am not construing racial imbalance any different from racial composition, and that is the reason why I am going along with it. When it gets downtown, they can make their own interpretation of it, and perhaps it will be a little different from our interpretation.

But the mere fact that the Senator from North Carolina or the Senator from Rhode Island or the Senator from New York has a different interpretation of the section is not affecting me alone. I want to make my position clear. What I am doing this afternoon, and what I am agreeing to, is nothing more than the Civil Rights Act of 1964.

Mr. JAVITS. I yield myself 1 additional minute.

Mr. President, all I am doing is wearing myself out, and I may need my strength on another field of battle, and there is no need for it.

I just say this: The Senate will comprehend my feeling in this way. The Senator from North Carolina has had a club he has used over the HEW. He says the words "racial balance" mean that they cannot have busing or transportation in any case, whether it is de jure segregation or de facto segregation. That club has not worked. Now, if the Senator from Rhode Island does go along with this, as he apparently is, it will give the Senator from North Carolina two clubs. He will now be able to try to beat them

over the head with the words "racial composition," and I think perhaps with more purpose and cause than he had before, and I do not want to give him that extra club. HEW may still sit by and say, "We're sorry, Senator. We don't agree with you. We agree with Senator PASTORE." But he will have another club, unless the same words are used. By expanding the words, I think the Senator is after expanding the concept, very clearly and definitely, and I think the Senator from Alabama (Mr. ALLEN) brought that out. If that is what the Senate wants to do, it is a sovereign body; it will do it. I cannot join.

I yield back the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. PELL. I yield 1 minute to the senior Senator from Rhode Island.

Mr. PASTORE. I made the suggestion that the words "or alter the racial composition" be added to the language in the bill, following the language on page 151, which is section 422. I understand that the Senator from North Carolina is going to withdraw his amendment. I will withdraw my amendment to his amendment, and we will start with a new amendment to amend the bill itself.

Mr. ERVIN. Mr. President, I withdraw my amendment.

The PRESIDING OFFICER. Unanimous consent is required to withdraw the amendment.

Mr. ERVIN. I ask unanimous consent to withdraw my amendment.

The PRESIDING OFFICER. Is there objection to the withdrawal of the amendment of the Senator from Rhode Island? The Chair hears none, and the amendment is withdrawn.

Is there objection to withdrawing the amendment of the Senator from North Carolina? The Chair hears no objection, and the amendment is withdrawn.

Mr. ERVIN. Mr. President, I send an amendment to the desk. It is handwritten, and I will read it:

On line 3, on page 151, insert these words between the word "imbalance" and the period: "or alter racial composition."

The Senator from Rhode Island and I agree that the words mean the same thing. But this will remove the danger that HEW may have to ignore this act, as it has ignored previous acts.

The PRESIDING OFFICER. The amendment will be stated.

The ASSISTANT LEGISLATIVE CLERK. On page 151, line 3, after the word "imbalance" strike out the period and insert "or alter racial composition."

The PRESIDING OFFICER. The question is on agreeing to the amendment. Who yields time?

Mr. JAVITS. Mr. President, I have the opposition time——

The PRESIDING OFFICER. There is no assigned time on this amendment.

Mr. PASTORE. Mr. President, I ask unanimous consent that there be a time limitation on this amendment of 20 minutes, with 10 minutes to a side.

The PRESIDING OFFICER. And on all amendments to this amendment?

Mr. PASTORE. Yes, on all amendments to this particular amendment.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Rhode Island? The Chair hears none, and it is so ordered.

Mr. EAGLETON. Mr. President, will the Senator from New York yield me 2 minutes?

Mr. JAVITS. I yield 2 minutes to the Senator from Missouri.

The PRESIDING OFFICER. The Senator from Missouri is recognized for 2 minutes.

Mr. EAGLETON. I should like to address a question to the Senator from North Carolina. Do I correctly understand him to say that by insertion of the words "or alter racial composition," in his judgment that is similar language and has the same meaning as the words "racial imbalance" already in section 422?

Mr. ERVIN. I think that means the same thing. The reason I am insisting on this is that HEW attempted to construe it some other way.

Mr. EAGLETON. Construe?

Mr. ERVIN. Yes. Construe. I want to make certain that they understand what we meant by the Civil Rights Act of 1964.

Mr. EAGLETON. Insofar as usage of the words is concerned, and this being a statute, perhaps someday it will have to be interpreted. The Senator is saying that the words "or alter racial composition" mean the same thing as "racial imbalance"?

Mr. ERVIN. They both mean the same thing. That is my understanding. I think they mean the same thing. I think it will make the meaning more clear to HEW than it has been about what the Senate meant in 1964.

Mr. EAGLETON. May I ask one question of the Senior Senator from Rhode Island (Mr. PASTORE). Is it his understanding, he having lived with both the Civil Rights Act of 1964 and having followed the progress of the various education acts which contain language similar to section 422 in the instant bill—is it his understanding as to the meaning of these words, that "racial imbalance" and the phrase "or alter racial composition" mean the same thing?

Mr. PASTORE. Absolutely. That is the only reason why I go along with it because I understand it is redundant; but in order to have some peace and expedition, I am accepting it.

Mr. EAGLETON. Harmonious redundancy. [Laughter.]

Mr. MAGNUSON. Mr. President, will the Senator from New York yield me one-half a minute?

Mr. JAVITS. I yield 2 minutes to the Senator from Washington.

The PRESIDING OFFICER. The Senator from Washington is recognized for 2 minutes.

Mr. MAGNUSON. I was going to ask the Senator from North Carolina, when he talks about "racial composition," how does he define that word "racial"?

Mr. ERVIN. According to race.

Mr. MAGNUSON. Just black and white?

Mr. ERVIN. No, all races.

Mr. MAGNUSON. Out in my country we try to achieve a balance, say, where we are near an Indian reservation. I think they do that also in New Mexico where the people live. I want the record to be clear that the words "racial composition" include all races.

Mr. ERVIN. Yes, all races.

Mr. JAVITS. Mr. President, I yield myself 2 minutes.

The PRESIDING OFFICER (Mr. BAYH in the chair). The Senator from New York is recognized for 2 minutes.

Mr. JAVITS. Mr. President, I have really tried. Somehow or other, I have been, apparently, unable to break through with what I consider to be the real effect of the amendment.

The real effect of the amendment will be to put HEW in the position where it probably—if this language stands after conference—will not do anything with respect to transportation or busing, or anything like that from a de jure segregation situation. It will have to wait for the action of a court.

Now, gentlemen, I beg you to understand this: That is exactly what the Senator who proposes the amendment has in mind.

Let me repeat what I said before, that he has tried to get the HEW to make this interpretation but HEW has refused.

Now we are adding some more words which may give more credence to his position because to overcome racial imbalance is to try to shift something around which is not unlawful segregation. I want to make that clear. But to alter racial composition is to try to shift something around which may be unlawful composition of a given school. Mr. President, we freeze it absolutely except as a court may rule.

One other thing is, we have not made clear that we did straighten out the matter of the courts in the previous amendment. Now we are going pretty fast. I would like the Senate to realize that we have no longer qualified with the words "executive branch," or the words "department, agency, officer or employee of the United States" now contained in line 20 of section 422, so that we are even including the courts here.

Mr. PASTORE. No, we are not.

Mr. JAVITS. I beg the Senator's pardon. We have not yet, but we may make the change because I have raised it, but we have not made it. Right now an officer of the United States is a judge. We are moving so fast and so far that we may get ourselves into a hole that we are not trying to dig.

Let us stop and take breath. This is a very serious matter. We may be changing something very serious. I think that we are.

Mr. PASTORE. If the Senator will yield right there, he is a member of the committee that reported the bill.

Mr. JAVITS. Right.

Mr. PASTORE. This is the language we voted out to the floor of the Senate.

Mr. JAVITS. Exactly.

Mr. PASTORE. So that the Senator meant "judge" when he did it.

Mr. JAVITS. Exactly.

Mr. PASTORE. The Senator meant a judge even on imbalance.

Mr. JAVITS. Now, just one second, please. I certainly did on racial imbalance. As I construed it, that has nothing to do with de jure segregation. That

is not the way it will be construed now, in my judgment, and therefore we should at least take the same precaution.

Mr. PASTORE. All right. Then put them in. I will be perfectly willing to go along with it.

Mr. JAVITS. We should take the same precaution. That is elementary fairness. We should take the same precaution to insert the words "executive branch."

Mr. PASTORE. Then make that motion.

Mr. JAVITS. That would be in connection with, "department, agency, officer, or employee of the United States." Would that be acceptable to the Senator from North Carolina?

Mr. ERVIN. I would say that the whole thing is unnecessary because this refers to handling appropriations. Courts and judges do not handle appropriations.

Mr. JAVITS. It does not say that. It says, "construed to authorize." I think at least that we should take that precaution.

Mr. ERVIN. Mr. President, I would amend my amendment, so far as it also provides on page 150, line 20, to insert the words between "of" and the word "the" the words "executive branch of the United States."

Mr. PASTORE. To read, "or employee of the executive department of the United States"—"branch of the United States."

The PRESIDING OFFICER. The amendment is so modified, on page 150, line 20, after the word "the", insert "executive branch of the".

Mr. JAVITS. Mr. President, I have done my best. I will not be a party to this. I think it makes a very material and serious difference.

The PRESIDING OFFICER. Without objection, the amendments are considered en bloc.

Mr. PASTORE. Mr. President, the yeas and nays have not been ordered.

The PRESIDING OFFICER. The Chair would inform the Senator from Rhode Island that the yeas and nays have been requested.

There was not a sufficient second.

Mr. PASTORE. Voice vote.

The PRESIDING OFFICER. The question is on agreeing to the amendments of the Senator from North Carolina en bloc.

The amendments were agreed to en bloc.

Mr. JAVITS subsequently said: Mr. President, I ask unanimous consent that on the voice vote on the Ervin amendments which resulted from a colloquy between the Senator from Rhode Island (Mr. PASTORE), the Senator from North Carolina (Mr. ERVIN), and me, the RECORD should show that I voted "no," and I would like to have that inserted at the proper place in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ERVIN. Mr. President, I move to reconsider the vote by which the amendments were agreed to.

Mr. TALMADGE. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment.

AMENDMENT NO. 504

Mr. BROOKE. Mr. President, I send to the desk an amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The ASSISTANT LEGISLATIVE CLERK. The Senator from Massachusetts (Mr. BROOKE) proposes an amendment as follows:

On page 45, before line 5, insert the following new section:

"SEC. 3. And further, it is the sense of the Congress that the Department of Justice and the Department of Health, Education, and Welfare should request such additional funds as may be necessary to apply the policy set forth in section 2 throughout the United States."

Mr. BROOKE. Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

UNANIMOUS-CONSENT AGREEMENT

Mr. BROOKE. Mr. President, I ask unanimous consent that there be a time limitation of 20 minutes, the time to be equally divided between the Senator from Rhode Island and me.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. PELL. Mr. President, I may very well accept the amendment.

Mr. BROOKE. I want to have the yeas and nays.

The purpose of the amendment is very simple. We have passed the Stennis amendment. And it seems we need a clear indication to the country——

Mr. BYRD of West Virginia. Mr. President, may we have order in the Senate?

I hope the Chair will enforce the rules of the Senate concerning order and decorum.

The PRESIDING OFFICER. The Senate will be in order.

The Senator may proceed.

Mr. BROOKE. Mr. President, the purpose of the amendment is threefold. First, we need a clear indication to the country of our intention to enforce the Stennis amendment.

Second, we need a clear indication to the Departments of Justice and Health, Education, and Welfare of our intention to support them financially in their efforts to carry out the policy of Congress.

Third, the amendment would help to clarify our intentions and let the people of this country know beyond a doubt that we mean business. As such, it has a great symbolic value for people who, rightly or wrongly, suspect our purposes in passing the amendment.

In the debate that took place on the Stennis amendment, it was made clear that the purpose of the amendment was not to slow down integration in the South, but to speed up integration in the North.

The amendment passed the Senate. It seems that now we ought to make this commitment very clear to the country that we do intend business and will give sufficient funds to the Department of Health, Education, and Welfare and the Justice Department to get the personnel in order to enforce integration in the North and the South and the East and the West of this country. We need this symbolic gesture. This is only the sense of the Congress that the Departments of Justice and Health, Education, and Welfare should request of Congress sufficient appropriations so that they can carry out the work indicated to them in the Stennis amendment.

This is a pure and simple amendment. I hope that the Senate agrees to the amendment.

Mr. MONDALE. Mr. President, will the Senator yield?

Mr. BROOKE. I yield.

Mr. MONDALE. Mr. President, I should like to join as a cosponsor of the amendment of the Senator from Massachusetts. I think the amendment makes a great deal of sense.

In doing so, however, I wish to make clear a point which I think was clearly made in the debate—that, in my judgment, the Stennis amendment which has been agreed to does practically nothing. But, in any event, I think there is plenty of need for an adequate budget to the fullest extent possible to assist in dealing with de jure segregation and, to the extent possible, with de facto segregation in the present law.

I think it is an excellent amendment. I ask unanimous consent to join as a cosponsor of the amendment of the Senator from Massachusetts.

THE PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STENNIS. Mr. President, has the Senator from Massachusetts finished?

Mr. BROOKE. I have finished.

Mr. HOLLINGS. Mr. President, will the Senator yield?

Mr. BROOKE. I yield.

Mr. HOLLINGS. Mr. President, is that page 45 or page 145?

Mr. BROOKE. It is page 45. The Senator from Mississippi (Mr. STENNIS) had amended the bill. And there is a new section 2 in the bill. This would be section 3 and would follow immediately behind section 2.

Mr. HOLLINGS. It would follow immediately behind section 2 on page 45.

Mr. BROOKE. That does not appear in the printed bill. It is an amendment to the printed bill.

Mr. HOLLINGS. I see. I thank the Senator.

The PRESIDING OFFICER. The Chair would like to observe that the language proposed by the Senator from Massachusetts, if agreed to, would follow the language of the Stennis amendment which has been agreed to.

Mr. BROOKE. That is correct. There would be a new section 3 to follow the section 2 that the Senator from Mississippi proposed, which amendment was agreed to.

The PRESIDING OFFICER. Section 2 is not in the printed bill.

Mr. PELL. Mr. President, I yield 5 minutes to the Senator from Mississippi.

The PRESIDING OFFICER. The Senator from Mississippi is recognized for 5 minutes.

Mr. STENNIS. Mr. President, as I said on the floor yesterday, I was not only glad to say that I will support whatever funds might be requested and needed to carry out the provisions of the amendment, but I also said that I had been begging that more funds be requested and more men employed with a real purpose of effectively working on this very problem beyond the South. That has

been going on for 4 or 5 years in conferences with the Secretary of Health, Education, and Welfare especially, and with others. It has been done not only by me, but also by the Senator from Georgia (Mr. RUSSELL) and by former Senator Hill of Alabama. We were on the Appropriations Subcommittee.

I think this lends strength or spells out strength, at least, to what is already implied in the amendment agreed to yesterday, that funds would be provided if requested and it is proved that they are really going to be used by competent workers, educators, or whatever assistants is needed.

I do want to make this point clear. I notice that my friend, the Senator from Pennsylvania, said that it would take an army or the good part of an army to enforce the amendment. I do not want to agree to the use of any army for doing anything like that. I have never advocated using that force to enforce this provision.

I feel sure that the Senator said that in jest. I feel it will not be necessary.

Mr. MAGNUSON. Mr. President, will the Senator yield?

Mr. STENNIS. Mr. President, I yield to the Senator from Washington, the chairman of the committee which is handling these matters.

The PRESIDING OFFICER. The Senator from Washington is recognized.

Mr. MAGNUSON. Mr. President, I think the merit of the amendment of the Senator from Massachusetts is that whatever funds we do get would be used uniformly throughout the Nation. In many cases some of us on the Appropriations Committee have thought that every budget that has come up here has been thoroughly inadequate.

The merit of the amendment of the Senator from Massachusetts is that whatever we do get has to be used uniformly and throughout the Nation.

We could appropriate a great deal of money—I agree with the Senator—and then find that the Department would take the bulk of the funds and use them in one place instead of another.

We all agree that we would like to see the funds expended exactly as the Senator from Massachusetts suggests.

I hope it is clear that when the Senator says "throughout the United States" we mean uniformly, the uniform spread of funds.

Mr. BROOKE. It means the uniform spread of sufficient funds to enable the enforcement of the law in all sections of the country.

Mr. STENNIS. Mr. President, the Senator from Washington mentioned a point there that has given us trouble. And, of course, if the amendment is agreed to, it would still be our responsibility to see that the money is spent in keeping with the letter and the spirit of what I hope and believe is the policy.

I shall certainly support it to the fullest, and I commend the Senator from Massachusetts for his thoughtfulness in offering the amendment.

Mr. PELL. Mr. President, prior to yielding back my time, I would like to completely support the words of the Senator from Mississippi. I think the thrust of the amendment is excellent. I hope its intent is carried out. I say that also for the comanager of the bill.

Mr. HOLLAND. Mr. President, will the Senator yield?

Mr. STENNIS. I do not control the time. The Senator from Rhode Island does.

Mr. PELL. I yield 3 minutes to the Senator from Florida.

Mr. HOLLAND. Mr. President, first I want to say I was not joking and I do not believe anybody else was joking who supported the amendment of the distinguished Senator from Mississippi yesterday. It would not occur to me to vote for a meaningful amendment without regarding it as necessary to follow through by making available the money to accomplish the purposes to be accomplished by the amendment. I certainly support the amendment of the Senator from Massachusetts.

In the second place, I want to say I cannot agree at all with the rather exaggerated statement made by the distinguished minority leader yesterday. I cannot quote it, but it seems to me he said it would take an Army of men and untold millions of dollars to enforce that amendment in other parts of the country outside of the South. I want to call attention to the fact that more than one-half the citizens of this Nation of Negro ancestry are within the South. I see no reason why any larger amounts would be required of personnel or funds to enforce that amendment in other portions of the country. I do not think it is an intolerable burden. I hope it will be enforced in other parts of the country.

I am ready to make available by my vote and activities in the Committee on Appropriation such funds as may be necessary to accomplish the purpose in other parts of the country outside the South, which are already being accomplished under present funds and personnel in the part of the country I represent in part.

I thank the Senator for yielding.

Mr. PERCY. Mr. President, will the Senator yield?

Mr. PELL. I yield 1 minute to the Senator from Illinois.

Mr. PERCY. Mr. President, I would like to commend the distinguished Senator from Massachusetts and also the distinguished Senator from Mississippi. This subject originally came up yesterday when I put the question directly to the Senator from Mississippi as to whether he would support additional funds to more uniformly apply desegregation enforcement guidelines. I asked whether we were thinking in terms of taking the $5.2 million allocated this year and spreading to cover enforcement costs in all areas or whether he would support additional funds for the Civil Rights Office. He said he supported more funds at that time.

I commend the distinguished Senator from Massachusetts for making this language a part of the bill. I fully support it and I would encourage the Department to give an adequate amount of attention to the segregation we know exists in the city of Chicago, and, to the extent we can, eliminate that kind of segregated school system.

Mr. ALLEN. Mr. President, I oppose this amendment because these Departments are fully capable of making their own budget requests and asking for more money for their Departments, if they need it.

Far be it from me to urge Federal bureaus to ask for more money.

Besides, if HEW and the Justice Department put on more enforcement agents and lawyers they will be used to harass the school systems of the South rather than sections outside of the South.

Mr. PELL. Mr. President, prior to yielding back my time, I asked for the yeas and nays on final passage.

The yeas and nays are ordered.

Mr. PELL. I yield back the remainder of my time.

The PRESIDING OFFICER. All time having been yielded back, the question is on agreeing to the amendment of the Senator from Massachusetts. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. BYRD of West Virginia. I announce that the Senator from California (Mr. CRANSTON), the Senator from Connecticut (Mr. DODD), the Senator from Alaska (Mr. GRAVEL), the Senator from Oklahoma (Mr. HARRIS), the Senator from Indiana (Mr. HARTKE), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Minnesota (Mr. MCCARTHY), the Senator from New Hampshire (Mr. MCINTYRE), the Senator from Montana (Mr. METCALF), the Senator from New Jersey (Mr. WILLIAMS), and the Senator from Texas (Mr. YARBOROUGH) are necessarily absent.

I further announce that, if present and voting, the Senator from Alaska (Mr. GRAVEL), the Senator from Oklahoma (Mr. HARRIS), the Senator from New Hampshire (Mr. MCINTYRE), and the Senator from New Jersey (Mr. WILLIAMS) would each vote "yea."

Mr. GRIFFIN. I announce that the Senator from Colorado (Mr. DOMINICK), the Senators from Oregon (Mr. HATFIELD and Mr. PACKWOOD), and the Senator from Illinois (Mr. SMITH) are necessarily absent.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The Senator from Arizona (Mr. GOLDWATER) and the Senator from Texas (Mr. TOWER) are detained on official business.

The Senator from Pennsylvania (Mr. SCOTT) is absent on official business.

If present and voting, the Senator from Colorado (Mr. DOMINICK), the Senator from Oregon (Mr. HATFIELD), the Senator from Pennsylvania (Mr. SCOTT), the Senator from Illinois (Mr. SMITH), and the Senator from Texas (Mr. TOWER) would each vote "yea."

The result was announced—yeas 80, nays 1, as follows:

[No. 50 Leg.]

YEAS—80

Aiken	Fulbright	Murphy
Allott	Goodell	Muskie
Anderson	Gore	Nelson
Baker	Griffin	Pastore
Bayh	Gurney	Pearson
Bellmon	Hansen	Pell
Bennett	Hart	Percy
Bible	Holland	Prouty
Boggs	Hollings	Proxmire
Brooke	Hruska	Randolph
Burdick	Hughes	Ribicoff
Byrd, Va.	Inouye	Russell
Byrd, W. Va.	Jackson	Saxbe
Cannon	Javits	Schweiker
Case	Jordan, N.C.	Smith, Maine
Church	Jordan, Idaho	Sparkman
Cook	Long	Spong
Cooper	Magnuson	Stennis
Cotton	Mansfield	Stevens
Curtis	Mathias	Symington
Dole	McClellan	Talmadge
Eagleton	McGee	Thurmond
Eastland	McGovern	Tydings
Ellender	Miller	Williams, Del.
Ervin	Mondale	Young, N. Dak.
Fannin	Montoya	Young, Ohio
Fong	Moss	

NAYS—1

Allen

NOT VOTING—19

Cranston	Hatfield	Scott
Dodd	Kennedy	Smith, Ill.
Dominick	McCarthy	Tower
Goldwater	McIntyre	Williams, N.J.
Gravel	Metcalf	Yarborough
Harris	Mundt	
Hartke	Packwood	

So Mr. BROOKE's amendment was agreed to.

Mr. PELL. Mr. President, I ask unanimous consent that the Secretary of the Senate be authorized to make such technical and conforming changes in H.R. 514 as may be necessary to avoid technical errors.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. PROUTY. Mr. President, it was my hope that the debate on this bill (H.R. 514) would concentrate on its educational aspects and that civil rights issues would be reserved for a civil rights bill.

The debate has not gone as I had wished, Mr. President, but I am not disappointed because I believe it has placed our Nation's racial dilemma in the right perspective.

For several days now we have been discussing a monumental issue, that of desegregation and how it can contribute to the improvement of educational opportunity for many of our young citizens.

In this discussion the old lines have disappeared, the old labels have come unstuck and the true nature of our problem has been revealed; two forms of segregation—one by design—one by default.

Both forms of segregation are evil. Both forms must be remedied. Neither form of segregation will be resolved by pointing out that one form is more evil than the other.

As a northerner, I could have assumed a rigid posture of righteousness and not budged.

As a Vermonter, I could have narrowed my perspective to the Green Mountain State and hurled epithets at those areas of the country where both forms of school segregation are rampant. Vermont's black population is less than two-tenths of 1 percent of the total population, and less than one-tenth of 1 percent of the school population. Ninety black children attend public schools in Vermont and certainly, there is no segregation. How easy it would have been for me to be pious.

But I am concerned with our Nation's racial patterns and problems and I am concerned with the education of all our Nation's children.

In the past 16 years since passage of the Supreme Court decision which declared separate schools to be unconstitutional, I feel we have made great strides toward bringing an end to segregation and improving education for all. However, I do feel that much remains to be done, particularly in our northern and urban areas, and thus I have been sympathetic to those of my colleagues who favored a change in policy and approach.

Since 1964, the courts and Government agencies involved in civil rights actions have been primarily concerned with the eradication of de jure segregation. Ostensibly, this policy has been followed in all parts of the country equally, but because most de jure segregation can be found and easily proved in the South, the focus of previous civil rights actions has been mostly in the South.

While I do not believe that we in the North have pretended segregation is nonexistent in our part of the country, I do feel that more attention could have been directed at us as well.

Therefore, although the debate of the last several days has been very grueling and painful, I hope it has proved beneficial by bringing us to the point where we have faced the issue squarely. I believe Senator STENNIS was right to bring this problem before the Senate and I am heartened by the sincerity of the various arguments presented, for I believe we all seek an equitable solution even though the means may not be clear.

When I first read the Stennis amendment, I had to agree with its overall intent to equalize the application of our civil rights efforts in all parts of the country. As the debate continued, however, I began to see that there were several ramifications not at first evident. Much as I want to end the segregation which impairs educational opportunity in every area of our country, I was not quite sure about the most effective way to do this.

Even though the Supreme Court has not yet acted upon the question of de facto segregation, I think we must recognize that the problem cannot be ignored. The Stennis amendment sought to force this question by making it a policy to enforce civil rights guidelines with respect to both de jure and de facto segregation.

Those in opposition to the amendment said that such a change should not be made in this manner, that we must wait for the courts to decide, that application of the changed policy would be impossible for lack of resources, and that the only real affect would be a slowing down of the limited progress that has been made in ending de jure segregation as a necessary first step.

These arguments, too, had some appeal, but in my own mind I was unsure that this action would be harmful because I believe the legislative intent has been stated many times. The progress made in ending de jure segregation must not be halted or slowed down in any way, but we must begin to understand the problems of de facto segregation and alleviate them wherever harm is done.

Again, it was the question of determining the best way to make this happen. Some who were in opposition to the Stennis amendment said we should study this issue more carefully, and even though this may have seemed a delaying tactics, I do believe such study can be helpful in any regard since the causes are so invidious and the cures so uncertain.

The amendment offered by Senator SCOTT also sought to clarify the issue by reiterating the sense of Congress with regard to uniform application of civil rights action and undersirable busing or assignment of students merely to overcome racial imbalance.

These policies are already stated in title IV of the pending bill and in the Elementary and Secondary Education Act itself. Nevertheless, I thought it would be helpful to emphasize our intent and therefore supported the Scott amendment.

During the debate of yesterday, it became evident that adoption of the Scott amendment was not satisfactory to a majority of the Senate that some additional expression of intent was desired by the people. In voting for the Stennis amendment, I believe we have voiced the feelings of the people and made it clear that a new policy of consistency must pervade.

Further, I do not believe we have taken such a great step backward as some might fear. Not only have we stated that present efforts by Government agencies will not be relaxed, but we have agreed that more resources will be needed and expressed our desire that they shall be forthcoming.

At the same time, we must remember that most civil rights actions are now being pursued through the courts anyway, and our changing the Government agency policy to be consistent in North and South in no way affects these cases.

For those who believe we are only going to create chaos in the North, I can only say that it already exists and is probably due in large measure to the way we have ignored the problems of de facto segregation to date. If there is going to be upheaval, let it be for the right reason; let it be because we are trying to take a step in the right direction; and let our concerns for the elimination of malcontent and disorder be equally shared across the Nation.

Let us take positive action with consistency and, even if differing circumstances in various parts of our land dictate alternative approaches, let us examine the total situation in concert and then begin to make whatever changes are necessary in a particular area.

But, Mr. President, I do not believe we should take any actions which would limit our flexibility to solve these problems fairly. It is for this reason that I have refused to support measures that

might arbitrarily prevent us from considering what may prove to be viable alternatives when pursued reasonably. This is not a civil rights bill, Mr. President, and while we have taken a necessary step forward in clarifying the policy of the Senate by adopting the Stennis amendment, if we are going to delve further into civil rights, let us do so in the proper manner at the proper time.

Equally important, I think, we should remember that it takes time to bring about such monumental change, and that during times of change we still have to worry about the education of those children concerned.

Regardless of the changes that result from civil rights legislation, we must remember that the quality of education in all schools needs improvement.

Education in this country will not achieve the desired objectives until all schools are improved to their maximum effectiveness and are truly equal.

Hopefully, the day will come when it does not matter which school a child attends, but this will not be possible until we look at every area in which improvement can be made. I would like to see us start toward that goal by forgetting the sorrows and mistakes of the past, by grasping the issues of the present, and by seeking all alternatives to a better future.

Mr. ALLEN. Mr. President, I am pleased that President Nixon has decided to create a Cabinet-level committee headed by the Vice President to look into problems created by administration of public schools by the Federal executive and judicial branches of Government. Such action indicates that the President recognizes the existence and magnitude of a problem of national importance.

While these problems are acute in Southern States, it would be a grave mistake to assume that they are regional or sectional or that any school system in the United States can long remain unaffected by any resolution in the Southern States.

In view of these developments, a question arises as to the role of Congress in helping resolve the problems. Will Congress accept a responsibility in this matter and realistically face up to the issues and contribute to a solution of the problem? I think Congress must do so.

There is no question about the power of Congress to take hold of this problem and resolve it. Section 5 of the 14th amendment provides: "The Congress shall have power to enforce, by appropriate legislation, the provisions of this article." If legislation enacted under authority of the 14th amendment is the source of current problems—it would seem to me Congress has a duty to address itself to the problems so created. It is generally conceded that Congress has the power to determine what does and what does not constitute a violation of "equal protection" as it relates to any of the rights sought to be protected by the 14th amendment. And certainly it has the power to clarify the rights to public education which are intended to be protected under the equal protection provision of the 14th amendment.

With the purpose of clarification in mind, it is extremely important to identify the origin of the problem. Let us get to the root of the problem. We will skip over the original 1954 Brown decision. I do not know anybody who believes that this decision could be reversed without a constitutional amendment and I do not know of anybody who believes that such an amendment could be adopted at this time. From the standpoint of the South, the original Brown decision was reluctantly accepted.

All States repealed statutory laws requring segregation of schools. In some Southern States segregation was provided for State constitutions and these also were stricken from the fundamental law by constitutional amendments freely and voluntarily agreed to by the people.

So, de jure segregation, segregation imposed by law, came to an end in the South after the original Brown decision.

But—the second Brown decision did more than strike down segregation de jure. The second Brown decision said that previously segregated systems although constitutional, legal, and proper for 80 years preceding the Brown decision would have to be altered and the Court imposed an affirmative duty on local school authorities to do the altering in a manner to conform to new but undefined Supreme Court mandates.

Herein, Mr. President, lies the root of of the problem. Here is the original departure from law and reason which has proven the source of many problems. First of all the idea that the nonrepresentatives, nonelected, branch of the Federal Government could properly employ judicial powers to enforce monumental social reforms affecting the lives and welfare of millions of citizens is nothing short of revoltionary.

It is difficult to imagine a mere revolutionary or a more tyrannical idea. It has corrupted the Constitution and along with it fundamental concepts of equity and justice. This we will demonstrate in just a moment. But first, let us examine the method by which the Supreme Court sought to implement its idea of social reform by judicial decree. The method of implementation has compounded the problem a hundredfold.

Justice Black has given a fair summary of the method of implementation adopted by the Court. He said:

> After careful consideration of the many viewpoints . . . we announced our decision in Brown II, 349 U.S. 294 (1965).

At this point, Mr. President, I will list in numerical sequence precisely what the Court held—in the words of Justice Black:

> 1. We held that the primary responsibility for abolishing the system of segregated schools would rest with the local school authorities.

Justice Black continued:

> We were not content, however, to leave this task in the unsupervised hands of local school authorities. . . .
>
> 2. The problem of delays by local school authorities . . . was therefore to be the responsibility of courts, local courts so far as practical . . .
>
> 3. Those courts to be guided by traditional equitable flexibility to shape remedies. . . .

Mr. President, it staggers the imagination to consider that that Court devoted 4 days to the argument on this single problem of implementation and yet came up with something so impractical. Fo example, an undisputed fact is that local school authorities did not have and have never had the power to carry out the Court-imposed responsibility to dismantle the institutional structure of public education incorporating segregated schools. Local school authorities cannot alone establish a "unitary school system"—whatever that term may mean. The school system was imposed by State legislatures—by the law of the Constitution, and by State statutes.

It is simply incredible that the Court should have felt no responsibility to better inform itself as to powers of local school authorities. They should have known that schools are operated under voluminous school codes enacted by State legislatures. Local school authorities are not autonomous sovereign bodies with power to enact their own laws. Their powers are derived from State legislatures. The powers so conferred are executive in nature and not legislative. Local boards of education are not empowered to spend school funds as they see fit. School revenues are appropriated and are budgeted. State support is earmarked by legislatures by object and by purpose. In most school districts in the South a far larger portion of school operating revenues are provided by State legislatures than by local governmental bodies.

School boards cannot levy taxes—they cannot use proceeds of taxation whi are earmarked for retirement of bond i sues or for payment of teachers' salaries or to purchase buses. In most States, procedures for school closings, consolidations, and resulting transfer of pupils and teachers are prescribed by State statutes. State enacted teacher tenure laws strictly govern assignment and transfer of teachers.

Under the circumstances, Mr. President, how in the name of commonsense could the Supreme Court have imagined that local school authorities could reform the public schools? Is it to be imagined that these things could be done without money? Is it imagined that local school authorities can levy taxes?

I doubt that members of the Supreme Court or anybody else for that matter had a clear idea of the extent to which the Court would eventually go in pushing its reforms. Nevertheless, State legislators at the time, and I was one of them, reasoned that law does not require the impossible and that all that local school authorities could do within the realm of possibility was to administer fairly and impartially a system of pupil placements which permitted parents an opportunity to choose the school their child should attend.

Certainly, this reasonable appraisal of the possible was supported by the first definitive interpretation of the Supreme Court Brown decision, one of the original suits on remand to the district cour

In *Briggs* v. *Elliot* (132 F Supp. 7 , the Court said:

> 1. "It (the Supreme Court) has not decided that the federal courts are to take over and

regulate the public schools of the state.

2. "It has not decided that the states must mix persons of different races in the schools or must require them to attend schools, or must deprive them of the right of choosing the schools they attend.

3. "What it has decided, and all that it has decided, is that a state may not deny to any person on account of race the right to attend any school that it maintains—but, if the schools which it maintains are open to children of all races, no violation of the constitution is involved *even though the children of different races voluntarily attend different schools*, as they attend different churches. (Italics supplied.)

4. Nothing in the constitution or in the decision of the Supreme Court takes away from the people *freedom to choose* the schools they attend. *The constitution in other words does not require integration. It merely forbids discrimination.* It does not forbid such segregation as occurs as the result of *voluntary* action. It merely forbids the use of governmental power to enforce segregation. (Italics supplied.)

Mr. President, the Supreme Court denied certiorari and consequently the above interpretation was widely accepted by constitutional authorities as guidelines for State legislatures. Nine Southern States adopted the principle of "freedom of choice" and pupil placement laws as logical steps toward compliance with Supreme Court decisions in the Brown case.

Mr. President, as late as 1963 Federal courts upheld freedom of choice and pupil placement laws and Federal courts have avoided holding that State constitutional provisions which protect the right of parents to freedom of choice are outlawed by the 14th amendment.

On the other hand, Federal courts, including the Supreme Court, have taken the position that freedom of choice, while not unconstitutional, is permissible only if parents choose schools so as to meet an unspecified racial mix as may be prescribed by various Federal courts.

This paradox in the law leads us to a consideration of the further steps of implementation set out in the second Brown decision. Let us consider the responsibility for judicial oversight which the Supreme Court imposed on Federal district courts.

Mr. President, is it reasonable or rational for Federal district courts to compel local school authorities to do what they have no statutory power to do? Well of course, it is not reasonable or rational. The Supreme Court started out in 1954 recognizing that segregation in Southern States had been authorized by State constitutional requirements and by State statutes. But then—in Brown II—the Supreme Court imposed a responsibility on local school authorities to undo the effects of constitutional and statutory law, and of custom, and tradition, and practice nearly 90 years. And on top of that the Supreme Sourt imposed a duty on district courts to preside over the process of compelling local boards to do what they had no power to do.

Mr. President, I submit to the judgment of reasonable men that the second Brown decision was a grave and almost incomprehensible mistake. The method of implementation prescribed was divorced from practical, down to earth realities. It had no relation to the factual situation as it existed then or as it exists today. Reason and rationality are the essence of law. Without these attributes of law a statute or decree can only be put into effect by force—sheer, brutal, naked force.

That, Mr. President, is precisely what the Supreme Court authorized when it invited district courts to preside over local boards of education and to fashion remedies under equitable powers of Federal courts.

District courts in the beginning accepted the Supreme Court recommendation with alacrity. They dusted off the extraordinary equitable remedy of mandatory injunction. They enforced their commands by the inquisitorial sword of confiscatory fines of $300 a day and threats of imprisonment without benefit of trial by jury. They substituted rule by law for rule by judicial decree backed by naked force. Since local school boards lacked valid legislative authority to comply, the courts substituted the authority of judicial decree. Federal district courts assumed responsibility for every phase and aspect of public school administration. There followed one of the most shameful periods of judicial tyranny in our history. Thousands of members of local school boards were literally subjugated under Federal judicial dictation and compelled to violate their sacred trust and carry out commands which they knew to be contrary to the best interest of the children under their protective care.

There is evidence to support the belief that some Federal district court judges retched on being forced by higher authority to do some of the things they were called upon to do in the name of law and the Constitution.

Soon spokesmen for the Supreme Court raised a hue and cry for Congress to take the monkey off the Court's back. A demand was raised for Congress to enact legislation titles IV and VI of the 1964 Civil Rights Act are a direct result of reaction to the distortions of the Constitution under judicial administration of schools. The need was for Congress to define rights to public education protected by the 14th amendment.

This Congress did in delegating power to the executive and in language so clear that no one could possibly have mistaken the meaning. As related to public schools, Congress granted power to desegregate and defined the term.

SEC. 401(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.

Congress said further:

SEC. 407(a)(2) . . . 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 assure compliance with constitutional standards.

Even later, Congress said in Public Law 89–750, section 181 (1966):

Nothing contained in this Act shall be construed to authorize 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.

And still later, in 1968, Congress said:

No part of the funds contained in this act may be used to force busing of students, abolishment of any school, or to force any student attending any elementary or secondary school to attend a particular school against the choice of his or her parents or parent in order to overcome racial imbalance.

At this point, Mr. President, it may be useful to point out the progression of shifting responsibility since 1964. Congress enacted the Civil Rights Act and thereby shifted responsibility for desegregating schools to the executive; the executive, after several years of experimentation with withholding food and necessities from innocent schoolchildren, became satiated and sickened by these acts of barbarism and then passed the buck back to Federal courts by inundating Federal courts with hundreds of lawsuits; Federal district courts responded by passing the buck back to the executive on the plea that Federal judges lacked the "expertise" to administer public schools and began ordering the executive to come up with school plans based on HEW interpretations of what the Supreme Court meant by such terms as "unitary school system" and "root and branch" and other legally meaningless words and phrases.

Mr. President, now the executive has created a Cabinet-level committee to explore least disruptive methods of implementing a mandate which remains undefined.

The point is that Congress and only Congress can straighten out this mess. It is time to stop the buck passing. Without a clear cut congressional determination of basic premises what can the executive do? Is it reasonable to expect the people whose policies and programs are largely responsible for the current mess to admit their errors and offer a constructive solution without first having received a clarification from Congress?

In my judgment, there is no way for Congress to avoid saying definitely what rights to public education are to be protected under provisions of the 14th amendment. Without such a determination the executive will continue doing what it has done before. It will continue to withhold funds from innocent schoolchildren and continue to furnish Federal courts with arbitrary, disruptive, unsound, costly, and thoughtless, hopped-up plans to achieve "racial balance" in schools. Without such a determination by Congress Federal courts will continue to enforce these plans by keeping members of local boards of education hostages under threats of financial ruin by confiscatory fines and imprisonment for contempt of court.

As a point of beginning, Congress must define the term "racial imbalance." Time and again Congress has limited the power to the executive by denying it power to correct "racial imbalance" in

public schools. But—the Civil Rights Commission and the Department of Health, Education, and Welfare equate the term "racial imbalance" with "de facto segregation." Despite the fact that there is no connection in the meanings of these terms, these agencies insist that in every instance where Congress used the term "racial imbalance" Congress intended to say "de facto" segregation. As a result of this weird construction of the "racial imbalance" limitation on the *power of* the executive—the Department of Health, Education, and Welfare insists that the limitation is in reality a grant of power to compel racial balance in schools. But in the South only.

In the official explanation offered by the Civil Rights Commission, which is also the explanation adopted by the Department of Health, Education, and Welfare, the Congressman who originally offered the "racial imbalance" clause as an amendment to the statutory definition of desegregation is quoted as having said, "De facto segregation is racial imbalance." The converse is that racial imbalance is de facto segregation. Thus, it is reasoned that since Congress did not grant the power to bus pupils to overcome racial imbalance, it did not grant the power to overcome de facto segregation. And to further compound the problem, the Department of Health, Education, and Welfare takes the absurd position that all school segregation in regions outside the South is de facto and all segregation of schools in the South is de jure.

Of course, if the above were a rational definition of de facto segregation, the imbalanced schools in the South would come under the definition and the Department would have to admit that Congress denied it the power to close schools and bus pupils in the South. To avoid this the Department contrived a logically untenable and novel doctrine of a "dual constitution." As the doctrine relates to public schools, it yields a proposition that de facto segregation means one thing in one section of the Nation and something entirely different in other sections of the Nation. It yields the further proposition that "equal protection" means different things in different sections of the Nation.

The implications of this doctrine are shocking. But before discussing this feature let us consider the meaning of the purely contrived confusion created by use of the terms "de facto" and "de jure."

Should Congress undertake to define these terms it could do no better than turn to the authority of legal dictionaries for basic meanings. From the multiple uses of the terms a congressional definition would likely be structured around the basic idea that de jure means, "rightfully or lawfully established," and de facto means "actually; in fact; in deed, actually done."

From these basic meanings it must be clear the segregation in the South prior to the Brown decision was segregation de jure. It was lawful and proper. However, after the Brown decision and the repeal of constitutional and statutory segregation, what remained was in fact de facto segregation.

Mr. President, at this point let me remind the Senators that there is more racial segregation in public schools in regions outside the South than in the South. Furthermore, let me remind the Senators that almost every State of the Union has at one time or another had statutes which recognized or required or encouraged racial segregation.

Mr. President, Judge Walter Hoffman of the Fourth Judicial Circuit has compiled a partial list of racial statutes from every State of the Union. I request unanimous consent that this compilation be printed in the RECORD at the end of these remarks. I invite Senators to consult this compilation and bear in mind that segregation under law in the North was as much de jure as it was in the South.

Furthermore, Federal Housing Administration underwriting manuals for many years recommended insertion of racial covenants in deeds and in this connection warned that incompatible racial elements in neighborhoods would reduce the value of property. The 1938 manual advised:

> If a neighborhood is to obtain stability, it is necessary that properties shall continue to be occupied by the same social and racial classes . . .

Even after the Supreme Court decision on unenforceability of racial covenants in 1948, FHA continued to treat racial integration of housing as reason for disapproving loans. This is segregation under law. One cannot avoid this judgment.

Mr. President, it is self-evident that neighborhoods and residential areas precede the location of schools. It follows that governmental actions creating segregated neighborhoods are in effect governmental actions creating segregated schools. Such segregation is de jure in the North as well as in the East and West.

It is true that racial covenants are no longer in effect anywhere. But the segregated neighborhoods are still there as are the schools that serve them. This is de facto segregation.

I submit that no reasonable distinction can be drawn between de facto segregation resulting from previous laws in effect in regions outside the South and de facto segregation resulting from previous laws in effect in the South. Both have resulted in racial imbalance in schools due to previous segregation authorized or encouraged by laws.

If Congress did not intend to overcome racial imbalance in schools in regions outside the South, it cannot be said in reason that it intended to empower the Department of Health, Education, and Welfare to overcome racial imbalance in the South and only in the South.

If Congress were to accept the "dual constitution" construction of the Civil Rights Act—consider the necessary implications.

Are we to conclude that the civil rights leaders in Congress in 1964 intended merely to offer a half of a loaf? Are we to assume that they were cynical Machiavellians bargaining for votes and deliberately hid the fact that the eduction sections of the law were intended to cover only one region of the United States? Or is the public to believe that these leaders were hypocritical and deliberately resorted to clever, undefined terms, to confuse the public but with the purpose and intent of excluding three-fourths of the States from operation of the law?

Mr. President, I reject all of these conclusions. I resent the implications inherent in HEW rationalizations which suggest that Senators or Congressmen attempted to exclude their own States from operation of the education powers of the Civil Rights Act.

Instead, I contend that the law means what it says. That the executive was not granted power to close schools and bus pupils to *overcome* racial imbalance—period.

I contend that Congress did not intend to authorize nor did it empower the Department of Health, Education, and Welfare to close neighborhood schools anywhere in the United States or to bus pupils anywhere for the sole purpose of achieving racial balance in schools no matter where such schools are located in the United States.

Such is the law that prevails throughout the United States—except in the South—where the Department of Health, Education, and Welfare has convinced some Federal district court judges that Congress deceived the public and never intended for the act to apply in three-fourths of the States.

It is not my purpose to cite the law which makes it unmistakably clear that racial discrimination in regions outside of the South is just as unlawful as racial discrimination in the South.

If Congress wants to insist that continuing segregation resulting from previous laws in the South violate constitutional rights, it cannot say that continuing segregation resulting from previous laws in other regions does not violate constitutional rights. And if Congress does not act, just as surely as I [illegible] standing here—neighborhood schools throughout this Nation will soon be closed and children bused all over cities and counties to overcome racial imbalance just as is happening in the South today.

Mr. President, there is a reasonable solution to this problem. Surely, if every child in a school district has an absolute right and opportunity to go to any school he chooses, subject only to limitations of space, the rights of no child or parent has been violated. From that point on, time and patience and understanding will take over. Any other course is tyrannical. It denies hundreds and thousands of children of a right to attend neighborhood schools for no other reason than the color of their skins. It denies legal rights of parents and teachers. It threatens loss of public support of education. It threatens ruin and chaos not limited to public education.

Mr. President, the bills and amendments introduced by those of us [illegible] familiar with the chaos in public education in the Southern States are designed to correct gross defects in the law and to reestablish the basic principle of "freedom of choice" long protected by courts throughout the United States. We intend to restore protection of that right to all children in the South.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment, the question

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