PROPOSED CUTOFF OF WELFARE FUNDS TO THE STATE OF ALABAMA

1787-2

HEARINGS

BEFORE THE

COMMITTEE ON FINANCE
UNITED STATES SENATE

NINETIETH CONGRESS

FIRST SESSION

JANUARY 25 AND FEBRUARY 23, 1967

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PROPOSED CUTOFF OF WELFARE FUNDS TO THE STATE OF ALABAMA

WEDNESDAY, JANUARY 25, 1967

U.S. SENATE,
COMMITTEE ON FINANCE,
Washington, D.C.

The committee met, pursuant to notice, at 10 a.m., in room 2221, New Senate Office Building, Senator Russell B. Long (chairman) presiding.

Present: Senators Long, Gore, Talmadge, Hartke, Metcalf, Williams, Carlson, Morton, and Dirksen.

The CHAIRMAN. The hearing will come to order.

This hearing was requested to give representatives of the State of Alabama an opportunity to present the views of the State on the proposed cutoff of Federal welfare funds to that State.

The Secretary of Health, Education, and Welfare, pursuant to title VI of the Civil Rights Act of 1964, advised this committee of his present intention to terminate Federal payments to Alabama under the welfare programs, effective midnight, February 28. The amendment requiring notification of committees having jurisdiction over programs involved in a civil rights order was sponsored in the House by the Congressman from the Third District of Louisiana, the Honorable Edwin E. Willis. At the time he offered the amendment on the House floor, he explained, and the Congress agreed with him, that a fund cutoff was too serious a matter to leave to the discretion of a single man. By requiring the head of the agency to report his proposed action to the appropriate committees of Congress, Congressman Willis said, "at least there would be some responsible minds over and beyond the agency head."

This is the first instance in which a Federal program is proposed to be terminated in a State by virtue of the civil rights legislation. For Congress, it is a case of first impression.

We all feel compassion for the many welfare recipients whose sole support comes from the welfare program and whose future well-being depends on the uninterrupted operation of this program. A program of this sort should not lightly be set aside.

We have the 43-page finding of the Secretary of HEW before us, and, without objection, this finding, together with a copy of the Secretary's letter of transmittal, will be made a part of the record at this point.

(The material referred to, along with pertinent sections of the Civil Rights Act of 1964, follow):

CIVIL RIGHTS ACT OF 1964

(Pertinent Sections)

TITLE VI—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS

SEC. 601. No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

SEC. 602. Each Federal department and agency which is empowered to extend Federal financial assistance to any program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of section 601 with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken. No such rule, regulation, or order shall become effective unless and until approved by the President. Compliance with any requirement adopted pursuant to this section may be effected by (1) by the termination of or refusal to grant or to continue assistance under such program or activity to any recipient as to whom there has been an express finding on the record, after opportunity for hearing, of a failure to comply with such requirement, but such termination or refusal shall be limited to the particular political entity, or part thereof, or other recipient as to whom such a finding has been made and, shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found, or (2) by any other means authorized by law: *Provided, however*, That no such action shall be taken until the department or agency concerned has advised the appropriate person or persons of the failure to comply with the requirement and has determined that compliance cannot be secured by voluntary means. In the case of any action terminating, or refusing to grant or continue, assistance because of failure to comply with a requirement imposed pursuant to this section, the head of the Federal department or agency shall file with the committees of the House and Senate having legislative jurisdiction over the program or activity involved a full written report of the circumstances and the grounds for such action. No such action shall become effective until thirty days have elapsed after the filing of such report.

THE SECRETARY OF HEALTH, EDUCATION, AND WELFARE,
Washington, January 12, 1967.

Hon. WILBUR D. MILLS,
Chairman, House Committee on Ways and Means, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 602 of the Civil Rights Act of 1964, I am transmitting herewith for filing with your committee a decision, CR–1, terminating, and refusing to grant or continue Federal financial assistance to the State of Alabama under Sections I, IV, V (Part 3), X and XIV of the Social Security Act.

The prefix "CR" above, refers to the docket of this proceeding maintained and available for public inspection in the Office of the Department Hearing Clerk, Room 5440, HEW North Building.

This decision is based upon findings that the Alabama welfare agency has failed to file with the Commissioner of Welfare an assurance that it will administer its Federally-assisted welfare programs in a manner consistent with the mandate of the Civil Rights Act of 1964 and this Department's Regulation issued pursuant thereto. It is also based upon findings that, in fact, the Alabama welfare agency has not made an adequate effort to determine the extent to which racial discrimination is practiced under its programs, nor has it undertaken to adopt methods of administration to correct such practices.

Only the Alabama agency, among the welfare agencies of all the States has failed to file an adequate statement of compliance.

After a determination by the Commissioner of Welfare on August 17, 1965 that she was unable to secure voluntary compliance by the Alabama agency, the

General Counsel of this Department on that same day notified the Alabama agency of those matters of fact and law which he considered to constitute non-compliance and stated that Federal assistance would be discontinued if the Agency were found to be in non-compliance.

The hearing procedures called for in Section 602 of the Civil Rights Act and in sections 80.8(c), 80.9, 80.10 and 81 of the Regulation of this Department (54 CFR Parts 80 and 81) have been followed.

The Hearing Examiner in this case recommended on April 6, 1966, that the Alabama welfare agency be found in non-compliance with Title VI and that Federal assistance to Alabama under Titles I, IV, V (Part 3), X and XIV of the Social Security Act be terminated. After a hearing and the consideration of briefs and exceptions, the Commissioner of welfare substantially adopted those recommendations in a decision dated November 16, 1966.

On December 16, 1966, the Alabama agency submitted three motions plus exceptions to the Commissioner of Welfare's decision. The General Counsel replied to these on December 21, 1966. These motions and exceptions have been received by me and subsequently denied.

I enclose my action approving the Commissioner's decision. It constitutes the final decision of the Department of Health, Education and Welfare, and will become effective at midnight, February 28.

I have taken this action with regret and only after the failure of long efforts to achieve compliance by voluntary means. The requirements of the 1964 Civil Rights Act were spelled out in Department Regulation two years ago. The Regulation clearly requires State agencies administering Federally-assisted programs to submit satisfactory assurances of non-discriminatory operation of each program including those parts in which services are provided by third parties. More than 16 months have elasped since the Alabama welfare agency was warned by the Commissioner of Welfare that Federal assistance would have to be ended if specific steps were not taken to comply with the law of the land.

In all this time the Alabama welfare agency has made no perceptible movement towards compliance for any part of its welfare programs.

The Department has told the Alabama welfare agency it need commit itself to compliance only for those programs under which it wishes to qualify for continued Federal assistance.

This distinction is important because in this compliance proceeding the Alabama agency has sought to distinguish between those parts of its programs which it administers directly and those parts in which it pays third parties (nursing homes, hospitals and the like) to provide services for the needy. In the case of third parties Alabama flatly refuses to accept any responsibility for assuring non-discrimination in the services which third parties provide and says it will seek judicial review of the requirement that it do so.

The State can test this principle with greatly-reduced hardship to the poor and needy if it will comply on those parts of its welfare program that do not involve payments for services by third parties. More than 80 percent of Federal assistance provided does not involve third party services.

I sincerely hope that in the period before this order becomes effective the Alabama welfare agency will move to comply fully with the Civil Rights Act of 1964.

At the very least, however, I hope Alabama's authorities will commit themselves to non-discriminatory operation of its welfare programs so that we may continue the major share of the Federal contribution to the blind, the needy and the disabled in the State.

Sincerely,

JOHN W. GARDNER, *Secretary.*

COMPLIANCE PROCEEDING PURSUANT TO SECTION 602 OF THE CIVIL RIGHTS ACT OF 1964 AND THE REGULATION OF THE DEPARTMENT OF HEALTH, EDUCATION AND WELFARE ISSUED PURSUANT THERETO

(Docket No. CR-1)

In the Matter of the Alabama State Board of Pensions and Security and the Alabama State Department of Pensions and Security

ACTION OF THE SECRETARY OF HEALTH, EDUCATION AND WELFARE

This case involves the refusal of the Alabama Board of Pensions and Security and the Alabama State Department of Pensions and Security (hereinafter referred to jointly as the Agency) to comply with the Regulation issued by this

Department and approved by the President pursuant to Section 602 of the Civil Rights Act of 1964 (45 CFR 80).

Under Section 80.4(b) of this Regulation each State agency administering "continuing" public assistance and welfare programs financed in part by Federal funds is to submit a statement of the extent to which those programs are and are not in compliance with Title VI of the Civil Rights Act and a description of methods of administering those programs which the Commisisoner of Welfare finds give reasonable assurance of securing compliance under Title VI. The Alabama agency administers such programs under Titles I, IV, V (Part 3), X and XIV of the Social Security Act. Their programs provide for Old Age Assistance and Medical Assistance for the Aged, Aid to Families with Dependent Children, Child Welfare Services, Aid to the Blind and Aid to the Permanently and Totally Disabled.

Only the Alabama agency, among the welfare agencies of all the States, has refused to submit the required statement and description of its compliance program. Between December 1964 and August 1965, the Commissioner of Welfare, through printed materials, briefings, private conferences and direct correspondence, sought the compliance of the Alabama agency.

On August 17, 1965, however, the Commissioner determined in writing that she was unable to bring the Agency into voluntary compliance with Title VI and scheduled a hearing on the matter. A notice was sent to the Alabama agency on that same day by the General Counsel of this Department specifying those matters of fact and law which were considered to constitute non-compliance and stating that Federal assistance to Alabama under the programs involved would be terminated if the Agency was found to be in non-compliance.

The hearing procedures called for in Section 602 of the Civil Rights Act and in Sections 80.8(c), 80.9, 80.10 and 81 of the Regulation of this Department (45 CFR Parts 80 and 81) have been followed.

The Hearing Examiner in this case recommended on April 6, 1966, that the Alabama welfare agency be found in non-compliance with Title VI and that Federal assistance to Alabama under Titles I, IV, V (Part 3), X and XIV of the Social Security Act be terminated. After a hearing and the consideration of briefs and exceptions, the Commissioner of Welfare substantially adopted those recommendations in a decision dated November 16, 1966.

My function is to "approve such decision, . . . vacate it, or remit or mitigate any sanctions imposed" . . . (45 CFR Part 80, Section 80.10(e)). If I approve any termination of Federal assistance as a result of a finding of non-compliance with Title VI, I am to make a full report of the matter to the Ways and Means Committee of the House of Representatives and to the Senate Finance Committee. Under the law the effective date of such termination is to be no less than thirty days after such reports are filed.

I have reviewed the Commissioner's decision, the testimony, exhibits, briefs and recommendations on which it was based, the exceptions filed by the Alabama agency and the reply thereto of the General Counsel of this Department.

Three requests or motions made by the Alabama agency call for an answer at this point:

1. *Request for a hearing before the Secretary.*—Under Section 81.106 of this Department's Regulation or independent thereof, the Agency requests an opportunity to make an oral presentation to me.

This request is denied. In my opinion the issues in this case have been fully elaborated, clarified and emphasized in the testimony before the Hearing Examiner and the Commissioner and in the exhibits, briefs, recommendations and decision which have been submitted.

2. *Motion to present current data concerning civil rights in Alabama as it relates to grants and services under the child welfare and public assistance programs involved in this proceeding.*—The Alabama agency asserts that changes have taken place since the time of the hearing before the Examiner which "materially affect" Alabama's right to receive Federal assistance for child welfare and public assistance programs. They ask to be allowed to submit such evidence or affidavit or otherwise or that final decision be withheld until this evidence can be presented at a new hearing.

This motion is denied. Evidence of decreased racial discrimination in the operation of the Federally assisted child welfare and public assistance programs in Alabama would be welcome. However, such evidence of decreased discrimination alone would not compensate for the failure of the Alabama agency to commit itself to achieve non-discriminatory care and services in Federally-

assisted programs as called for in Section 80.4(b) of this Department's Regulation. Were it willing to do so, however, this evidence would, of course, be relevant and needed to evaluate the adequacy of the methods of administration which it would propose to use to assure compliance with Title VI.

3. *Motion to incorporate Title XIX into this proceeding.*—Pursuant to Section 81.56 of this Department's Regulation, the Alabama agency moves to add to this proceeding, the question of the compliance of its proposed Medical Assistance program with Title VI. The Agency is trying in this way to have this new program approved and funded without providing the assurances of non-discrimination called for in our Regulation. The Agency promises only to comply with what the courts ultimately decide it must do.

This motion is denied. I do not believe that granting it would be either timely or appropriate.

This Department shares the expressed interest of the Alabama welfare agency in bringing the benefits of Title XIX to the people of Alabama as soon as possible.

We stand ready to help it to resolve all of the issues—civil rights and otherwise—which presently stand in the way of approval of its Title XIX plan.

If the Commissioner of Welfare determines that voluntary compliance with Title VI requirements cannot be obtained for that plan, formal action on the matters in dispute will be expedited.

APPROVAL OF DECISION

The Alabama agency recognizes that the "legality" of this Department's Title VI Regulation is not a question to be considered in this proceeding. This issue may be raised before the courts.

Within the area of Departmental discretion under the Regulation, however, I consider the actions of the Commissioner of Welfare in this matter to have been reasonable and appropriate and I approve her decision that the Alabama agency is not in compliance with Title VI.

It is disappointing that we have had to seek compliance formally in an area where the voluntary cooperation of all parties is so important. It is particularly unfortunate that such action may necessitate the termination of badly needed Federal welfare funds in Alabama.

The Alabama welfare agency in effect seeks to force this Department to choose between its mission to assist States in aiding the needy and its obligation to secure non-discriminatory treatment for those receiving assistance through Federally aided programs. As stated at page 26 of its brief to the Commissioner of Welfare, "Until public assistance recipients receive an adequate grant and receive needed services, Respondents submit that the requirements of the Civil Rights regulations are irrelevant, oppressive and illegal."

This Department does not agree that the poor and the disabled are less entitled to non-discriminatory treatment than other Americans. We do not propose to ignore or postpone their fundamental human rights until we can adequately provide for their physical needs. We do not accept the proposition that seeking non-discriminatory care for the needy will reduce the amount of care available to them.

It seems self-evident that the more scarce facilities are, the more important it is to try to assure full access to them by all those in need of assistance under Federally aided programs.

The Alabama agency alone among the welfare agencies of all the States has refused to accept the procedures suggested by the Welfare Administration for compliance with Title VI. It has attacked the validity of the provisions in Section 80.3 of the Department regulation which prohibits discrimination in the provision of Federally-assisted services through third parties. It has been unwilling to commit itself to achieve non-discriminatory care and services in Federally-assisted programs as called for in Section 80.4(b) of that regulation. It has not adopted or proposed methods of administering its programs which give "reasonable assurance" that compliance with Title VI can be obtained; nor has it made a clear commitment not to discriminate on the basis of race in those aspects of its program which are solely within its control as is also required in Section 80.4(b). It has said only that it will comply with the Civil Rights Act as that Act is interpreted in the courts.

To await ultimate judicial review and approval of the Department's Regulation before enforcing its provisions would constitute an abdication of the responsibility of this Department.

The object of Title VI and of our Regulation is to assure that with respect to Federally-assisted programs no person shall on the basis of race, color or national origin be subjected to discrimination or excluded from any Federal benefit.

Where compliance with this statutory mandate cannot be secured by voluntary means, Congress has directed that, after an opportunity for a hearing and a finding on the record, Federal agencies and departments are to terminate or withdraw financial assistance. The procedures prescribed by Congress have been adhered to fully and meticulously. Alabama continues to have the right of seeking judicial review of any final action taken by the Department.

The refusal to submit the required assurances and methods of administration is more than a matter of form. The General Counsel is correct in stating that in programs such as these:

"The Federal-State relationship is grounded in State plans which evidence the State's commitment, whereby the single State agency (here, the Respondents) is charged with responsibility for seeing that Federal requirements are met. In absence of such an undertaking of responsibility by the State, there is no basis for operation of the Federal-State program."

As he also stated:

"With the enactment of Title VI the State's responsibility was automatically extended, if it desired to continue to receive Federal financial assistance, to embrace the prevention of racial discrimination under the programs."

Alabama has refused to comply with the Department Regulation despite the repeated conciliatory efforts of the Commissioner of Welfare to find a basis for agreement. Correspondence from the Commissioner and the General Counsel and their statements in this proceeding make clear that they have remained ready to consider any reasonable modification proposed by the State to the suggested procedures which would still meet the requirements of the Regulation.

Specifically, the Alabama welfare agency has been assured in writing that it need commit itself to compliance only for those programs under which it wishes to qualify for continued Federal assistance. The Agency also has been advised that it may negate any inference that it is guaranteeing the compliance of those whom it compensates for furnishing services to beneficiaries of Federal Services.

It should also have been obvious to the Agency that it could have offered to comply on those parts of its programs which do not involve any compensation for services provided to beneficiaries by third parties. More than 80 percent of the Federal assistance provided for its programs does not involve such third party services.

None of these possibilities has produced any perceptible movement by the Alabama agency toward compliance for any part of its programs. It remains in non-compliance in at least the following respects:

1. It has not made a clear and adequate commitment to insure non-discriminatory operation of its Federally aided welfare programs even in those parts which involve payments or the provision of services directly to beneficiaries by the Agency. As stated by the General Counsel at page 4 of his brief dated December 22, 1965, "This prohibition against discrimination extends to any differential treatment on account of race in any aspect of the making of money payments, including the treatment of individuals in facilities where application is made, any medical examinations incident to the determination of eligibility, the determination of eligibility itself and the amount or type of benefits or social services, and the assignment of case workers." The prohibition against discrimination similarly extends to other matters which are under the Agency's control such as the location of local offices.

2. The Alabama agency has refused to accept any responsibility for assuring that third parties to whom it provides services, or whom it compensates in connection with care they provide to beneficiaries, shall provide such care without racial discrimination.

3. It has not provided an adequate statement of the extent to which racial discrimination presently exists in connection with its Federally-assisted welfare programs.

4. It has not agreed to or proposed methods of administering its Federally-assisted welfare programs—even in connection with those matters which do not involve the services of third parties—in a way that gives reasonable assurance that those parts of its programs will be operated on a non-discriminatory basis. More specifically, it has *not:*

(a) provided sufficiently for instruction or dissemination of information about the rights and responsibilities under Title VI of staff members, beneficiaries or third parties providing services;

(b) proposed any system of surveying compliance, keeping records or filing reports that would enable compliance to be properly evaluated;

(c) suggested a complaint process that offers all interested or affected persons an adequate opportunity for consideration of complaints of alleged non-compliance.

In short, more than two years after promulgation of this Department's Title VI Regulation and more than 16 months after receipt of the bill of particulars contained in the General Counsel's letter of August 27, 1965, the Alabama agency has not offered to correct any of the deficiencies in compliance as to any part of any of its Federally-assisted programs.

EXCEPTIONS TAKEN BY THE ALABAMA AGENCY

The Alabama agency has taken numerous exceptions to the decision of the Commissioner of of Welfare most of which repeat exceptions which it had taken to the Hearing Examiner's recommended decision.

I have considered each of these and make the following rulings on them:

I. Withholding of funds for direct grants to public assistance recipients

The Alabama Welfare agency contends that the parts of its programs which involve direct money payments to beneficiaries are separable from the parts which involve payments to third parties for services to beneficiaries, that no significant discrimination has been shown as to such direct payments and therefore that Federal funds for such payments should not be withheld.

Commissioner Winston's decision did not rule that the Alabama agency could not comply on the direct payment parts of its programs alone. She noted, however, that it was still not clear "whether the Respondents are prepared to offer a Statement of Compliance which the Commissioner of Welfare could find acceptable under Federal law and regulations with respect to direct money payments."

The Alabama agency seems unwilling to accept the fact that it must do more than pledge non-denial of benefits based on race and refute any allegations of discrimination which are made.

Section 601 of the Civil Rights Act of 1964 provides not only that beneficiaries of Federally assisted programs shall not be denied benefits on the basis of race, but also that they shall not be subjected to racial discrimination under such programs.

In accordance with Section 602, the Regulation which this Department has issued seeks to effectuate those provisions consistent with the achievement of the objectives of the various programs covered by this Regulation.

The Regulation seeks to do so in the tradition of Federal-State health, welfare and education programs by providing for each State agency to submit a statement assuming responsibility for securing compliance with Title VI and a program for achieving that result. As stated earlier, the Alabama agency has refused to submit such a statement and a program.

The Agency also suggests that its practice of assigning case workers to beneficiaries on the basis of race is excluded from the coverage of Title VI by Section 604. I reject that suggestion. Section 604 does not excuse discriminatory employment practices which also constitute discrimination in the way services are provided to beneficiaries of Federally assisted programs. This has been our consistent position in connection with the assignment of teachers under Federally assisted education programs and it is equally applicable to case workers employed by State welfare agencies.

The exception of the Alabama agency to the withholding of Federal funds for direct payments to beneficiaries is therefore denied because the Alabama agency has thus far refused to comply with the requirements of Title VI even as to such direct payments.

As noted by the General Counsel at pages 7 and 8 of his brief:

"In the Federal-State programs, the Congress has made Federal financial assistance available to the States if they comply with certain Federal requirements prescribed in or pursuant to the applicable Federal statutes. The States have the sole choice as to whether they wish to participate in any program. If the Respondents will not comply with the requirements pursuant to Title VI of the Civil Rights Act of 1964, it is their choice, and theirs alone, not to be eligible for Federal financial assistance."

"Respondents have challenged the implementation of Title VI in the simplest and most fundamental way—by refusing to agree to a basic condition for operation of the programs. Unless the Federal authorities are to abandon their responsibility for carrying out the Federal statute and the Presidentially-approved Regulation, there is no alternative to acceding to the State's choice to opt out of the Federal-State programs."

The Alabama agency is specifically invited, however, to submit a satisfactory compliance statement and methods of administration to cover at least the parts of its programs which provide for direct money payments. Such action on its part would make it possible for us to continue more than 80 percent of the Federal assistance we are now providing for the programs in question. The Commissioner of Welfare is available to discuss this possibility if the Alabama agency so desires.

II. Withholding of Federal funds used to pay for services where the beneficiary has selected the one providing the service

The Alabama agency urges that Federal funds used to pay for the services provided by third parties should not be terminated because of racial discrimination in providing such services since the beneficiary not the State agency selects the one to provide the service.

This exception is also rejected. The refusal of the Alabama agency to accept responsibility for assuring beneficiaries are served without discrimination cannot be justified on the ground that the beneficiaries are "free" to choose the providers of their care. In many cases the beneficiaries have no choice but to accept what they can get on whatever terms it is offered and wherever in the State it is available. The ultimate object of Title VI, this Department's Regulation and this proceeding is to broaden their choice and to improve their options.

It is also noted that the Alabama agency performs functions in connection with third party "vendors" beyond paying for their services. Either directly or through other State agencies it negotiates or sets the fees which it will pay and it is involved—as the Agency itself admits—in at least "helping" make arrangements for medical care "if requested to do so."

If the Alabama agency would assume its responsibilities, the termination of Federal funds for third party payments could be avoided. We could work together with the Agency toward our common objective of better service for the needy of Alabama.

III. Withholding of administrative funds

The Alabama agency states that "Commissioner King has made it clear that he will do everything within his control to comply with Title VI of the Civil Rights Act and it excepts to any withholding of Federal funds for administration of Alabama's Public Assistance and Child Welfare programs."

The exception is denied. For the reasons set forth above, I do not believe that either Commissioner King or those representing him in this proceeding have made clear that the Alabama agency is complying or is ready to comply with Title VI on any of its programs or parts thereof.

If the Agency is ready to do so now, however, for those parts of its programs which involve only direct payments and services to individuals, we will be able to continue providing funds for administration of those program parts.

IV. Exceptions repeated from brief to the Commissioner of Welfare

(1) *Determination of the Alabama agency's unwillingness to comply voluntarily.*—The Agency contends that both the Hearing Examiner and the Commissioner of Welfare misjudged it. It asserts that it "wishes now to comply with any legally effective law or rule and regulation," but that the Agency does not consider the Title VI regulation of this Department to be legally effective in Alabama. It seems to suggest that since it may seek judicial review of our Regulation and since it has said it will comply with what the courts will enforce, that it is premature to find it unwilling to comply.

I agree with Commissioner Winston's overruling of this exception. The "willingness to comply" which the Alabama agency expresses is neither adequate nor immediate.

(2) *Proposed findings.*—The Commissioner of Welfare recognized that the Alabama agency had proposed findings to the Hearing Examiner and the Agency stated that she had corrected the error alleged.

(3) *Application of title VI to discrimination in services provided by third parties in federally assisted programs.*—The Alabama agency repeats its objec-

tion to the Hearing Examiner having summarized part of its position as being "that Title VI of the Civil Rights Act does not, in substance, authorize the Federal Government to object where individuals are separated or segregated on the grounds of race, color or national origin, in being provided benefits under Federally financed assisted programs, particularly when such services are provided by third parties through contractual or other means." The Agency says instead that its position is that it does not have the power to compel such third parties to stop discriminating on the basis of race.

The Commissioner of Welfare overruled the exception saying that she considered the Hearing Examiner's interpretation "to be more in accord with the Respondent's primary position than the exception suggests."

I agree. However it is phrased, the Alabama agency is saying that in complying with Title VI it should not have any responsibility to avoid arrangements with third parties who discriminate.

No one has suggested that it can compel private parties to provide services to Federally asisted beneficiaries without discrimination.

Our Regulation under Title VI is based upon the premise that most of those providing such services can be persuaded to provide them nondiscriminatorily and to the extent they will not, that Federal funds should not be paid to help perpetuate such discriminatory practices against innocent beneficiaries. Alternate, acceptable services should be found and developed.

The Alabama agency has refused to be a party to such persuasion and administrative action, at least until it has exhausted its rights to judicial review. Assuming the legality of our Regulation were upheld, the Agency apparently would then accept responsibility for seeking third party compliance—although, of course, it will have no greater power then to compel such compliance than it now has.

(4) *Eligibility for public assistance in Alabama.*—The Alabama agency repeats its exception to the Hearing Examiner's statement that "a completely destitute aged individual may receive a money payment of $75 per month. The Agency concedes that this is or was correct but contends that it is misleading because "a person need not be 'completely destitute' to receive the amount."

I concur in the Commissioner's ruling that the issue involved here is immaterial.

(5) *Help provided in arranging for medical care.*—The Alabama agency asserts that the Hearing Examiner erred in stating that "quite frequently" it participates in helping to make arrangements for those needing medical care and that the Commissioner of Welfare failed to recognize that this was "an incorrect reference to freedom of choice" which raises "a material question."

The Commissioner noted that the Alabama agency's view of its undertakings on behalf of those wanting arrangements for medical care to be made for them was more limited than that of the Examiner. She found support for this statement in the record, however, and determined that "in any event, the Exception relates to an issue substantially immaterial to the basic mode of administration to which it is addressed."

This exception is again overruled. As stated earlier, the Alabama agency, as the disburser of Federal funds for welfare in Alabama, has a responsibility to seek an end to discrimination in the services provided by third parties under Federally assisted programs.

This is true even when the individual selects the provider of his care. The extent of the Alabama agency's involvement in making arrangements for such care does not affect the existence of that responsibility but only the ways in which it should be exercised.

(6) *Securing the services of physicians.*—The Alabama agency also repeats its exception to the Hearing Examiner's statement that the Alabama agency uses the services of physicians to determine eligibility for certain forms of public assistance. It again urges the materiality of any point relating to freedom of choice.

In its previous assertion of this exception the Agency had also noted a second reference to the eligibility of "completely destitute" persons which it considered misleading.

For the reasons stated in dealing with exceptions (4) and (5), I consider that this exception is not material and concur in the Commissioner's action on it.

(7) *Omission of findings on the legislative history of the Civil Rights Act of 1964.*—The Commissioner properly overruled this exception. As noted earlier the "legality" of this Department's Title VI Regulation will not be considered

in this proceeding. Therefore, no findings of legislative history are considered necessary to support it.

(8) *Discrimination in availability of day care centers.*—The Alabama agency repeated its objection to the Hearing Examiner's statements concerning discrimination in the availability of day care centers in Alabama. It objects to his having stated that the same ratio of availability of better quality day care centers existed in favor of whites as was true for day care centers in general.

The Commissioner of Welfare did not consider this objection material because it was directed at the precise ratio of white to Negro quality day care centers and did not dispute the findings of discrimination in the availability of those centers. Her ruling is affirmed.

The analysis "of the ways in which discrimination exists or is practiced" which the Alabama agency urges be undertaken, can best be done—as our Regulation provides—by the Alabama agency as part of its program of compliance with Title VI.

(9) *Separate but equal doctrine.*—The Alabama agency contends that it is not seeking to justify the segregationist practices of third parties providing services under Federally assisted programs but is only contending that it is unable to require civil rights compliance by such parties. It "objects strenuously" to the Hearing Examiner's statement identifying its position with the separate-but-equal doctrine.

This objection is overruled. The Hearing Examiner's characterization was neither unreasonable nor material.

Without using the phrase "separate but equal", the Alabama agency has repeatedly urged that compliance with Title VI should not be considered to require it to seek "sociological purity of the suppliers of services to the indigent." It has sought to establish its compliance with Title VI principally on the basis that no beneficiary is denied benefits in Alabama because of race even though such benefits may be provided on a segregated or discriminatory basis.

All of these things indicate the acceptance by the Alabama agency of present patterns of segregation and discrimination in providing Federally assisted welfare services.

Whether or not the agency approves of such segregation and discrimination or merely acquiesces in it, its approach would help to perpetuate such practices and does not discharge its responsibilities under Title VI of protecting beneficiaries from such practices.

(10) *Adequacy of statement of compliance.*—The Alabama agency contends that it has filed a statement of compliance with Title VI. It also objects to the Hearing Examiner's determination that it had, in executing its State plan, in fact assumed responsibilities for assuring that third parties providing services must avoid discrimination in so doing.

The inadequacies of the statement submitted by Commissioner King were fully covered in the General Counsel's letter of August 27, 1965, and have been reaffirmed at each stage of this proceeding, including earlier parts of this action.

As Commissioner Winston noted, the point raised as to the State plan is immaterial.

(11) *Coverage of individual physicians.*—The Alabama agency implies that since conditions in the offices of individual physicians are not explicitly covered in Title VI or in this Department's Regulation, we should not insist that those whose care is paid for with Federal funds are entitled to non-discriminatory treatment in such offices.

Commissioner Winston was correct in ruling that this matter is adequately covered in the illustrative examples of the scope of the Regulation, specifically in Section 80.5(a).

(12) *Reasonableness of compliance requirements regarding third party actions.*—The Alabama agency asserts again that it should not be required to "boycott" third parties providing services in a discriminatory manner under Federally assisted programs in order to receive such Federal assistance. It asks reexamination of its exceptions to the Hearing Examiner's decision in which the Agency observed that "It appears that the regulations with respect to third parties promulgated by the Department of Health, Education, and Welfare are irrelevant, oppressive and illegal in Alabama."

As stated earlier the legality of the Regulation will not be considered in this proceeding and the expressed intention of the Alabama agency to seek judicial review of this Regulation will not be accepted in lieu of compliance with the Regulation.

(13) *Failure to file a statement of compliance.*—The Alabama agency excepts to a second finding of the Hearing Examiner that it did not submit a Statement of Compliance. It also refers to its exception to any withholding of Federal funds for direct money payments.

For the reasons stated in overruling exceptions I and 10, this exception is also overruled.

(14) *Knowledge of discriminatory practices.*—The Alabama agency contends that the Hearing Examiner incorrectly described Commissioner King's knowledge of discriminatory practices involving welfare recipients. The Examiner stated that "Respondents have neither made nor taken any action to make or secure a fair inventory or evaluation of the extent of unavailability of treatment, or other discriminatory practices directed against beneficiaries of the programs involved here, solely on account of their race or color, and Respondents have not evidenced any intention of so doing . . ."

As the Agency's brief to the Commissioner of Welfare indicates, the exception is based on the fact that Commissioner King did assert that he was informed about the availability of certain kinds of medical care to the needy of both races in Alabama. However, the Commissioner also testified that he had not tried to make any evaluation of Title VI compliance or non-compliance in Alabama welfare programs and that the Alabama agency had no intention of signing a compliance statement covering contractual arrangements with third parties.

I agree with Commissioner Winston that the record supports the finding of the Hearing Examiner. Commissioner King did not have nor has he expressed any willingness to compile the detailed inventory of compliance and non-compliance required under Title VI. The finding should be modified, however, to reflect Commissioner King's knowledge about the availability or unavailability of certain forms of treatment.

(15) *Segregation in county office buildings.*—Commissioner Winston conceded that the Hearing Examiner's finding of segregation or discrimination in the use of physical facilities in county office buildings where welfare programs are administered, should be modified to indicate that such segregation or discrimination only exists in some of such buildings.

The Alabama agency still objects to the finding, stating that the testimony established "that county offices, with very few exceptions, maintain all facilities on a nearly non-discriminatory basis."

The Commissioner of Welfare ruled properly on this matter, in my opinion. The record does not make clear how extensive segregation is in such office buildings. The word "some" certainly does not prejudice the position of the Alabama agency that "with very few exceptions" such buildings are operated on a non-discriminatory basis.

(16) *Validity of departmental regulation.*—The reservation of this exception is noted. As stated earlier, this matter will not be considered in this proceeding.

(17) *Failure to find nondenial of benefits on the basis of race.*—The Alabama agency "objects strenuously" to the lack of a finding that it does not deny benefits on the basis of race.

It is true that the Agency has repeatedly asserted that it does not deny benefits on the basis of race and that it is not aware of anyone who, because of race, has not been able to secure medical care or services somewhere in Alabama. Given the testimony as to the amount of discrimination and segregation existing and in the absence of a complete evaluation of the extent of compliance under Title VI, the Commissioner of Welfare correctly determined that it was neither possible nor appropriate to make the finding requested by the Agency.

(18) *Concern about timing.*—The Alabama agency does not press its exception that the Certificate of Service attached to the Hearing Examiner's Recommended Decision is defective because of incomplete dating. It suggests, however, "that on questions of timing the Department of Health, Education and Welfare has consistently shown a lack of concern about establishing the point of time in which certain legal actions can be deemed to have occurred or not to have occurred." As Commissioner Winston ruled and the Alabama agency seems to concede, any clerical error that occurred in connection with the Certificate of Service did not prejudice it. Its requests for a hearing before the Commissioner was granted and its request for an extension of time to file their exceptions and briefs with me was granted.

The Alabama agency's "suggestion" of our lack of concern with the time at which legal actions "can be deemed to have occurred or not to have occurred"

seems intended to renew its exception that this proceeding is premature. That exception is again rejected. Two years after the effective date of our Title VI Regulation is not too early to determine that agencies which have refused from the beginning to provide the assurances required, are not in compliance with Title VI.

(19) *Failure to find that the compliance statement required is an unreasonable implementation of the Civil Rights Act.*—The Alabama agency objects to the failure to find that it should not be required to state more than that it will comply with the Civil Rights Act and that the compliance statement required by the Commissioner of Welfare is not authorized by the Civil Rights Act as it applies to welfare programs. This objection is overruled. The desired findings are wrong. Under the Title VI Regulation of this Department, the Alabama agency is required to state more than that it will comply with the law as it is ultimately interpreted in the courts. The compliance form which the Welfare Administration has suggested is a reasonable and appropriate implementation of that Regulation. It has also been made clear that it may suggest any modifications thereof which meet the requirements of the Regulation.

As requested by the Alabama agency, the material contained at pages 1–13 and 23–27 of the brief to Commissioner Winston is considered to have been included in the exception and brief which the Agency filed with me.

The points contained in those pages and in the conclusion to the brief filed with me are considered to have been adequately discussed and disposed of elsewhere in this action. Any point or exception raised by the Alabama agency and not otherwise disposed of is rejected.

CONCLUSION

For the reasons stated above, I approve the decision of the Commissioner of Welfare that the non-compliance of the Alabama welfare agency with Title VI requires the termination of Federal assistance until compliance can be achieved.

Such a termination will produce serious hardship to many needy persons and their families in Alabama. It will also rupture a Federal-State relationship which has functioned for more than 30 years in serving the poor and disabled of Alabama.

I want to avoid both results to the extent possible. I cannot do so, however, by condoning the refusal of the Alabama welfare agency to assume the same kind of responsibility for Federal standards on non-discrimination that it has assumed for other aspects of its Federally assisted programs.

Although the Alabama agency has repeatedly stated its intention not to comply unless it fails to have the Commisioner's decision reversed on judicial review, I continue to hope that the Alabama agency will come into full compliance for all of its programs voluntarily and thus end the necessity of eliminating or reducing Federal assistance to the needy of Alabama.

Because its primary objection seems to be against requiring third parties to serve beneficiaries of Federal assistance without discrimination and because of its concern about termination of funds for direct money payments to beneficiaries, I have specificially invited the Alabama agency to submit adequate compliance statements for the parts of its plans which involve only direct money payments or social services to individuals. This option of compliance for some but not all of the Federally-aided programs has always been available to the State agency. I wish to urge the agency to avail itself of this option during the period prior to the effective date of this order. If the agency fails to do so, it must assume full responsibility for any disruption in the provision of aid and care to the needy of Alabama.

As part of such compliance statements, the Alabama agency should state that third parties are not and will not be involved in the assistance and services provided to beneficiaries and therefore that the requirement of the Regulation concerning third party responsibility is not applicable.

Compliance with Title VI for those parts of the Alabama Public Assistance and Welfare programs which do not involve third party "vendors" would enable us to continue providing more than 80 percent of the approximately 95 million dollars that the Federal government contributes annually to those programs.

We regret that even if compliance is achieved for these program parts, Federal funds for medical assistance for the aged and the disabled will still have to be terminated in Alabama if the State Agency persists in its refusal to accept responsibility for securing compliance with Title VI by third parties providing such

Federally assisted care. The necessity of terminating Federal funds used in making payments to physicians, hospitals and nursing homes in Alabama or in providings services to nursing homes and other institutions will also adversely affect the State programs for child welfare, aid to dependent children and aid to the blind.

I, of course, continue to invite the voluntary compliance of the Alabama agency for these third-party payments and services also.

I am this day filing a full report of this matter with the Ways and Means Committee of the House of Representatives and with the Senate Finance Committee. Pursuant to Section 602 of the Civil Rights Act of 1964 and Section 80.8(c) of the Regulation of this Department, the decision terminating Federal assistance which is approved in this action will become effective at midnight, February 28.

As indicated above, I would welcome the opportunity to modify this action and the termination of funds to the extent that the Alabama agency comes into compliance as to all or part of any of the Federally-assisted programs involved. The opportunity for it to do so has been available for two years but I want to make it clear that the action I am now taking in no way reduces that opportunity or our desire that Alabama take advantage of it.

JOHN W. GARDNER.
Secretary, Department of Health, Education, and Welfare.

The CHAIRMAN. We have, also, a letter the Secretary sent us last night advising that he had denied Alabama's request for a postponement of the effective date of the order. Without objection, this letter and his order are also being made a part of the record.

(The material referred to follows:)

THE SECRETARY OF HEALTH, EDUCATION, AND WELFARE,
Washington, January 24, 1967.

Hon. RUSSELL B. LONG,
Chairman, Committee on Finance,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: On January 12, 1967, after the most careful deliberation, I approved an order terminating Federal financial assistance to the Alabama State Department of Pensions and Security because of the State agency's refusal to comply with Title VI of the Civil Rights Act of 1964. I delayed the effective date of that order several weeks to February 28. A report of that action and a copy of the order were transmitted to you on January 12, 1967.

The State of Alabama has requested a postponement of the effective date of the order and I have denied this request.

A copy of my letter to the State's Special Assistant Attorney General, setting forth the reason for my action, and a copy of my order are enclosed herewith for your information.

With best wishes.

Sincerely,

JOHN W. GARDNER, *Secretary.*

THE SECRETARY OF HEALTH, EDUCATION, AND WELFARE,
Washington, D.C., January 24, 1967.

Re docket No. CR-1.

Mr. REID B. BARNES,
Special Assistant Attorney General, in care of Lange, Simpson, Robinson & Somerville, Birmingham, Ala.

DEAR MR. BARNES: This is to acknowledge receipt of the motion by the State of Alabama for postponement of the effective date of the order terminating Federal financial assistance. After thorough review, and in light of 16 months of unfruitful negotiations, I have denied that motion for the following reasons.

On January 12, 1967, I approved an order after the most careful deliberations terminating Federal financial assistance to the Alabama State Department of Pensions and Security because of the State agency's refusal to comply with Title VI of the Civil Rights Act of 1964. I delayed the effective date of that order to February 28. This was done in part to provide the State agency ample time within which to come into full compliance voluntarily and thus end the necessity of reducing aid to the needy of Alabama. The State agency regrettably has not thus far availed itself of this opportunity.

The provisions of the law are unambiguous. The object of Title VI and of our Regulation is to assure that with respect to Federally-assisted programs no person shall on the basis of race, color or national origin be subjected to discrimination or excluded from any Federal benefit. Where compliance with this statutory mandate cannot be secured by voluntary means, Congress has provided for termination or withdrawal of Federal financial assistance after an opportunity for a hearing and a finding on the record. The procedures prescribed by Congress have been adhered to fully and meticulously. Alabama has the right of seeking judicial review of the final action taken by this Department and of applying to the appropriate court for a stay of the Department's order.

I note that in your motion you requested that a decision be rendered promptly to allow the State to seek a court injunction. Since the termination order of January 12, 1967 will not be effective until February 28, 1967, there remains adequate time for the initiation of appropriate judicial review.

For these reasons, and with due consideration of all surrounding circumstances, the application for a stay is denied.

Sincerely,

JOHN W. GARDNER, *Secretary.*

COMPLIANCE PROCEEDING PURSUANT TO SECTION 602 OF THE CIVIL RIGHTS ACT OF 1964 AND THE REGULATION OF THE DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE ISSUED PURSUANT THERETO

(Docket No. CR-1)

In the Matter of the Alabama State Board of Pensions and Security and the Alabama State Department of Pensions and Security

ACTION OF THE SECRETARY OF HEALTH, EDUCATION, AND WELFARE

The motion of January 16, 1967 for postponement of the effective date of the order terminating Federal financial assistance to the Alabama State Board of Pensions and Security and the Alabama State Department of Pensions and Security is denied.

JOHN W. GARDNER,
Secretary, Department of Health, Education, and Welfare.

JANUARY 24, 1967.

The CHAIRMAN. We are pleased to have with us the senior Senator from Alabama, the Honorable Lister Hill; the junior Senator from Alabama, the Honorable John J. Sparkman; and the distinguished former Governor of Alabama, the Honorable George C. Wallace.

Senator Hill, you are recognized to make whatever statement you want and to introduce the other witnesses.

STATEMENT OF HON. LISTER HILL, U.S. SENATOR FROM THE STATE OF ALABAMA

Senator HILL. Mr. Chairman, gentlemen of the committee, on Friday, January 13, 1967, a most unfortunate day for poor and needy people of Alabama, the people of the State of Alabama learned of the Secretary of Health, Education, and Welfare, Secretary John W. Gardner's decision to cut off Federal financial support for public assistance, child welfare programs on February 28, 1967.

As you know, pursuant to section 602 of the Civil Rights Act of 1964 your committee, the committee of legislative jurisdiction in these programs, was duly notified of the Secretary's decision and the proposed action against the State of Alabama.

Mr. Chairman, I think the decision and proposed action exceeds the authority provided by the 1964 Civil Rights Act, was contrary to and in direct violation of the intent of Congress when that act was passed, and therefore illegal.

The end result of Secretary Gardner's decision and proposed action, Mr. Chairman, would be to deny help to those who cannot help themselves.

It would be to deny support and assistance to our older people, who can no longer adequately provide for themselves, and deny help to our small children who have no parents to take care of them.

It would be to deny help to our permanently and totally disabled of Alabama, as well as to our blind.

As the committee of legislative jurisdiction over these welfare and public assistance programs, I do not have to tell you how much these programs mean to so many people throughout the Nation. I am sure our commissioner of pensions and security will tell you first-hand how drastically the termination of these programs would affect so many needy people in Alabama.

I would like to thank you, Mr. Chairman, and the members of the committee for giving Alabama an opportunity to be heard today on the Secretary's proposal to cut off our welfare funds.

My colleague, Senator Sparkman, is here. Perhaps he would like to add a word to what I have said.

STATEMENT OF HON. JOHN SPARKMAN, U.S. SENATOR FROM THE STATE OF ALABAMA

Senator SPARKMAN. Thank you, Senator Hill.

Mr. Chairman, before I do say a few words, I should like to call attention to the fact that we have several members of the House delegation here also. I hope their names may be recorded in the record. If they care to make statements, I hope they may be given that privilege.

I just want to say this—and I shall be very brief.

I believe that if this matter is gone into fully, this committee will find that the State of Alabama, through its department having control over the welfare funds, is in full compliance with the requirements of the law under title VI of the Civil Rights Act of 1964.

I believe that it will find that assurance has been given to the Department of Health, Education, and Welfare, not just once but many times, that the State will fully comply with the law.

It seems to me that the requirement that the Department is trying to make on the State of Alabama is one of arbitrary action involving a promise to comply with guidelines now in existence and guidelines that may be promulgated in the future.

I am sure that was not the intent of Congress in passing title VI—and that compliance in fact is the requirement.

I am certain that the facts will show that the State of Alabama is in full compliance in fact.

That is all I care to say.

The CHAIRMAN. Senator Sparkman, we have had a somewhat parallel problem in Louisiana. May I say to you and Senator Hill, and also Governor Wallace—we have had situations where the district court, having heard a case—decided it in favor of the State of Louisiana. Despite this, a Federal official will undertake to say the State must be denied Federal funds although the court had not so decided.

Now, I am familiar with the one-man majority on a three-man court in the fifth circuit undertaking to approve guidelines in advance. My

guess is that a district court that recognizes that one-man majority of a three-man panel would be in violation of even what the Supreme Court has said up to now.

There are members of this committee, as you are well aware, who have fought down through the years and in 1964 particularly, to provide that a State would not be denied funds for the benefit of the children, the needy, the sick, by some administrative decision which did not have the sanction of the Federal court order. I believe to some extent this is the issue we are discussing here.

When the Civil Rights Act was before the Senate, Senator Gore vigorously pointed out the abuse inherent in title VI of that act.

Senator HILL. Mr. Chairman, may I say that we have with us this morning Congressman Bill Nichols of the Fourth Alabama District; Congressman Armistead I. Selden, Jr., of the Fifth District; Congressman John Buchanan of the Sixth District; and Congressman Tom Bevill, of the Seventh District.

The CHAIRMAN. I would like to ask those members of the congressional districts to stand up. I see Congressman Jones there, Congressman Selden. Thank you, gentlemen, we are honored to have you here.

Senator HILL. And Congressman Bob Jones of the Eighth Alabama District.

Now, Mr. Chairman, if it is agreeable to the chairman, I take pleasure in presenting to you the former Governor of Alabama, Governor until the 16th day of this month, and the present Governor's No. 1 adviser, Gov. George C. Wallace of Alabama.

The CHAIRMAN. Governor Wallace, the committee is pleased to have you here. You may proceed in any manner you desire.

STATEMENT OF HON. GEORGE C. WALLACE, FORMER GOVERNOR OF THE STATE OF ALABAMA AND NOW SPECIAL ASSISTANT TO THE GOVERNOR, ACCOMPANIED BY RUBEN K. KING, COMMISSIONER, STATE OF ALABAMA DEPARTMENT OF PENSIONS AND SECURITY; HUGH MADDOX, LEGAL ADVISER TO THE GOVERNOR; MRS. MARY LEE STAPP, ASSISTANT ATTORNEY GENERAL; AND REID B. BARNES, SPECIAL ASSISTANT ATTORNEY GENERAL

Mr. WALLACE. Mr. Chairman and members of the committee, we have with us people who are serving in the department of pensions and security in Alabama who may be able to answer questions—if you have time—and I am going to be as brief as possible in order that you might ask them any questions about this matter.

I do appreciate the opportunity as former Governor and adviser to the present Governor; I am really representing her and Alabama before this hearing, before this distinguished committee.

Since these matters which we are discussing took place in my administration, I did want to say that I have a prepared statement, that members of our staff prepared, which I filed with you, which is fairly lengthy, and I am not going to read it, for the simple reason that it would take too long.

The CHAIRMAN. We will print that entire statement, Governor, as part of your presentation here.

Mr. WALLACE. Thank you. I will not read it, because it will be in the record—in order that I may be more brief.

But of course, as you stated so aptly, this is a matter where the Secretary, Mr. Gardner, has ordered a termination of funds to the elderly and the blind and the disabled and the handicapped in Alabama. And, of course, I think, without going into it—I think every member of this committee can certainly realize the suffering that such an order will bring about as soon as the funds are terminated, because there is $100 million a year involved, and all of it goes to those who cannot help themselves.

I might say in the beginning here that the department and the Governor—myself, when I was Governor—have always stated that we will abide by the law.

There are some laws passed by the Congress that we do not like, and I hope some day to see modified. But as long as they are the law of the land, we must obey the law. And I have never made a statement nor will I ever make a statement that we can violate orders of courts or the law of the land.

I don't like a lot of court orders, and I think my position on the Federal judiciary is well known. But once they issue an order and it becomes final, it must be obeyed whether you like it or not. Otherwise we would have anarchy.

I might say that the department and myself both have said to HEW—we will abide by the law—whatever the law is, and whatever regulation is interpreted in the courts as being lawful will be obeyed. And we have today pending in the Federal courts a petition for declaratory judgment about the validity of these regulations and also asking for a restraining order against the Secretary regarding the termination of funds.

I might say whatever the outcome of that case happens to be upon its final adjudication, the court order will be obeyed by the department of pensions and security and by the State of Alabama.

Now, our objection to signing forms—and even though we are the only State, as has been said so many times, that has not signed form CB–FS 5022 and agreed to the so-called regulations—I might point out that there are a great number of commissioners in this country who object as vehemently as we do to that which they had to do. And if this committee would call them before it, you would find just as much opposition on their part as on the part of Alabama—even though some folks in higher quarters in their government said, "You must go ahead and sign, that's the easiest way out."

I am sure that some have signed—although I don't mean to charge any State with bad faith—sign—do the best you can—and maybe that's the best way.

However, we have a regulation here which has not been approved even by the President, as we understand it, required by the law that says that we will agree upon the signing of the regulation to abide by any future regulations promulgated by the Department, which is the most vague and indefinite proposition that can be imagined.

We recently had a decision from the Supreme Court that says a Communist does not have to sign—you do not have to sign an anti-Communist or loyalty oath in the State of New York because it is vague and indefinite.

We have decisions of other courts that say you cannot make a person sign a loyalty oath for medicare on the grounds that it violates the rights and so forth.

The CHAIRMAN. Let me inquire.

Do I understand you to be saying that included in this assurance which you have declined to sign is a requirement that you agree in advance to abide by regulations that you have never seen?

Mr. WALLACE. That's right. That is exactly what the regulation says. And the regulation also says that this is a legally enforcible contract. In other words, it is a contractual agreement.

Senator GORE. Mr. Chairman, would the witness please cite the provision?

Mr. WALLACE. Yes, sir.

Senator GORE. Does the committee have a copy, Mr. Chairman?

(The material referred to follows:)

[HEW Form 441-A (1/65), CR-5000, H.T. No. 47]

[FROM THE HANDBOOK OF PUBLIC ASSISTANCE ADMINISTRATION—SUPPLEMENT C

HANDBOOK FOR CHILD WELFARE SERVICES—SUPPPLEMENT

NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS

OPERATING PROCEDURES PURSUANT TO HEW REGULATION, TITLE 45, CODE OF FEDERAL REGULATIONS, PART 80, AND TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

U.S. Department of Health, Education, and Welfare, Welfare Administration, Bureau of Family Services, Children's Bureau]

ASSURANCE OF COMPLIANCE WITH THE DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE REGULATION UNDER TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

----------(hereinafter called the "Applicant")
(Name of Applicant)

HEREBY AGREES THAT it will comply with title VI of the Civil Rights Act of 1964 (P.L. 88-352) and all requirements imposed by or pursuant to the Regulation of the Department of Health, Education, and Welfare (45 CFR Part 80) issued pursuant to that title, to the end that, in accordance with title VI of that Act and the Regulation, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Applicant receives Federal financial assistance from the Department; and HEREBY GIVES ASSURANCE THAT it will immediately take any measures necessary to effectuate this agreement.

If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the Applicant by the Department, this assurance shall obligate the Applicant, or in the case of any transfer of such property, any transferee, for the period during which the real property or structure is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. If any personal property is so provided, this assurance shall obligate the Applicant for the period during which it retains ownership or possession of the property. In all other cases, this assurance shall obligate the Applicant for the period during which the Federal financial assistance is extended to it by the Department.

THIS ASSURANCE is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property, discounts or other Federal financial assistance (but this assurance is given only with respect to programs for which an assurance is required under section 80.4(a) of the Regulation) extended after the date hereof to the Applicant by the Department, including installment payments after such date on account of applications for Federal financial assistance which were approved before such date. The Applicant recog-

nizes and agrees that such Federal financial assistance will be extended in reliance on the representations and agreements made in this assurance, and that the United States shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the Applicant, its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this assurance on behalf of the Applicant.

Dated ---------- ----------
(Applicant)

By ----------
(President, Chairman of Board, or comparable authorized official)

(Applicant's mailing address)

HEW Form 441-A (1/65): May be used in providing the assurance required by section 80.4(a) of the Regulation where the Applicant is also administering a program of continuing Federal financial assistance subject to section 80.4(b) of the Regulation.

Mr. WALLACE. We will file this copy, Senator. It says the name of the applicant hereafter called the applicant, hereby agrees that it will comply with title VI of the Civil Rights Act of 1964—and I might say in passing that our department and I as Governor have stated that we will abide by title VI.

It calls for nondiscrimination. We recognize that that is the law of the land and that you cannot and must not discriminate in the funds going to needy people—you cannot discriminate. That is the law. And we would not want to discriminate if that wasn't the law. And Alabama has not discriminated in the matter of the recipients of welfare funds.

But it says—

hereby agrees in order to comply with Title VI of the Civil Rights Act of 1964, P.L. 88-352 and all requirements imposed by or pursuant to the regulation of the Department of Health, Education, and Welfare, 45 C.F.R. Part 80, issued pursuant to that—

And so forth.

So there is an open end signing that is a legally enforceable agreement.

I believe somewhere in the regulation here it says that as long as aid is extended, when you sign this you are bound by that.

We find right here that it says:

The applicant recognizes and agrees that such Federal financial assistance will be extended in reliance on the representations and agreements made in this assurance . . . that the United States shall have the right to seek judicial enforcement of this assurance.

Well, even though you sign this—when you sign this, and some act or regulation pursuant to the signing of this is not in accordance with the law, or not required by the law, then the Federal courts can say—you have signed a contract; you have agreed to do such and such.

So we think this is very vague and indefinite.

We also feel that when the courts of our land have held that a Communist does not have to sign a loyalty oath on the grounds that it is vague and indefinite, that this is the most vague and indefinite proposition ever presented to any agency of any State.

We also object to the regulation on the ground that it calls—the rules that you agree to go by already issued by the Department—calls for the State agency to do things that the civil rights law itself prohibits. In other words, it says that you must secure compliances from third parties—such as child care centers and nursing homes, and others which are not covered by the act, so that our department must enforce these regulations. I understand from our attorneys, that a private church school, a church or orphans' home which has a certain policy of admittance of people to that school must change their admittance policy. They do us a favor when they take one of our children, but under the HEW regulation, the Department must go over and police them and tell them who they can enter or who can work with them, and otherwise.

We say that the Civil Rights Act does not give any such authority to Mr. Gardner.

The regulations also say this.

They want us to require a doctor who examines patients or disabled people to have integrated waiting rooms. And I want to say to the chairman that we do not care in Alabama whether a doctor has a segregated or an integrated waiting room. We feel that since they were precluded from the requirements of the Civil Rights Act, that for the HEW to require us to sign a statement that we will require the doctors to do something that the law does not require them to do, is not in keeping with the intent of Congress. And we don't think that any agency of State government ought to go to a doctor and tell him what kind of waiting room he can have. We don't care what kind he has. And in one county in Alabama we don't have but one doctor. And that doctor could very well say, "we don't want your business. In the first place, we don't make much out of it; it is more of a public service."

We also feel that this can be extended in the future to the grocery store. A recipient of an old-age pension check could be required to spend it at a store that hired employees in keeping with what Mr. Gardner might decide to say. Now that may be extreme but that is perfectly possible under their interpretations.

Yet we also say that we have said over and over and we say it to this committee today—we are in compliance with title VI. We will obey the law. We wrote the Department, Mr. Chairman, and I told them that Alabama will obey the law—will obey the civil rights law. And yet their decision has come back and we are told that we must do more than say we will abide by the law.

I would like to read you some excerpts from the opinion. And even though they said themselves that the agency promises—that is Alabama, to comply with what the courts ultimately decide it must do—we did not say that ourselves. We did not say we would abide by the law as the court ultimately interprets it. We said we will abide by the law.

We will abide by any regulation that the courts say are legal regulations promulgated by the Department. But to quote Mr. Gardner in his decision—"The agency"—that is the Alabama agency—"promises only to comply with what the court ultimately decides it must do."

Well, what else can they ask us to do, but say we will comply with what the courts ask us to do.

Another statement, "It has said only that it will comply with the Civil Rights Act as that act is interpreted in the courts."

Now, we even said more than that. We said we will abide by the act itself.

They added themselves "as interpreted in the courts."

We say we will abide by regulations as interpreted in the courts.

On page 15 the Secretary says:

> The Alabama agency seems unwilling to accept the fact that it must do more than pledge nondenial of benefits based on race and refute any allegations of discrimination which are made.

Well, that is, I think, all that any agency can say.

And here is another very pertinent part of his decision.

On page 31 Mr. Gardner says:

> Under Title VI regulations of this Department, the Alabama agency is required to state more than that it will comply with the law as it is ultimately interpreted in the courts.

And yet as I said—they have added themselves "as ultimately interpreted in the courts."

We say we have to abide by the law as it is on the statute books even before interpretation, unless we raise the issue ourselves in a court of law.

Now, I want to point out again expressly—we have told him we will abide by the law, and we will. We are abiding by the law. We will abide by any regulations that the courts state are legal. We say these regulations are illegal—broad, constitutional grounds protect people from signing things that are vaque; here, you don't even know what you are signing. A Communist is not even required to do that. We don't think a welfare commissioner or anybody in Alabama ought to be required to do something that a Communist is not required to do.

Now, Mr. Gardner says we must go further.

Let me also point out that this is an innovation in government in this country—when we are going to cut off money to 112,000 elderly citizens whose average age is 75 years of age and 3 percent are 90 years of age, who are sitting today trembling and living the very last few hours, days, and months of their lives—the blind and the disabled and the helpless. They are going to cut that money off and starve those people to death, and they are going to make them suffer because some agency of Alabama government doesn't sign something that it thinks it ought not to sign.

Now, if they must sign this under the law Mr. Gardner has only to go into the Federal courts. HEW could have gone in 16 months ago and if that is the law, then Commissioner King would have been required to sign it and he would have signed it—if a court said he had to do it.

But, no, they don't want to do that. They are going to cut the money off and make all these innocent, helpless people suffer because of something Mr. King did not do on a matter of principle and something the State of Alabama did not do.

Also we have gone into court ourselves, and we can only ask that this committee recommend to Mr. Gardner that he not terminate these funds until this matter has been adjudicated in the courts. And I don't see that any more fair proposition can be put to a committee

than for us to say we are abiding by the law, we are going to abide by the law, we are going to abide by any regulation that the courts say is the law, and to ask them to hold up the cutting off of funds until the matter is adjudicated in a case now pending in a Federal district court.

If someone violates the law, punish them. Punish Mr. King. Punish me. But don't punish 112,000 old people who cannot help themselves.

This is what they used to do in Russia. They used to take the food cards away from folks. I am not trying to equate the American Government with the Russian system, or Mr. Gardner. But I say that some of the actions of that Department are irrelevant when they say, "we are going to punish old folks in Alabama because we don't think that Governor Wallace obeyed the law, or Mr. King."

I have always said if the court says "this is the law," I will abide by it, whether I like it or not, because you will have anarchy if you don't.

There is no instance anywhere where I have ever advocated anything but obedience to the law, press and news media to the contrary notwithstanding.

That is really about all—I also want to point out, as I conclude here that as far as discrimination is concerned, one of the things they complain about is that we don't have certain type caseworkers going to see certain type people. Well, as you know, you gentlemen excluded the States and the counties and the cities from the Fair Employment Practice Commission Act. We have Negro social workers in Alabama, and we have white. We are trying to get more Negro social workers and more white. We have a difficult time getting social workers because of the high requirements and because they want to go evidently into other phases of activity.

We are on the lookout now for good social workers of both races.

But now they come along and say "We want you to build buildings in certain places in Alabama." In other words, they want to locate even the welfare building in a county.

Now they want to say what social worker shall call on what person.

Now, if the objective of this act was to provide Negro social workers going to see white folks and vice versa, then the regulations would be violated if you didn't do that. But the prime purpose of this act is not for employment purposes, but to aid the needy.

Every Senator that stood on the floor—I won't read Vice President Humphrey and Senator Pastore and all the rest of them, and Congressman Willis, who talked about the amendment, and Senator Gore, who offered the amendment that was defeated in the Senate against the cutoff proposition—but if you go by the legislative history of what the leaders of this legislation said. then we are certainly in the right. And we rest our case on what Mr. Humphrey said, and Mr. Pastore said.

Senator GORE. Can the witness cite from the record any particular instance in which the authors or advocates of the bill said that such action as is here proposed would not be taken?

Mr. WALLACE. Senator, you say you would like for me to——

Senator GORE. I am asking—can you cite from the record?

Mr. WALLACE. Sir, I can cite from the record here. Actually there are more parts of the record to be cited that we don't have with us.

We will cite for you.

Senator Pastore said—and I understood he was the floor leader for title VI—

> Let me advise Senators that the failure of a District Court to desegregate the schools will not jeopardize the school lunch program; it absolutely will not. Even if a community does not desegregate, that will not jeopardize the school lunch program—unless in that particular school white children are fed, but the black children are not fed; and I refer Senators to page 33 of the bill, which states very, very clearly: "which shall be consistent"—in other words, the orders and rules—"shall be consistent with the achievement of the objectives of the statute authorizing financial assistance."
>
> We have a school lunch program, and its purpose is to feed, not to desegregate the school; therefore, that would not be consistent. But if a school district did not desegregate, it could no longer get Federal grants, let us say, to build a dormitory—not unless it integrated; and a hospital could not receive 50 percent of the money with which to build a future addition unless it allowed all American citizens who are taxpayers and who produce the tax funds that would be used to build the addition, to have access to the hospital.
>
> So we must remember that the shutting off of a grant must be consistent with the objectives to be achieved. A school lunch program is for the purpose of feeding the school children. If the white children are fed but the black children are not fed, that is a violation of this law.

Since you excluded the cities and States and counties as an employer under the provisions of the FEPC Act, then HEW has no control, nor the courts, over the employment practices of a State. Yet social workers are employees of the State. And under this regulation—and one of their objections is that we don't have a certain number of social workers going to see certain people which we contend is none of their business, because FEPC does not apply to Alabama. And the objective of this act is to feed these needy people and help them subsist, and not provide employment for social workers.

We also have what Mr. Vice President Humphrey said when he was a Senator:

> A Title VI which required Federal agencies to deny or delay the food, shelter, clothing and medical attention to preserve life would not be in the public interest.

That is what the Vice President said.

And they are doing the very thing today that the Vice President himself said in leading the fight for this bill would not be in the public interest.

Senator GORE. Well, Governor, I recall these debates.

I recall that assurances were given——

Mr. WALLACE. Yes, sir.

Senator GORE (continuing). That the bill before the Senate did not provide the extensive power which I believed it to contain—and which I regarded at the time as subject to arbitrary and tyrannical abuse. But the first presumption in determining legislative intent is that Congress intended to do what it did do.

Mr. WALLACE. Yes, sir.

Senator GORE. The law does contain very extensive and arbitrary power.

Under the law, the recipient is the key to action here.

In the case of the welfare program, the State of Alabama, under the law, is the legal recipient. Is that correct?

Mr. WALLACE. Well, I suppose—of course I could not answer that question. I suppose that they are the legal recipient. But I don't think——

Senator GORE. Just let me read from the act here.

Mr. WALLACE. Of course these gentlemen say not necessarily are they the legal recipient. It is a conduit by which the legal recipient receives the aid.

Senator GORE. The contractual relationships exist between the Federal Government and the State government.

Mr. WALLACE. Yes, sir.

Senator GORE. This is true with respect to the welfare portion of the social security program.

Mr. WALLACE. Yes, sir.

Senator GORE. It is not true with respect to the contributory pension and annuity portion of the social security program.

Mr. WALLACE. Yes, sir.

Senator GORE. Now, since the State of Alabama is the recipient in this case, insofar as this act is concerned, I suggest to you that the power conveyed by this act may be even broader than its use thus far would indicate.

Mr. WALLACE. Senator, I——

Senator GORE. If I may proceed just a moment.

It may well be possible that because you are held by Secretary Gardner as not being in compliance with the act, then not only may it be possible to cut off welfare funds to Alabama, but highway, vocational, agriculture aid—indeed, all Federal assistance to programs in the State of Alabama.

Now, the arbitrariness of such power can be used by threat as well as by execution.

Mr. WALLACE. Yes, sir.

Senator GORE. And I must say I know of instances in which the threat has been very effective.

Mr. WALLACE. Yes, sir.

Senator GORE. Perhaps by citing this I may be guilty of trying to justify the apprehension I expressed and felt at the time of passage about the arbitrariness and possibly tyrannical power contained in title VI of the act. What I really want to point out is that the full use and force of this act has not necessarily yet fallen upon the people of Alabama. More extensive powers are contained therein.

Mr. WALLACE. Senator, of course what I understand you are saying is the same thing you said on the floor of the Senate when you offered your amendment about the arbitrary power given to HEW and other departments to cut off funds, and predicted the thing that is happening to Alabama, about to happen to Alabama, would come to pass.

However, we do not question the constitutionality of any act that says you cannot discriminate. But I think there are questions of constitutionality in the matter of cutting off funds to recipients such as elderly citizens as a result of what the Secretary considers to be a violation of his regulation by a commissioner.

Here is section 604—

> Nothing contained in this title shall be construed to authorize action under this title by any department or agency with respect to any employment practice of any employer, employment agency or labor organization except the primary objective of the Federal financial assistance to provide employment.

We do think a regulation issued by them for the purpose of employment practices is not legal, in view of the fact of section 604.

I want to point out in conclusion here, we have the figures here to show that insofar as the recipients of the welfare program in Ala-

bama—percentages speak for themselves—I also call your attention to a section of the act—and I am not trying to interpret the act to you gentlemen, because you are more familiar with it than I am—which states that the act "shall be limited in its effect to the particular program or part thereof where such noncompliance has been found."

Here we have—and I will conclude this—the statistics themselves are proof enough of the fact that we do not have discrimination.

The Alabama population is a little less than 30-percent nonwhite—about 28. Yet 43.3 percent of the recipients are nonwhite. And the same imbalance in favor of the nonwhite exists in the old-age pension program. Nonwhite residents 65 and over represent only 28.6 percent of the total aged population, yet 40.2 percent of the pensioners are nonwhite.

In the matter of dependent children, the balance in favor of nonwhite is again prevalent. And though the nonwhite under 18 popula- of the total aged population, yet 40.2 percent of the pensioners are white.

We feel that any citizen of Alabama, regardless of race or color, is entitled to aid under this program in a nondiscriminatory manner.

But there are no complaints from Alabama citizens at the present time that they are discriminated against by the Alabama agency. And we cannot understand the cutting off of funds when there is none. We say we are in compliance. Mr. Gardner says to be in compliance we have to sign their forms and agree to regulations.

Gentlemen, thank you.

(The prepared statement of Mr. Wallace follows:)

STATEMENT OF HON. GEORGE C. WALLACE

Mr. Chairman and distinguished members of the Senate Finance Committee; first, let me say that it is a distinct pleasure to appear before you here today and discuss with you briefly a situation which will ultimately affect the lives and well-being of some 200,000 people in Alabama, of all races.

The Civil Rights Act of 1964 has been on the statute books now for over two and one-half years and this is the first time a committee of the Congress has seen fit to hold a hearing in a matter involving the cut-off of federal funds. You will recall this requirement that the report of the cut-off of funds be filed with the Congressional committees passed the House by a vote of 129–21. Congressman Willis, speaking in support of the amendment, said:

"Suppose he does cut off a program. A single man is doing that. What happens in actuality? I merely repeat my colleague from Louisiana (Mr. Boggs), in that respect as it would affect my own State. Suppose the agency head would cut out the school lunch program, who actually would he be primarily hitting? He would be hitting all the people, the young people. Then suppose the distribution of surplus food is cut off, who would he be hitting? He would be hitting primarily the persons who are to be protected. Certainly in my State the colored people are the greatest beneficiaries under this program. Suppose he would cut off the welfare program, who would he be hitting? He would be primarily hitting the colored people because they are the primary and greatest beneficiaries.

* * * * * * *

"My amendment would bring into play other minds in connection with this question of decision to cut off a Federal assistance program. It would bring into play committees of Congress having jurisdiction over the programs under consideration. The head of the agency would have to give a report to the committees of Congress having jurisdiction over the subject matter, so that at least there would be some responsible minds over and beyond the agency head.

"Then the last sentence would be that no such action shall become effective until 30 days had elapsed after the filing of such report." (110 Cong. Rec. 2498)

The purpose for which the amendment was passed is now a reality—the Department of HEW has made a decision to cut off funds to Alabama. At stake

in this matter is some 105 million dollars of aid under programs of Old Age and Medical Assistance for the Aged, Aid and Services to Needy Families with Children, Aid to the Blind, Aid to the Permanently and Totally Disabled, and Child Welfare Services. The question presented is whether the Alabama Department of Pensions and Security is in compliance with Title VI of the Civil Rights Act of 1964, which prohibits discrimination in federally assisted programs.

I am sure that you distinguished Senators are familiar with the background and the debates which occurred during that three-month period in 1964, when the Civil Rights Bill was before you. Since the passage of the Bill, I am sure that you have had an opportunity in one way or another to come in contact with some of the problems centering around the enforcement of Title VI of this law. The opportunity you have now is a first! A Congressional inquiry has been made into the activities in the Department of Health, Education and Welfare in connection with its enforcement action under Title VI in Education, but in regards to Welfare programs, it is the first such opportunity. Therefore, I hope that you will study the decision and the facts of this termination of 105 million dollars with great care.

I am sure that you recall that during the time the Civil Rights Bill was pending before the Senate that there was an advertisement which appeared in several of the major newspapers around the country entitled "$100 Billion Blackjack". Then Senator Hubert Humphrey, on March 17 and 18 of 1964, made a very vitriolic attack on the truth of the advertisement and claimed "there is no '$100 Billion Blackjack' and any statement that there is, is an outrageous lie". Other Senators saw fit to attack the advertisement as containing untruths and half-truths. Let's examine the record now just two and one-half years after the event, to see how prophetic the ad really was.

In the ad was a statement that the Civil Rights Bill would "allow each Federal Department and agency to determine for itself what is and what is not discrimination—the bill itself does not define the word." The ad said: "It would amend every Federal law (hundreds of them) that deals with financing so that each Federal department or agency could make its own regulations to manipulate Federal funds. Each Federal department would define for itself what is 'discrimination' and apply its own penalties (Sec. 601-602)." Proponents of the Civil Rights Bill scoffed at the terms used in the ad such as "Total Federal Control" and "The Socialists' Omnibus Bill". But let's check the record and see what has happened just in Alabama alone.

1. Thousands of illiterate voters have been placed on our voter rolls, even though literacy is required in many other states of the Union. New York can require ability to read and write, but not Alabama, Mississippi, Georgia and South Carolina.

2. Our school boards are harassed and intimidated with telephone calls and surveys.

3. Federal officials are actually telling local school boards how many teachers they must place in particular schools.

4. Federal officials are attending local school board meetings and while there are threatening the boards with loss of funds.

5. Stringent "guidelines" which call for racial balance of both faculty and students are applied even though the Civil Rights Act forbids such action.

6. One-half million dollars was held up for two years, even though the agency had no evidence of discrimination, and there was no hearing or finding on the record, with report being filed with Congressional committees as required by law.

7. The Civil Rights Act limits the Attorney General to individual suits against local boards of education where complaints are received. The United States is now suing the entire State of Alabama, even though the United States had filed individual suits in every instance where a complaint was received by the Attorney General.

Stated in the most simple terms, the issue here today, and the issue in the school cases and the hospital cases, is whether the Administrative heads who carry out these programs are going to be allowed to use the funds of this Republic to compel action not allowed or sanctioned by law. That this is the issue is clearly shown by the action taken by the Secretary in this case. In short, the Secretary seeks to require the Alabama agency *to do more than that required by law*. As evidence of this, permit me to cite to the Committee some instances wherein this is shown by the decision itself. On page 6 of the decision the Secretary says:

"The Agency promises only to comply with what the Courts ultimately decide it must do."

In a government obstensibly based on law and not on men, what more should be required of anyone than that he will abide by the law as interpreted by the courts? On page 9 of the decision, the Secretary says again:

"It (meaning the Alabama agency) has said only that it will comply with the Civil Rights Act as that Act is interpreted in the Courts."

On page 16, the Secretary says:

"The Alabama agency seems unwilling to accept the fact that it must do more than pledge non-denial of benefits based on race and refute any allegiations of discrimination which are made."

And on page 38 of the decision, the Secretary finds:

"Under the Title VI Regulation of this Department, the Alabama Agency is required to *state more than that it will comply with the law as it is ultimately interpreted in the courts.*"

I am sure that the Committee has read the decision of the Secretary and that each member of the Committee knows that these statements are not taken out of context.

The Alabama Agency has stated in writing and the Commissioner has stated in the hearing that the Agency will abide by the Civil Rights Act of 1964 as ultimately interpreted by the Courts. We feel that our request for judicial review is not an unreasonable request.

In view of the facts presented in the decision itself, it is our hope that the Congress will take immediate measures to prevent this usurpation of authority on the part of the Executive Branch. The Alabama Agency has agreed that it will follow the law, as interpreted by the Courts. This assurance would be sufficient except that the Department of Health, Education and Welfare seeks to require of us certain action which the Department of HEW itself must know the Civil Rights Act of 1964 does not give it the authority to require.

We opposed the passage of the Civil Rights Bill of 1964 and would like to see the Congress repeal it, because of the very danger which we now face—that of the extension of federal executive power into purely private endeavors. The Congress has not seen fit to regulate such private endeavors. The cut-off of funds because we do not agree to "do more than the law requires, as interpreted by the Courts" is the present example of the danger now faced.

But since the Act is now the law, our biggest problem has been in trying to get the administrative agencies to stay within the terms of the Act. This has been a most difficult job.

We further opposed the passage of the Civil Rights Act of 1964 on the ground that it constituted an illegal delegation of legislative power to the executive branch of government. From the early days of our Republic—because of the abuses which had resulted when the King controlled all the wealth—the Legislative Branch of government has been vested with the sole power to collect taxes and to dictate how the monies in the treasury will be spent. You have given up this power to the Executive Branch—whether constitutional or not is open to question—but in any event you have very prudently retained the safeguard that the action taken must be recorded and filed with your committee. Therefore, let me say again that we are glad that we have this opportunity to present the true facts to this committee today, and we hope that after a presentation of the facts that this committee will take action to void the effect of the Secretary's decision. We come not in a spirit of arrogance. We come not for a political favor or for political disfavor—neither do we come with hat in hand. We come as free Americans who sincerely desire to prevent the extension of federal executive power into areas now allowed by law or the Constitution of the United States. We come because we feel we are right and within the law.

We come to say that the Secretary has made a most erroneous decision in the following respects:

The Secretary finds that the Alabama agency is the only state agency which has refused to sign the compliance form No. 5022 submitted to the agency by the Department of HEW. An examination of the HEW form 5022 will readily show why the Alabama agency has refused to sign it. In the first place, the form seeks to get an agreement that the agency will abide by the Civil Rights Act—which the Department has already done. Then comes the sleeper—in Section 4 the form provides that "the State agency will take such steps as necessary to assure that any other agency, institution or organization participating in the program, through contractual or other arrangements, will comply with the Act and Regula-

tion." The requirements which are made by this form remind me of the requirements which are made in other programs under the Department of HEW, wherein a Form No. 441 is required to be signed. In order to participate in some of the programs and projects available through the Federal Welfare agency HEW Form 441-A is required to be signed. This form seeks to get an agreement that the agency will abide by the Civil Rights Act and "*all requirements imposed by or pursuant* to the Regulation of the Department of Health, Education and Welfare." We may be the only state which has refused to advise our Welfare Commissioner to agree to give such carte blanche approval of regulations and requirements which may be imposed in the future. Alabama may be the only state which has refused to knuckle under to these requirements of the Department of HEW, but our Commissioner tells us that at meetings of Welfare commissioners from all over the country, they too are tired of these illegal regulations. We count it a privilege to stand up and be counted if the only sin we are guilty of is our failure to agree to "do more than state that we will abide by the law as ultimately interpreted by the courts".

Our fear of what lies behind these quests for signatures is contained in what is referred to as "Explanation of HEW Form No. 441, Assurance of Compliance with the Department of Health, Education and Welfare Regulations under Title VI of the Civil Rights Act of 1964" which is in the "Handbook". In this explanation, HEW says "HEW Form No. 441 *constitutes a legally enforceable agreement* to comply with Title VI of the Civil Rights Act of 1964, and all requirements imposed by or pursuant to the Regulations of the Department of Health, Education and Welfare issued thereunder." To see the folly of an agency binding itself to unkown rules, orders and regulations forever is to present the problem and to give the answer why the Alabama agency and other agencies of the State of Alabama have refused to sign such an "open end" contract.

Already the Commissioner of Education has issued three sets of different "Guidelines" which have not been approved by the President, though they are rules of general applicability. In this case, the Welfare Commissioner has issued the "Handbook", which contains rules and directives of general applicability, and this "Handbook" has not been approved by the President.

As a matter of fact, the form itself provides further that the agreement may be judicially enforced "so long as aid is extended to the applicant". In other words, the agency could be bound to enforce the requirements of HEW even though it might not be getting one penny of money. We cannot believe that the Congress intended for such results to be reached in this program, and we hope you will correct the erroneous interpretation here being made.

Alabama is the only State, according to the decision, which has refused to sign the compliance form. This refusal, as is pointed out earlier, is not an attempt to be stubborn or recalcitrant, but arises from a justifiable belief that the law does not require the signing of such an assurance. Of course, the simple way would have been to sign the form. Loss of individual liberty and freedom always comes easy. Too often, our birthrights of freedom and liberty are sold for a bowl of porridge and sacrificed upon the altar of expediency.

We were under the distinct impression that Title VI was designed to eliminate discrimination in federally assisted programs, though we strongly suspected that it would be used for social experimentation and federal control. If the purpose of Title VI was merely to eliminate discrimination, then Alabama is not guilty because there is no discrimination practiced in the programs administered by the Agency. The statistics themselves are proof enough of this fact. Alabama's population is 30% non-white, yet 43.3% of the assistance recipients are non-white. The same imbalance in favor of the non-whites exists in the old age pension program. Non-white residents 65 and over represent only 28.6% of the total aged population, yet 40.2% of the pensioners are non-white. In the matter of dependent children, imbalance in favor of non-whites is again prevalent. Though the non-white under 18 population in the State is only 35.4%, 66.1% of the recipients of aid are non-white. These statistics alone, which cannot be controverted, clearly show the absence of any discrimination in the welfare program in Alabama. The benefits of the welfare programs are going to people throughout the State without discrimination.

Therefore, the objectives of the federal assistance programs to provide help for the aged, blind, dependent children and the disabled are being carried out without distinction on the ground of race, color, creed or national origin. This is all that the Act requires. In fact, this is the intent of the Act, as expressed

by Senator Pastore (the floor leader in the Senate for Title VI), when he said as follows:

"Let me advise Senators that the failure of a district court to desegregate the schools will not jeopardize the school lunch program; it absolutely will not. Even if a community does not desegregate that will not jeopardize the school lunch program—*unless in that particular school the white children are fed, but the black children are not fed;* and I refer Senators to page 33 of the bill, which states very, very clearly: 'which shall be consistent'—in other words, the orders and rules—'shall be consistent with the achievement of the objectives of the statute authorizing financial assistance.'

"*We have a school lunch program, and its purpose is to feed, not to desegregate the schools; therefore, that would not be consistent.* But if a school district did not desegregate, it could no longer get Federal grants, let us say, to build a dormitory—not unless it integrated; and a hospital could not receive 50 percent of the money with which to build a future addition unless it allowed all American citizens who are taxpayers and who produce the tax funds that would be used to build the addition, to have access to the hospital.

"So we must remember that *the shutting-off of a grant must be consistent with the objectives to be achieved. A school lunch program is for the purpose of feeding the school children. If the white children are fed, but the black children are not fed, that is a violation of this law.*" [Emphasis supplied.]

Just as the Lunchroom Program was for the purpose of feeding children, so the federal programs here involved are for treating the sick and caring for the poor, and so long as the treatment and care are provided for all, then there is no discrimination under such programs within the meaning of the Civil Rights Act of 1964.

The attempt which has been made to require the State agency to police the actions of private third parties is inconsistent with the objectives of the Social Security Act.

There has been *no evidence* furnished by the Department of Health, Education and Welfare that recipients and beneficiaries of the 105 million dollars have complained of discriminatory treatment by the State agency. Certainly, no complaint has been brought to the attention of the State agency in this regard.

Briefly, I would like to now show wherein HEW seeks to make requirements which go beyond the law. It is my understanding that the Public Accomodations provision of the Civil Rights Act of 1964 does not purport to cover such establishments as hospitals, nursing homes, child care centers and that offices of professional people, such as doctors, lawyers and the like did not come within the provisions of the Act. If I am correct in this assumption, then the Department of HEW is attempting to do indirectly what it cannot do directly—make these establishments covered.

HEW is clearly exceeding the law when it seeks to require the State Agency to force compliance with a certain type of procedure on the part of purely private third parties. This game of "blackjack dominoes," taken to its ultimate extreme, would mean that HEW could coerce the grocer, who in turn would coerce the producer into some type of sociological action deemed essential to some "national policy" by HEW. This is similar to a case arising in Alabama pertaining to a proposal for an EDA grant to build a bridge. EDA said that before it would consider the grant, a private industry (covered under Title VII of the Civil Rights Act) would have to execute an agreement to comply with Title VI of the Civil Rights Act of 1964 because its employees and some of its road equipment would be using the bridge. Gentlemen, this is no isolated case. This type of thing has been prevalent in Alabama since the Departments started enforcing Title VI of the Civil Rights Act.

I would also like to call your attention to another attempt in this case wherein HEW exceeds its authority under the Act. I refer to the matter of employment practices. Section 604 specifically provides that no agency can interfere with an employment practice except where a primary purpose of the funds is to provide employment. Furthermore, Section 701(b) of the Civil Rights Act specifically exempts a State and a political subdivision from the definition of the term "employer". It would seem, therefore, that the question of how the State handled its employees would be of no concern to HEW under the Act. However, nothing could be further from the truth. The Department of HEW wants to tell the State how many persons can be hired, what cases they will be assigned to and where they can work. Section 604 was added by the Senate leadership substitute in order to clarify the effect of Title VI on discrimination in employment. In the words of Senator Humphrey:

". . . section 604 would be added, to preclude action by a Federal agency under title VI with respect to any employment practices of an employer, employment agency, or labor organization, except where a primary objective of the Federal financial assistance involved is to provide employment. This provision is in line with the provisions of section 602 and serves to spell out more precisely the declared scope of coverage of the title."

As Senator Humphrey specifically said, section 604 spells out more precisely the declared scope of *coverage of the title.*

Even the Regulation of HEW (Section 80.3(4)(c)) provides that employment practices can be regulated only in those cases where a primary objective of the federal assistance is to provide employment. Furthermore, HEW at first considered this to be the intent of the Act also. In the form entitled "Explanation of HEW Form No. 441," it is pointed out:

"6. Does that mean that an Applicant who signs the Department's Assurance may nevertheless make distinctions among his employees on the basis of race, color, or national origin?

"A. Title VI of the Civil Rights Act does not concern itself with employment practices except where a primary objective of the Federal financial assistance is to provide employment. Thus, where a basic objective of the program is to provide employment, the Applicant's employment practices are subject to the Department's Regulation. However, even where this is not the case an Applicant may be precluded from engaging in any discriminatory employment practices under the provisions of Title VII of the Civil Rights Act, Executive Orders 10925 and 11114, and the Merit System Regulations."

We further feel that the Department of HEW has exceeded the intent of the law in its rule making power. The so-called Lindsay amendment required the President to approve any rule, regulation or order of general applicability. The Congressman's remarks are as follows:

"Mr. Chairman, this amendment is designed to require that the President shall approve rules and regulations that are promulgated pursuant to section 602 of title VI.

"I believe this amendment will be accepted by the chairman of the Committee on the Judiciary and the ranking minority member. The members of your committee feel that the rulemaking power is so important in this area and can be so significant because of the latitude that this title by definition has to give to the executive in drafting rules and regulations that the Chief Executive should be required to put his stamp of approval on such rules and regulations—after, of course, the normal procedures have been followed in promulgating such rules and regulations."

The Secretary has ignored this requirement and has issued Handbooks which have the force and effect of orders and rules and the President has not signed such Handbooks.

In the debates in the Senate, Mr. Pastore said:

"Section 602 of title VI not only requires the agency to promulgate rules and regulations but all procedure must be in accord with these rules and regulations. They must have broad scope. They must be national. They must apply to all 50 states.

* * * * * * *

"Further, the President must approve the rule."

The Secretary claims that we are attempting to force him to make a choice "between its mission to assist States in aiding the needy and its obligation to secure non-discriminatory treatment for those receiving assistance through Federally aided programs". In the first place, the Secretary misconstrues the State's position—which is, that it will abide by the law as interpreted by the Courts—and that aid should not be terminated until a judicial determination can be obtained. In fact, this position seems quite consistent with that of Vice President Humphrey, when he said on March 30, 1964:

"A title VI which required Federal agencies to deny or delay the food, shelter, clothing and medical attention necessary to preserve life would not be in the public interest.

"Effective and lasting elimination of discriminatory practices often requires a considerable measure of acceptance by public officials and the community. Such acceptance is less likely in an atmosphere in which Federal agencies are confined to taking drastic action which local officials and local public opinion are apt to regard as harsh and punitive. This is especially true in matters which deeply affect large numbers of individuals, such as education, public welfare, public

health, employment, disaster relief, and so forth. Placing the emphasis on constructive measures—on adjustment of differences, on use of available local agencies or of the courts, on establishing working machinery to handle complaints of discrimination, and so forth—may avoid the headon clashes of Federal and State or local authority, the charges and countercharges, and the building up of intense popular feelings which a sudden and drastic cutoff of funds is apt to provoke. In a highly charged emotional atmosphere, it is desirable to give the officials administering a Federal assistance program the maximum flexibility as to the method by which to eliminate racial discrimination in that way which is least apt to arouse intense ill-feeling."

We ask leave to file with the Committee copies of the briefs filed on behalf of the State before the Hearing Examiner and the Commissioner.

I want to impress upon the members of the Committee once again that Alabama has agreed to abide by the law, as interpreted by the Courts. We feel that this type of assurance should be sufficient for any department or agency of the United States charged with carrying out any responsibility under Title VI.

We feel that the Congress will take action to curb this unbridled use of executive power. No man, regardless of how principled, should be vested with the authority to decide whether 200,000 Alabamians will have food, shelter, clothing and medical services on March 1 of this year, because of his definition of that elusive little word "discrimination."

We will be happy to try to answer any questions the members of the Committee might have and also to furnish any statistics which we might have available.

Again, let me say that we are going to abide by the law, as interpreted by the Courts, but we are not going to sign our lives away because of the decision by one nonelected official that we are required "to state more than that it will comply with the law as it is ultimately interpreted in the courts." We are here to avail ourselves of the assurance that then Senator Humphrey gave to Congress and the people of this country that "a Title VI which required Federal agencies to deny or delay the food, shelter, clothing and medical attention necessary to preserve life would not be in the public interest."

We will be happy to try to answer any questions the members of the Committee might have and also to furnish any statistics which we might have available.

Senator GORE. Is the crux of the question here that the State of Alabama is unwilling to sign a commitment that it will comply with Secretary Gardner's interpretation of the civil rights act?

Mr. WALLACE. Our contention is that we will not sign a regulation that says you agree to abide by any regulation issued in the future, and we feel that other regulations involving third parties are not in keeping with the law in the matter of employment practices, in the matter of child care.

We feel that a number of his regulations go beyond the law.

In our court case, Senator, filed in Alabama, we are asking a judgment on the validity of these regulations. And if the court says they are valid, we are going to comply right off with them.

Senator GORE. Well, I shall rephrase the question.

Is the crux of the issue here that the State of Alabama is unwilling to sign a commitment that it will comply with such regulations as the Secretary of Health, Education, and Welfare may in the future issue?

Mr. WALLACE. That's correct; that is one of the issues.

Senator GORE. Without knowing what those regulations are, and whether in the opinion of the legal authorities of the State of Alabama, and perhaps ultimately the U.S. courts, such a regulation may not be in accordance with the act?

Mr. WALLACE. That's correct.

Senator MORTON. Will you yield there, Senator Gore?

Senator GORE. Yes.

Senator MORTON. The additional point is that in your opinion—that of your legal advisers certain regulations now promulgated are not within the act; namely, these third party regulations?

Mr. WALLACE. That's correct.

Senator GORE. The Governor—former Governor—did not cite the specific language of the regulations which would——

Mr. WALLACE. I will cite it.

Senator GORE. You did not read it. Would you read it into the record?

Mr. WALLACE. I will cite one specific——

Senator GORE. Will you read into the record the provisions with respect to your obligation to exercise police or regulatory authority over third parties, as Senator Morton mentioned?

Mr. WALLACE. The handbook issued by the Secretary of regulations which the law requires to be approved by the President—and we say and understand has not been approved by the President——

Senator GORE. How do you understand that?

Mr. WALLACE. Sir? They admit themselves that it has not been approved by the President.

Senator GORE. Well, let me read from title VI of the Civil Rights Act.

> No such rule, regulation, or order shall become effective unless and until approved by the President.

Are you saying to this committee that this regulation, this order, has not been approved by the President?

Mr. WALLACE. I am advised by—of course, my——

Senator GORE. This should be a matter of record. If this committee is expected to exercise its functions as an agency for review or oversight, then we must have cited for the record any failure on the part of the administration to comply with the law.

Mr. WALLACE. I am told by——

Senator GORE. The Chair will entertain your legal adviser to be heard, with your permission.

Mr. MADDOX. Mr. Chairman, I am Hugh Maddox, legal adviser to the Governor—former legal adviser to Governor Wallace.

Title 45, part 80, which are the regulations issued by the Department of Health, Education, and Welfare, have been approved by the President. They were approved by him, I think, in December of 1964.

45 CFR, part 81, the part dealing with the hearing procedures, were approved by the President. They are contained in 45 CFR, part 81. Those have been approved by the President.

The handbook which is in the record—and is referred to by HEW as the handbook, contains interpretations and a form 5022, which has not been approved by the President. It also contains a form 441(a) which contains the verbiage to which the Governor referred with regard to agreeing to abide by not only current regulations, but all regulations which might be issued in the future.

It also contains the verbiage that it is a contract and may be enforced in court—so long as Federal aid is extended to—not given, but extended to an agency.

These are the forms and the rules which have not been approved by the President—the handbook.

Mr. WALLACE. And one of the rules in the handbook, Senator, says, "The State agency"——

Senator GORE. Excuse me. May I ask your legal adviser—by what authority or evidence do you say to the committee that such has not been approved by the President?

Mr. MADDOX. The Department of Health, Education, and Welfare, as I understand it—though I did not participate in the case—I have read the record—it says that they stipulate the handbook has not been approved. I understand it had been stipulated to.

Senator GORE. Well, you are unable, as I understand it, to give to the committee more than your opinion that it has not been approved.

While he is searching the record there, Governor Wallace, would it be logical to assume that an order pursuant to a finding or regulation which had not been approved by the President, as required by the law, would not be a legally binding regulation?

Mr. WALLACE. In my opinion, it would not be legally binding, that is correct.

Mr. MADDOX. May I answer your question, Senator?

On page 8 of the hearing examiner's recommended decision—I thought I had read it—counsel for the General Counsel and respondent stipulated that the handbook had not been approved by the President.

Senator GORE. Well, the question now—you are reading from what?

Mr. MADDOX. It is styled "The Hearing Examiner's Recommended Decision, CR-1, in the Matter of the Alabama State Board of Pensions and Security."

Senator GORE. Is this a record in an adversary proceeding?

Mr. MADDOX. No, sir. This is the hearing before the hearing examiner in the Department of Health, Education, and Welfare. It is my understanding that this is probably a part of your records here.

Senator GORE. Well, the committee, of course——

Mr. MADDOX. If not, I will offer this to the committee.

Senator GORE. Well, unless there is objection on the part of members of the committee, we will make the pertinent part of this record which you have cited a part of the record of the hearing. The committee will undertake to ascertain from the executive branch whether or not the handbook is a part of the regulation, the order or the ruling, and if so, whether it has been approved by the President.

(The material referred to follows:)

BEFORE THE COMMISSIONER OF WELFARE, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

IN THE MATTER OF THE ALABAMA STATE BOARD OF PENSIONS AND SECURITY AND THE ALABAMA STATE DEPARTMENT OF PENSIONS AND SECURITY

DOCKET NO. CR-1

Compliance Proceeding Pursuant to Section 602 of the Civil Rights Act of 1964 and the Regulation of the Department of Health, Education, and Welfare Issued Pursuant Thereto

HEARING EXAMINER'S RECOMMENDED DECISION

APPEARANCES:

Alanson W. Willcox, General Counsel and Edwin H. Yourman, Assistant General Counsel with Reginald G. Conley, Associate General Counsel, Frances L. White and Max Rothman, Esquire, on the briefs and Laurence Davis, Esquire, who made a limited appearance, for the Commissioner.

Reid B. Barnes, Esquire, Counsel with Mary Lee Stapp, Legal Advisor, and Carol F. Miller, Assistant Legal Advisor for Respondent.

If the decision imposes sanctions it is subject to review by the Secretary.[8]

[8] The action of the Secretary, if the order is for suspending, terminating, or refusing to grant or continue Federal financial assistance, does not become effective until after the expiration of 30 days after the Secretary has filed a full written report of the circumstances and grounds for such action with the Committee of the House and the Committee of the Senate having legislative jurisdiction over the programs involved.

II. STATEMENT OF FACTS

Efforts of the Commissioner To Facilitate Compliance

To acquaint the various State welfare agencies with regard to the requirements of the Act and the Regulations adopted pursuant thereto and to secure their compliance, the Commissioner of Welfare sent a copy of the Act to those agencies soon after it was enacted in July 1964. Then, in October 1964, the Welfare Administration sponsored a meeting of all State welfare administrators for the purpose of discussing current developments in the programs under the jurisdiction of that agency. The subjects covered at this meeting included the implementation of Title VI of the Civil Rights Act, provisions of the Act and the details of the departmental regulations which were then being formulated. Representatives of Respondents were at this meeting. Shortly after December 4, 1964, the Administration distributed a copy of the regulations to each State welfare agency. In late December 1964, and early January 1965, the Welfare Administration sent copies of certain sections of the policies which implemented the regulations to the State welfare agencies.

On January 19, 1965, a Handbook was sent out to all State agencies administering approved public assistance plans.[9] The document was entitled "Non-Discrimination in Federally Assisted Programs." A copy of this Handbook was introduced and received in evidence in this proceeding (General Counsel Exhibit 1). This document of approximately 28 pages is designed to assist the State agencies to fulfill the requirements under the Civil Rights Act of 1964, and the regulations. The provisions specified therein should be included by the State as a part of its plans for the programs identified as "continuing programs."

[9] *Counsel for the General Counsel and Respondents stipulated that the Handbook had not been approved by the President.*

Senator GORE. I notice Chairman Long has returned. May I proceed with one additional matter?

The CHAIRMAN. Go right ahead.

Senator GORE. Before you cite what I have requested with respect to the third party, I wish to advert to one statement that you made a few moments ago.

You cited the fact that the act of cutting off funds must, by a certain provision of the law, be confined to the particular program involved.

Do you recall your statement in that regard?

Mr. WALLACE. Yes, sir.

Senator GORE. I would like to read to you a sentence from the act.

Compliance with any requirement adopted pursuant to this section may be effected, (1) by the termination of or refusal to grant or to continue assistance under such program or activity to any recipient as to whom there has been an express finding on the record, . . .

I again cite to you the importance of the word "recipient."

Alabama is the recipient of funds for its highway program, for its public assistance program, for its aid to the blind, the dependent children, the old.

I think the educational program would fall in that category, as would the vocational agricultural program, and the unemployment compensation program. I recall that—I administered that in my State.

Senator TALMADGE. There are some 200 Federal-aid programs, as I recall it.

Senator GORE. I did not realize it ran to some 200. But what I am trying to cite to you is that this law can be used, in my opinion, to much greater effect than it has yet been applied to the people for whom you speak.

Let me continue now to read from the act—having in mind that Alabama is the recipient of funds for some 200 programs.

Continuing to read:

by the termination of or refusal to grant or to continue assistance under such program or activity to any recipient as to whom there has been an express finding on the record, after opportunity for hearing, or a failure to comply with such requirement, but such termination or refusal shall be limited to the particular political entity, . . .

Alabama is the political entity in this case.

or part thereof, or any recipient as to whom such a finding has been made and, shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found, or, (2) by any other means authorized by law:

So it seems to me that it is rather clear now, as I thought it was clear then, at the time Congress considered the act, that the powers here are almost unlimited to deny funds to an entire State because a Federal official has felt, even before such holding has been tested as to legality, that a State is in some part failing to comply with his interpretation of the act.

Mr. WALLACE. Yes, sir.

Senator GORE. I emphasize this broad interpretation not to be a part of any coercion to the State of Alabama—they must choose their own course—but to show that this act contains very broad powers, very great powers. Very great reliance is placed upon an arbitrary decision by Federal officials.

This is a severe threat to hang over the heads of needy people; people in States that are dependent upon Federal programs for their health, education, economic progress, and development. But be warned that such powers are contained in the act.

Mr. WALLACE. Yes, sir. And I think you are absolutely correct, Senator. You warned of the capacity of this act when you offered your amendment. You were certainly correct. This is just the beginning of the exercise of the arbitrary power that this brought out. You are certainly correct.

Senator GORE. I would hope the powers in the act would not be used to the full extent. One of the saving graces of our system is the abstinence of the use of arbitrary power even though such may be available.

I hope that the full extent of this act will not be brought to bear upon the people of your State or the people of any other State.

Mr. WALLACE. Thank you, Senator. And that is why we are asking for a judicial determination of the regulations in this act. All we are asking is that the committee recommends to Mr. Gardner that they withhold termination of funds until the courts adjudicate whether or not these regulations are legal. If they are legal and binding, we will comply. Otherwise, we would wait.

Senator GORE. Now, I ask you for one other thing and then I shall desist.

Will you cite that portion of the regulation in which you would be required, or by which you in the future would be required to police the activities of private citizens referred to by Senator Morton as third parties?

Mr. WALLACE. On page 2 of the handbook, paragraph 4:

other agencies, institutions, organizations and contractors. The state agency will take such steps as necessary to assure that any other agency, institution or organization participating in the program through contractual or other arrangements—

Which is very broad—

will comply with the act and regulations.

Senator GORE. You think that includes other organizations—would include a private citizen?

Mr. WALLACE. Yes, sir. In fact, Mr. Barnes, who represented the Board in the court case, says that is what agents of the Department told him.

Mr. BARNES. I am Reid Barnes. I am a Birmingham attorney, and special assistant attorney general.

The CHAIRMAN. Would you take the microphone and make your statement, sir.

Mr. BARNES. In the hearing before the hearing examiner, which is a part of the procedure, precedent to the cutting off of funds, the testimony given by the Department of Health, Education, and Welfare, one of their witnesses pointed out, as an example, that it would be up to the State to see that a private physician, to whom Federal money was paid through the conduit of the State department, provide desegregated waiting rooms and desegregated restrooms, even though the private physician received the money indirectly through the State department.

I will confine myself to that, if that answers your question.

The situation with nursing homes is similar to the situation with church homes except that most church homes will receive a child and will charge the State nothing. The contention—as I understand it, although it may not be directly in the testimony, was that we could not use Federal money to pay case workers who go out and assist needy children who could be taken care of by church homes and other institutions if the case worker selects or refers the child, counsels with the child's family, plans visits or gives any guidance when the church home or facility refuses to take children of both races. I understand we could not do this even if this is the only or best place for the child and even if the court having jurisdiction of the child directed this kind of plan.

This would be an instance in which the church home does not even receive 1 penny from the State of Alabama to take and care for the child.

Senator GORE. Thank you, Mr. Chairman.

The CHAIRMAN. Governor, I am familiar with some of these cases where Federal agents have undertaken to exceed their authority.

It has been my impression that the people here in Washington at the departmental level have been more sensible and more reasonable than some of these agents that they send out in the field—although that has not always been the case.

With regard to hospitalization, we have seen cases of the kind that you are describing where we cannot provide hospital care for people because they have an agent out in the field who thinks that integration of the races is more important than health or even life itself. They act as if a person has to choose between life and integration, and that they must be integrated first before they can live.

Now, we had this problem with regard to hospitals in my hometown—trying to provide the older sick people with their medical care benefits. The hospital was willing to do everything these Federal agents insisted, except they felt they should not be required to go down

on their own account and buy an ad in the newspaper and advertise that they were doing all this integration. They felt that was going one step too far, and they would not agree to that. We finally persuaded the Federal agents to let us go ahead and provide medical care for sick people without having to humiliate the people at the hospital by advertising that they were doing all these various and sundry acts that Federal agents insisted upon. They were willing to integrate, but they did not feel the law required them to buy an ad in the newspaper and advertise it.

Some of the arbitrary things of that sort are still responsible for the fact that a great many of the sick people in Louisiana cannot get the medical care they need—the medicare that Congress promised them.

We had a parallel situation in regard to education in one area where we were getting some Federal money. The Federal agent contended that although the court said he does not have the right to bus the children from a predominantly Negro school to a white school and vice versa, he did have the right to bus the teachers. Our people were told, "You don't get the money available to you—an impacted school area—to educate your children unless you bus white teachers into the Negro schools and bus Negro teachers into the white schools."

In many instances children would be deprived of the teachers they like most in order to satisfy some fellow here in Washington, or some fellow sent out from Washington who has some degree in advanced sociology in some Eastern college where they have very little experience with the kinds of problem we have to deal with.

So I can understand something of your problem.

May I say that my experience at the Washington level, when these people come to us has been that we have been able to win most of these arbitrary fights here. Unfortunately at the State level a lot of people just do not know that perhaps their Senators and Congressmen might be able to keep some agent in the field from being as completely ridiculous and arbitrary as some of those people have tried to be.

I quite agree with you that you certainly have a right to have your day in court, and I must say I have a great deal of sympathy for the position you are taking in this matter.

Mr. WALLACE. Thank you, Senator.

The CHAIRMAN. Senator Williams.

Senator WILLIAMS. Just for clarification. It is my understanding that all you are asking is a continuation of the Federal aid until the courts have made a determination as to the legality of these regulations.

Is that correct?

Mr. WALLACE. Yes, sir. Senator, we are asking that you recommend that we continue until it is adjudicated in the courts. In fact, a motion was filed before Secretary Gardner—and I believe Senator Hill was involved in helping us—asking him to do what we are asking you to recommend, and the Secretary denied it. All we are asking is that the courts adjudicate this, and if they say you have to do it, we will do it—whether we like it or not.

I don't think we are going to like some of the things they make us do all along. But we will do whatever the courts require us to do.

Senator WILLIAMS. You have answered the second question—that is, that the State of Alabama would abide by whatever decision may be handed down in that connection.

Mr. WALLACE. Yes, sir. We will abide definitely by the court decision.

Senator WILLIAMS. That was my question.

Mr. WALLACE. We might, of course, on a district level, if it is not to our liking, we may appeal. But in the final determination, it will be obeyed; yes, sir.

The CHAIRMAN. Well, as I understand further, Governor, you are willing not only—if I understand your position—your State is willing to abide by any decision to which your State has been a party. But what would your view be with regard to a decision where your State is not a party, but the same issue was decided by a court where some other State was a party?

Mr. WALLACE. Well, if the facts were different, we might feel that we ought to have our day in court. We have seen an instance right in the Fifth Circuit Court of Appeals here, where the Fifth Circuit Court has just overruled four of their prior decisions on the matter of the 1954 decision.

But we would obey whatever is a final determination in the highest court; yes, sir.

The CHAIRMAN. That Fifth Circuit Court also undertook by a 2-to-1 margin—it tried to decide about four other cases that they had never even heard, as I understand it.

I regret to say one of those judges came from Louisiana. If we had known about that, I have some doubt he would have been on the circuit court, but that is just the misfortune we had. We did not recommend him to begin with.

I don't care to make any invidious comparison, but that was a Republican nomination. We were not consulted about that one.

While Senator Ellender and I may be at fault for a lot of things, we are not at fault for that appointment.

But that was a very amazing situation, to see a judge undertake to decide cases in advance without hearing the facts—which I understand was the effort there. I would certainly hope the district courts in the area would not feel that a 2-to-1 margin on a circuit court can decide cases that have never even been heard.

Senator HILL. It was two out of some 12 or 13 judges; was it not?

The CHAIRMAN. That's right, sir.

Senator HILL. In other words, what the decision of the court—the majority of the sitting judges—might be, members of that court might be entirely different from that 2-to-1 decision.

Is that correct, sir?

The CHAIRMAN. That is right.

As I understand your position, Governor, where the facts are on all fours and the case has been heard, and the people of the State have had their remedy as far as judicial review is concerned, if those are the same facts—even if it is with regard to some other case—you would expect to abide by that?

Mr. WALLACE. Yes, sir. I would say we would expect to abide by it. I do not want to leave out the fact that we might want to continue in the court and see if we could not finally get—you know, the courts of the land are pretty bad in reversing themselves and destroying precedents, and someday the pendulum might start swinging the other way, and they might start reversing themselves on some of these cases. In fact, I think that is going to happen one of these days.

You did not ask me to get into the court business, but the Federal judiciary in this country are just about unbridled, and the people of our country are getting pretty sick and tired of judicial rules in our country. I am. The people in our State, and I think your State—I cannot speak for your State, but all over the country—I would hope someday we might have a reversal of some of these decisions.

The CHAIRMAN. Senator Talmadge.

Senator TALMADGE. Governor Wallace, may I say at the outset I did not support this legislation because I thought title VI was the most dangerous delegation of power in the history of our Republic.

As I understand the issue, the Secretary of Health, Education, and Welfare has determined that the State of Alabama is not in compliance with title VI and has cut off, effective February 28, some $100 million a year in various Federal welfare programs.

Is that correct?

Mr. WALLACE. Yes, sir.

Senator TALMADGE. Those particular welfare programs, as I understand it, relate to old age assistance, medical assistance to the aged, aid to families and dependent children, child welfare services, aid to the blind, and aid to the permanently and totally disabled.

Are those the programs involved?

Mr. WALLACE. Yes, sir.

Senator TALMADGE. How many people in Alabama are involved in these?

Mr. WALLACE. 200,000 in all categories.

Senator TALMADGE. Those are the sick, and the old and blind and lame, and people of that type?

Mr. WALLACE. That is correct.

Senator TALMADGE. Orphaned children?

Mr. WALLACE. That is correct.

Senator TALMADGE. Are any of them guilty of violating title VI?

Mr. WALLACE. No, sir, not a one of them.

Senator TALMADGE. Now, as I understand the issue further, does the Secretary of Health, Education, and Welfare say that the State of Alabama has discriminated in any of these areas in the handling of funds?

Mr. WALLACE. I don't believe they have. They say we are not in compliance because we have not signed a paper.

Senator TALMADGE. Simply because you did not sign a contract agreeing to abide by any regulation that the Secretary of Health, Education, and Welfare might make in the future, is that correct?

Mr. WALLACE. That is correct.

Senator TALMADGE. They are not contending that the State of Alabama is denying assistance to Negroes or discriminating on the old age assistance, are they?

Mr. WALLACE. No, sir.

Senator TALMADGE. Nor your medical assistance to the aged, nor your aid to families with dependent children?

Mr. WALLACE. That's right.

Senator TALMADGE. Nor your child welfare services, nor aid to the blind nor aid to the totally and permanently disabled. There is no contention on the Secretary's part that you are discriminating against any of these individuals under any of these programs.

Mr. WALLACE. That's right. And there are no complaints.

Senator TALMADGE. I am certain that Congress had in mind that Federal funds would not be used for the purpose of discrimination. I thought it was a dangerous delegation of power, and I opposed it. But all of the debate that took place on the floor of the U.S. Senate by the proponents of this measure was that no State could utilize Federal funds for the purpose of discrimination.

Has the State of Alabama discriminated in any way?

Mr. WALLACE. No, sir.

Senator TALMADGE. Has the Federal Government accused you of discriminating in any way?

Mr. WALLACE. No, sir—other than we did not sign the form.

Senator TALMADGE. They have merely accused you of not signing a form that the Secretary's subordinates prepared for him, is that the issue?

Mr. WALLACE. That is correct.

Senator TALMADGE. You are agreeing to abide by anything the courts uphold?

Mr. WALLACE. Yes, sir. And we would say we are in compliance with title VI, and that is the law of the land, and you cannot discriminate. We are in compliance, and we will abide by any court decision involving these regulations.

Senator TALMADGE. It seems entirely reasonable to me. I cannot for the life of me understand how anyone could conceive that he ought to punish 200,000 innocent people in any State simply because some State official has refused to sign a contractual agreement delegating some power to some Federal official to make up further regulations as he sees fit.

Mr. WALLACE. That's correct, sir.

Senator TALMADGE. An open ended contract, and no one would know where it would ever wind up.

They have not gone into court and tried to enjoin the State of Alabama from any discriminatory program in any way?

Mr. WALLACE. No, sir. There has been no suit filed other than, I believe, an individual has filed a suit—has filed a needy-dependent-children suit, contesting the regulation that says that if an able-bodied man lives in the house with you, and you have children, that you cannot draw aid if he is able bodied. And they are contending that a woman has a right to let any man live in the house with her who wants to live with her, and still get the welfare money.

We always had a regulation that if a person had an able-bodied man living in the home as a husband or a common law husband they should provide for the children. But now that is being attacked in a suit which claims a woman who has children by someone else, illegitimate children, has a right to have anybody live in the house with them they want to, and still draw aid.

I will have to amend that by saying they have attacked that regulation. That is an individual suit, though.

Senator TALMADGE. And the sole issue involved here is whether or not some Alabama official will sign a piece of paper?

Mr. WALLACE. That is correct.

Senator TALMADGE. It doesn't relate to discrimination in any way, shape, or form?

Mr. WALLACE. No, sir.

Senator TALMADGE. Thank you, sir.

The CHAIRMAN. Could I pin that down a little bit more directly?

Anticipating what some of the response might be from the Secretary or his representative—they might contend that what they mean here when they say "regulations issued pursuant to this title" is that the future regulation would be something they had a legal right to do.

Now, to sharpen that issue, would Alabama be willing to sign this agreement if that requirement about regulations issued pursuant to this title was amended to say regulations that had the support of title VI—regulations that clearly fall within title VI?

In other words, if we reserve to Alabama the right to decline to abide by a regulation which Alabama feels the Federal Government has no right to insist upon, and to contest that in the courts—if we could get that agreed on the other end—would that resolve this issue?

Mr. WALLACE. Senator, our position is a little bit different from that in the sense that you are asking the question if they remove the requirement that you agree to abide by regulations in the future, would we be willing to sign it.

There are some regulations that, as we said, we think go beyond the law.

Of course we also think—and we think this ought to be tested, and I think it is going to be tested in court—as to whether or not any agency can require you to sign in advance that you will abide by the law. We feel that everyone is presumed that they will abide by the law. And this is almost an innovation over the years, in the civil rights cases to require people to sign in advance that they will abide by the law. Whereas we find in the cases involving loyalty oaths that the courts have gone to all pains to say that deprives people of their rights, in having to sign oaths and requirements that they will not do so and so.

We think any agency is assumed and presumed to obey the law. If they don't obey the law, they should be punished.

But we think on broad principles and constitutional grounds we should not be required to sign anything. However, if the courts say "You must sign," and these regulations are valid, then we will sign.

In other words, actually this says that when you sign it, it is a contractual agreement enforceable in the courts.

Now, suppose this civil rights law would be repealed some day and we have signed a contract with them to carry on under this Department any regulations they issue.

The CHAIRMAN. I do not contend for that at all. My only thought about this matter is that both you and the Secretary and this committee have a responsibility to 200,000 unfortunate people whose support and existence is threatened by this cutoff of these funds.

I would hope that we do not get down to a point where on either side, the Federal side or the State side, we are standing on a matter of pride. I think that the State has every right to insist that it not be required to forgo its rights. The point you are talking about, about the power of this contract in the event the law repealed it, that seems to me to present no problem—I don't think the Federal Government contends that.

My only thought is that I would like to see this resolved in such a way that those people would get the assistance they are entitled to under the law, and that Alabama not be required to surrender its sovereignty or to abide by arbitrary and illegal orders of some Federal agent.

I just wanted to see if we could have some understanding that if we obtain an amendment to this, perhaps we might find a basis upon which this matter could be resolved.

I personally think it would be an absolute tragedy to have 200,000 people denied what little meager funds they are getting, which they so badly need. At the same time I know how sometimes positions can get frozen in these matters so they cannot be resolved the way they should.

It seems to me the worst thing to happen would be for the Secretary's order to go into effect.

Mr. WALLACE. Senator, we are in accord. Whatever the court says, we will do. And if they require you to sign this, and these regulations are valid, that will dispose of it.

Senator HILL. Mr. Chairman, certainly Alabama is entitled to its day in court. From the Magna Carta down to date, that has been a fundamental principle of our justice.

The CHAIRMAN. I would like to ask just a few additional questions.

In your statement you have stated that Health, Education, and Welfare has refused to let you present additional information on this matter or additional evidence.

Can you give us some indication of what this additional evidence consists of?

Mr. WALLACE. Senator, if you would let Mr. King, the commissioner—would you let him answer that?

Mr. KING. My name is Ruben King, commissioner of the State department of pensions and security.

Additional information was available which we tried to present to the Secretary and the information was briefly this—that there have been a number of hospitals that have been certified for medicare in the State, there have been a number of day care centers, nursing homes that have been certified to receive Federal funds and are private institutions since the original proceedings before the hearing examiner.

We thought this was pertinent to the question, because it showed that there was evidence in the State of compliance with title VI, and he refused to accept this evidence.

Many of these hospitals and nursing homes had come into compliance so they could receive funds under title XVIII of the medicare program and also expanded facilities so that they could provide services.

We thought this information was very pertinent because it did show that there was progress in the State of Alabama toward complying with title VI of the act.

The CHAIRMAN. Now, section 602 of the Civil Rights Act permits a cutoff of Federal funds for a program "or a part thereof" which is not in compliance. That being the case, shouldn't the Federal payments be continued for the welfare program to the extent that these programs—that these complying institutions are utilized?

Mr. KING. Mr. Chairman, we stated from the very beginning that we are in compliance with all the programs. I have written two different letters to the Secretary. I have even done more than that. I came to Washington personally before a hearing examiner and stated on the record that we were in compliance with the program of the Department. I don't know how much more they want. I don't know how much more assurance they want from us.

I think we have done more than any State in the Union to assure the Department of Health, Education, and Welfare that we are in compliance.

The CHAIRMAN. Does the Secretary deny that you are in compliance—that is——

Mr. KING. He says we are not in compliance because we have not signed the compliance form.

The CHAIRMAN. That gets me to the next point.

Did the Secretary of Health, Education, and Welfare advise you in detail of specific acts of discrimination in specific cases?

Mr. KING. We have never been advised of any specific instances of discrimination in direct grants to the recipient. They have contended in some cases that the fact that the Negro population of the State of Alabama is approximately 30 percent of the population and the fact that only 7½ percent of the recipients in nursing homes were Negroes, they insinuated that in itself was discrimination.

This is in regard to these third party situations that we keep on talking about.

We tried to show to the Commissioner—and I stated it publicly and privately—that I think it is a credit to the Negro race that when their people get old they want to keep them in their own homes. And yet they say the fact that you have 30 percent of your population Negro and only 7½ percent of your welfare recipients in nursing homes are Negro, that that in itself is discrimination.

They have come out with all these types of vague situations and tried to insinuate there was discrimination in the welfare program in the State, and there have been no such cases, there have been no such instances where it has been brought to my attention as commissioner.

I have stated, and I stated in public, before the hearing examiner, that I have known on no case where a Negro applicant made application for a nursing home and was denied admission because of that. There is no waiting list. And that is what we tried to get across to these people.

The CHAIRMAN. In other words, because a lot of aged Negro citizens are living in their little places on the land, which a lot of old people like to do, prefer to stay there rather than have somebody move them away from the land into a nursing home, someone comes out of some distant area and wants to suggest that that constitutes discrimination, when there is no showing that those people would prefer it the other way around. If they prefer to stay in their little home and live there——

Mr. KING. They are much better off, Senator, if they would do it.

Senator MORTON. Mr. Chairman—of course that elderly person staying in that home is probably drawing a welfare benefit under the old-age assistance program, and the family utilizes that money to care for this aged person. The whole family unit is probably better off than

denying that income to the family and moving the older citizen to a nursing establishment.

Mr. KING. Not only that, Senator, but it is also a great saving to the taxpayers of the country, too.

The CHAIRMAN. Of course, if those people wanted to be moved—if they requested to be moved, you would move them, I assume, on the same basis as anyone else.

Mr. KING. That is correct, Senator. I say again to this committee that there is no discrimination in the welfare program in the State of Alabama. In fact, I think we go overboard to see our aged citizens, not only in Alabama—not only the aged citizens, but all other needy people get help.

I would like to point out to this committee that 388 people out of every thousand over the age of 65 in the State of Alabama gets assistance from the department of pensions and security, and the only State in the Union with a higher percentage is the State of Louisiana, which has approximately 500 out of every thousand.

I think that the record itself and the figures that are available to this committee is ample evidence there is no discrimination in the welfare program in the State of Alabama.

The CHAIRMAN. Was there any testimony alleging specific acts of discrimination in the administration—this is repetitious—was there any testimony alleging specific acts of discrimination in the administration of Alabama's welfare programs which were called to your attention by HEW? I am talking about specific acts.

Mr. KING. No, sir.

The CHAIRMAN. None.

Mr. KING. No, sir.

The CHAIRMAN. Has Alabama developed a plan for continuing payments to welfare recipients in the event Federal funds are cut off on March 1?

Mr. KING. No, sir, we have not, because we feel very confident in the fairness of this committee, and its recommendations to the Secretary, and we also have confidence in the courts of this country that they are not going to let 200,000 innocent people in the State of Alabama be punished by a bureaucrat here in Washington who knows nothing whatsoever about the problems confronting the people of the State of Alabama.

The CHAIRMAN. Why did the Secretary refuse to permit Alabama to include in its title XIX medicare program this along with other welfare programs at issue?

Mr. KING. Well, we don't really know why. We think that it presents some of the same problems we have discussed before this committee today, and we thought that we could get the problem solved at the same time. We asked that he include title XIX and he refused to do so.

The CHAIRMAN. May I say this sounds to me to be pretty parallel to the situation in Baton Rouge, where the people could not get the care because the hospital would not buy an ad in the newspaper and advertise it was doing all these various things, bowing down, advocated by some Federal official. And for the lack of satisfying the bureaucratic pride of some agent they said the people could not have the help.

Senator HILL. As you know, Mobile is the second largest city in

Alabama. We have a very fine hospital there, the Mobile Infirmary.

Now, when the Mobile Infirmary realized we were going to have medicare, it spent several millions of dollars to provide a hundred additional rooms to take care of medicare patients. And yet the Mobile Infirmary has been refused certification for medicare patients, although all of the evidence shows, all the evidence before the Department of Health, Education, and Welfare—there is absolutely no discrimination within that hospital. Patients are admitted, they have the same rooms as white patients, rooms with white patients. The hospital—the doctors that send patients there have solemnly agreed that every patient in Mobile, Ala., can select that hospital if he or she sees fit to do so, to go to that hospital.

Any patient that wants to come to that hospital, white or nonwhite, is admitted. And when admitted there is absolutely no segregation whatever.

The CHAIRMAN. Senator Morton.

Senator MORTON. Governor, just two points I would like to clear up in my own mind.

Did I understand that Senator Hill, the senior Senator from Alabama, the chairman of the important Labor, Education, and Welfare Committee in the Senate—has asked the Secretary to delay this decision until the declaratory judgment is laid down?

Is that correct?

Senator HILL. That's correct—until the court acts on it.

Senator MORTON. Did the Senator get assurances that this would or would not be done?

Senator HILL. No. We got assurances yesterday this would not be done. They denied it.

Senator MORTON. Therefore——

Senator HILL. They denied it.

Senator MORTON. Therefore, the narrow purport of this hearing, as requested by Governor Wallace, is that this committee use its influence with the Secretary to get the stay of this denial until the court acts.

Senator HILL. That is correct.

Senator MORTON. This is the issue. I wanted to clear that up. I didn't know whether you actually had made the request or whether you intended to make it.

Senator HILL. That's correct, sir.

Senator MORTON. One other point.

As I read these regulations, particularly this handbook—which HEW holds up to be within the law, they would require advance assurances from Alabama or any other State that the programs which you set up comply with the Civil Rights Act. That is clear. And I draw this implication further—that it would require you or any other State to spell out the steps that you take or expect to take to eliminate any present discrimination and, therefore, assure conformity.

Now, if I am correct in my understanding of these regulations—and especially this handbook—this clearly puts the burden of proof on not only Alabama, but on each of the 50 States. In other words, you are not in compliance until you prove yourself innocent, so to speak. In other words, you are guilty until you prove innocence. Conversely, if the courts do not hold that the handbook here, or

pamphlet, whatever it is, delineating these regulations and amplifying them—if this is not within the intent of the law in title VI, then to deny funds the Federal Government would have to prove discrimination before it could deny the funds to Alabama, Kentucky, or any other State in the Union.

Isn't this latter course within the entire tradition of our jurisprudence? Isn't this former course, which apparently they are taking in denying you these funds, not on the basis of any specific case in Selma, Montgomery, Talladega, or anywhere else, but because you refuse to sign a paper which commits you down the road to the theory that you are constantly guilty until you yourself prove your innocence.

Mr. WALLACE. That is correct. That is the principle; yes, sir.

Senator MORTON. That is it in a nutshell.

Mr. WALLACE. That is correct.

Senator MORTON. The specific reason you are here is to get us to use our good offices if we can, to influence the Department and the Secretary to stay this denial to you of funds, you as a conduit. Technically, as Senator Gore pointed out, you are a recipient, but you are really a conduit for these six specific funds, old-age assistance, medical assistance for the aged, aid to families with dependent children, child welfare services, aid to the blind, and aid to the permanently and totally disabled. That is the issue, it's as narrow as that. We are in the realm of speculation when we go beyond this into the implications of what the court decision may be.

But your immediate problem is to stay the execution of this order—not that Alabama gets anything out of it as a State, except for your great responsibility to these 200,000 people that are involved.

Mr. WALLACE. Yes.

Senator MORTON. Thank you.

The CHAIRMAN. Senator Hartke.

Senator HARTKE. Governor, you really don't like this law, do you?

Mr. WALLACE. Sir?

Senator HARTKE. You really don't like this law, do you?

Mr. WALLACE. You mean the civil rights law? No, sir, I don't like the civil rights law, Senator, just like other members of this committee do not like it, because they opposed it and filibustered and spoke longer than I did against it, but it is the law of the land and must be obeyed.

Senator HARTKE. Why don't you obey it, then?

Mr. WALLACE. I have obeyed it.

Senator HARTKE. The law says very clearly here, whether you like it or not, that the regulations are part of the law.

Mr. WALLACE. That is what the law says, but the law can be interpreted in the courts and adjudicated, and we have gone into court. And you folks have gone into court on the side that you represent on everything from the school decision in 1954 until this date. We are in the courts. We are in the Federal courts. If the Federal courts say these regulations are legal, then Alabama will abide by them. But we don't expect to abide by them until the courts say so.

Senator HARTKE. What we are dealing with here is with human rights, is that right?

Mr. WALLACE. Sir?

Senator HARTKE. What we are dealing with in the Civil Rights Act is with human rights.

Mr. WALLACE. That's right.

Senator HARTKE. What you are saying is that because this law is interpreted by you in a fashion which you say is contrary to the way the Department has interpreted it, that material rights are being denied to your citizens because human rights are going to be protected.

Mr. WALLACE. Well, I don't quite get you. But I do say, Senator, that 200,000 people—human rights are involved. We hear a lot about human rights in Washington, property rights and human rights. And one of the greatest of human rights, I think, is the right of your indigent, and disabled and crippled and blind to receive assistance from the State. That has been accepted. And so we don't say that we have a right to interpret the law. We have a right to ask and present our interpretation to the courts. That is what we are doing. And I don't think there is any fairer way to adjudicate this matter than to go into the court. We are in the courts. But Mr. Gardner has denied a request to continue to feed 90-year-old people, blind people, crippled people that can hardly get out of a wheelchair because he doesn't like what Mr. King does.

We are going to punish folks because of what Mr. King does or I do. Punish us. If we violate the law, you put us in jail. But don't starve somebody to death.

Senator HARTKE. There is nothing in here that says if you don't follow this regulation anybody is going to jail. It doesn't say anything about that. There is nothing in this regulation that says anything about if you do not want to follow the regulations you can voluntarily choose—which you have voluntarily chosen to do. You can voluntarily choose on your own accord to deny these 200,000 people these material benefits. You have made that choice, and you are entitled to it.

Mr. WALLACE. No, sir, I don't——

Senator HARTKE. Wait a minute. You can have your time when I am done. You have voluntarily chosen to deny to your own citizens of your State all of these funds which you are crying about here today. You have made this choice, to deny these people these funds on the basis that you do not, first, like the law, you do not like the interpretation of the law, and you want the court——

Mr. WALLACE. Senator——

Senator HARTKE. Just a moment, now. You want the court to issue in effect an injunction against the Department of Health, Education, and Welfare which is not provided for in the law.

Now, there is a simple way for you to provide all of this money. You can sign your statement. You can go ahead and comply with the law. And you can still proceed in the courts. Then if you go ahead and are right in the courts, then these people will not be denied these benefits in the interim.

But this is your choice.

I think this should not go unchallenged here, that you have made the choice, not the Federal Government. You have made the choice not to comply with the law. You have made the choice not to comply with the regulations. You have made the choice to deny these people, these old people, these things for which you claim here today you have such great sympathy. You have made the choice to deny them these material benefits.

Now, if you want to go ahead to the courts and challenge the law, that is one thing. You are within your rights to do it. But I don't think you have any right under this law as presently written to ask for an injunction because there is no procedure outlined for such an action.

Mr. WALLACE. Senator, in answering that—of course I reject your statement that I am responsible for cutting off the funds. The Administrative Procedure Act provides for postponement of withdrawal of funds pending judicial review. The Civil Rights Act itself provides for judicial review. Alabama determined that the correct course of action regarding the welfare issue was to exhaust every available administrative remedy before seeking judicial review. By this course of action it was hoped that Alabama not only could acquaint HEW with the actual situation confronting the agency, but could raise the actual legal issues involved. At the same time these matters were being studied, the Justice Department was insisting in another case in Alabama that judicial review in these civil rights cases should not be granted without exhausting administrative remedies. I made no order to cut the funds off. Mr. Gardner made the order to cut the funds off. And Mr. Gardner made the order to cut the funds off in spite of the fact that we filed a proceeding in the courts asking for a judicial determination of whether or not these regulations were valid.

What you are saying is that we ought to have signed something that we thought was invalid and go into court and asked them to invalidate that.

Senator HARTKE. All I am saying is you have decided not to comply with the law as interpreted by the agency of the Federal Government which is providing the money. You made that decision voluntarily on your own volition, and you are denying those benefits on your volition. I happen to think that law is right. Your proposition and your contention of the law was rejected by the Congress.

Now, this happens to be the way we work here. We still live in a country where the Congress passes the laws and courts interpret them. If you want to complain there is something unconstitutional, invalid, in a regulation or in the law, you are within your rights. But you have no right, in my opinion, to come here and accuse the Department of doing something which the Congress has directed them to do.

The CHAIRMAN. Senator, let the witness answer the question now, and then you can ask your next question. In trying to preside over this hearing, I think it is well that both the Senator and the witness be permitted to fully state their position.

Senator HARTKE. I have been here now since 10 o'clock, Mr. Chairman. It is a quarter to 12. I have watched that, because I thought this would come up. I am always at the end. I have been on this exactly 4½ minutes right now. I don't think that is fair—when this whole proceeding has been completely one sided so far.

The CHAIRMAN. I apologize that we have not gotten to you before this time. I would have liked to have gotten to you prior to this. But all I am saying is when one Senator feels strongly about something and the witness is stating his position, that the record should show both what the Senator's position is and what the witness' answer is.

I will sit with you from this time until this time tomorrow, if necessary, to make the record clear. But the witness should be allowed to answer the question and then you can go ahead to your next one.

Senator HARTKE. Isn't your position that you want to have the judicial review and approval of the Department's regulations in this case before there is compliance, but in the meantime you want to go ahead and have the money distributed to you?

Mr. WALLACE. No, sir; that is not correct.

Senator HARTKE. You want the money?

Mr. WALLACE. Yes, sir; we want the money.

Senator HARTKE. You want the money without following——

Mr. WALLACE. No, sir. We have told you and our commissioner has told you we are in compliance. And you say we are not. What evidence do you have?

Senator HARTKE. I am not saying you are not. The Department said you are not.

Mr. KING. That is our contention, Senator, that we are.

Mr. WALLACE. The Department will be here tomorrow. We are in compliance. There is no discrimination in the disbursement, the handling of funds to the recipients as a result of race, color, creed, or national origin.

Of course there is no evidence that you have that we are not in compliance. We are in compliance. We have gone into court. When Mr. Gardner says he is going to cut the money off, Mr. Gardner is responsible.

I again say that we have, even in the medicare program—there is no insistence that a person sign even a loyalty oath or anti-Communist oath. And there is no insistence that a schoolteacher sign a loyalty oath, because that violates his rights.

Well, Alabama and the commissioner have rights, too.

This is a vague and indefinite proposition. We have gone into court about it. If they apply the same analogy and the same logic as they do in the other cases, they will say you cannot be forced to sign something that is vague and indefinite. We don't know but what the Department may in the future issue a regulation that people who are incurable in nursing homes can have no Federal money spent upon the prolongation of life. That is an extreme case. But suppose they did that. We don't want to agree in advance.

We are in compliance with the law. The only people who say we are not in compliance is Mr. Gardner and his staff who say we are not in compliance because we have not signed a piece of paper. And that is not in itself the criterion.

We want the money for those folks because it is the only money they can get. It is Federal money, but it is taxpayers' money. It is not generated by the Federal Government or State or city governments. It is generated by the taxpayers of America.

We are talking about poverty and human rights. We have to have a poverty program, to bring everybody up. Here we come along with a program to cut money off because somebody won't sign a paper.

Senator HARTKE. Mr. Chairman, I just call your attention to this. The answer has no relevance to the question whatsoever. But I did not interrupt him as he attempted to interrupt me. I let him go ahead and make his statement.

Have you signed and undertaken the responsibility that you will achieve nondiscrimination in Alabama?

Mr. WALLACE. Have we signed what, Senator?

Senator HARTKE. An undertaking of responsibility is required by the law and the regulations——

Mr. WALLACE. Required by this law?

Senator HARTKE. Required by this law.

Mr. WALLACE. You are assuming there is discrimination. We tell you there is no discrimination. Instead of signing it, I tell you as the former Governor of Alabama that there is no discrimination in Alabama. I don't think you have any facts to point out there is discrimination in Alabama, because I don't think you have been there in a long time, and I don't think you are aware of the facts regarding this program. But I give you my word there is no discrimination in this program in Alabama.

I would say that if a Governor or a Senator gives me his word, I would accept it.

Senator HARTKE. Mr. Chairman, I call your attention to the fact I did not say anything about whether there was any discrimination in Alabama or whether there wasn't. I asked the simple question as to whether or not he had signed a certificate of responsibility which could have been answered very simply. But we get a speech every time.

Mr. WALLACE. You are very good at that yourself, Senator.

Senator HARTKE. Let me say to you, sir, I happen to be in the position where it is all right. This happens to be the U.S. Senate, and there is no rule against a Senator speaking.

Mr. WALLACE. I realize that.

Senator HARTKE. You said here you are going to do what the courts say you should do. But you also have said you are also going to try to change the court's interpretations—even if the court decision comes out against you—that you are going to continue to go as long as you can, so you can change the court's decision, is that right?

Mr. WALLACE. That's correct.

Senator HARTKE. Do you intend to abide by a court decision when it is rendered?

Mr. WALLACE. Yes, sir.

Senator HARTKE. Or do you intend to continue to not comply——

Mr. WALLACE. I have never defied a court decision in my life. There have been many more issued in my State regarding the Governor's office than has been issued in any State of the Union, and every one of them has been abided by. And not a single time has any State official been held in contempt or cited for contempt.

Senator HARTKE. Is this your contention? Let me see if I have this right now—if you will listen. That no beneficiary is denied benefits in Alabama because of race, even though such benefits may be provided on a segregated—on a segregated or direct basis.

Mr. WALLACE. Senator, I didn't get the first part of your question, sir.

Senator HARTKE. Do you contend that no—is this your contention——

Mr. WALLACE. What's that? I don't hear good, really.

Senator HARTKE. Is this your contention—that no beneficiary is denied benefits in Alabama because of race even though such benefits may be provided on a segregated or discriminatory basis.

Mr. WALLACE. Well, you are assuming that—I don't exactly know what your question is. Are you talking about the fact that some disabled person might be examined by a doctor that has segregated waiting rooms? I would say there is no discrimination in this program in Alabama. There has been no charge of discrimination, other than the Secretary says we did not sign the compliance. No individuals have complained to the Department. In fact, there are not any complaints.

Senator HARTKE. If there is no discrimination, and there is no segregation, then why wouldn't you be willing to make a statement and sign the statement? If there is no such discrimination, then you could make a statement that you will achieve integration here in the situation and provide the same type of treatment that the law requires under title VI.

Mr. WALLACE. We say that we will provide the same kind of treatment.

Senator HARTKE. But only if the court orders it.

Mr. WALLACE. No, we say it now. I am saying it now. Even before the court orders it. We are going to sign this vague and indefinite statement if the court orders us. But we have always said in written communication to HEW there is no discrimination and we will not discriminate. And that is written and signed. But they come back and say, "You must go further than to say you will abide by the law." We said we will abide by the law.

Senator HARTKE. You said——

Mr. WALLACE. Of course you mentioned about segregation. Yes, sir, we have some segregation in Alabama. But there is some of it in Indiana, too. In fact, one of the top leaders not long ago said there is about as much in Indiana as any State of the Union, since Chicago was the most segregated city. I don't want to get into segregation talk.

Senator HARTKE. Chicago is not in Indiana.

Mr. WALLACE. No. I am just mentioning Illinois—East Chicago, though, is, and Hamlin. If I ever get out of Alabama, I am going to move there.

Senator HARTKE. I will say one thing—it's a wonderful State.

Mr. WALLACE. It is a wonderful State. And I carried one of those delegates up there—the Governor said law or no law you were not going to get them. Anyway, that's great country. I like the steelworkers up there.

Senator HARTKE. Well, that's not exactly right. I don't think I will go into that, either.

Let me ask you this.

You said you were denied the right to provide additional evidence, I think one of your gentlemen said that. Is that a correct statement?

Mr. WALLACE. That's right.

Senator HARTKE. Your name?

Mr. KING. I am Ruben King.

Senator HARTKE. You are the Mr. King to whom they refer?

Mr. KING. Yes, sir.

Senator HARTKE. Mr. King, what you wanted to provide was evidence of decreased ratio of discrimination, is that correct?

Mr. KING. That is correct, sir.

Senator HARTKE. You see, that's an admission there is racial discrimination.

With that, I quit. Those are all the questions I have, sir.

Mr. KING. I would like to answer the question.

Senator HARTKE. You answered the question.

Mr. KING. You asked the question. Let me answer it. You assume because we were refused the opportunity to present this evidence that that in itself showed that there is discrimination.

No, sir, we have not admitted there is discrimination.

There are hospitals and nursing homes that were trying to comply with provisions of title XVIII. These are third party situations and we believe the department of pensions and security has no right to tell these people what to do in their private businesses. But these people are outside the scope of the authority of the Commissioner. And all we want to do is show to the Commissioner that these people were complying with the law.

The CHAIRMAN. Let me read the legislative history on this matter.

Some Members of the Senate point out that this title VI could be a very dangerous thing.

Senator Pastore at that time speaking as the floor manager of the 1964 civil rights bill, made a statement which I am certain had to be cleared with the Department when he made it, because it was in great detail. It is not the kind of thing that a Senator just reels off the top of his head.

He said—on pages 6840–6841 of the Congressional Record, April 7, 1964—

There is finally one additional feature of Title VI which demonstrates beyond doubt that it is not intended to be vindictive or punitive. I am referring to the fact that the authority contained in the title to cut off funds is hedged about with a number of procedural restrictions and requirements. These would hardly be necessary or appropriate if the bill were designed to be punitive or a vindictive measure. But these restrictions have already been briefly described, but let me again summarize what must be done before funds can be cut off. The following would have to occur. First the agency must first adopt a general nondiscriminatory rule, regulation or order. Second, the President must give his approval. Third, the agency must seek to secure compliance by voluntary means. Fourth, the hearing must be held before any formal compliance action is taken. Fifth, the agency may and in many cases will seek to secure compliance by means not involving cut-off of funds. Sixth, if the agency determines that—

This is very important, I believe—

if the agency determines that a refusal or termination of funds is appropriate, it must make an express finding that the particular person from whom funds are to be cut off is still discriminating.

Has that been done?

Mr. KING. No, sir.

The CHAIRMAN. So far as I know, there is no allegation that that has been done.

Seven. The agency must file a written report with the appropriate Congressional committee and 30 days must elapse before further action can be taken. Eight. The aid recipient can obtain judicial review and may apply for a stay pending such review.

As I understand it, that is what you are applying for—a stay of the cutoff order pending judicial review.

Mr. WALLACE. Yes.

The CHAIRMAN. Senator Pastore continues:

Let me recount those eight safeguards to show that action under Title VI is neither precipitous nor punitive. Certainly a piece of legislation that contains this multitude of protections cannot be said to be arbitrary, vindictive or punitive.

That is the legislative history that the Senate had before it when it voted on title VI of the Civil Rights Act.

Senator GORE. Mr. Chairman, I would like to make my views, feelings, and position here as clear as possible.

It is true, as you have cited, Mr. Chairman, that Senator Pastore, former Senator Humphrey, Senator Ribicoff, managers of the bill on the floor made certain statements.

But I suggest to you that the courts do not examine such evidence of congressional intent unless there is ambiguity with respect to the terms of the act which Congress passed.

I believe, to use layman's language, the first rule of construction is that Congress intended to do what it did do.

If there is a dispute about what it did do, then intent is further examined.

Now, at the same time that the record can be cited, as has been done, that such arbitrary power as is here alleged would not be used, the Senate was equally on notice that the terms of the bill which it was considering, if enacted, contained such power.

I must say that I am surprised that several of the States have not already been involved in cutoff of funds.

I was in error in being apprehensive that a number of States and communities would be slow to sign documents, to make indefinite commitments, which under the law I thought could be required.

I want to be perfectly plain about this, Governor Wallace—insofar as I can as a member of this committee—insofar as I can help to alleviate this impasse, I wish to do so.

I say to you in all candor you are not one of my political heroes. I would not be in sympathy with an effort on your part to make a political issue of this. I would not be in sympathy with the administration if it undertook to make a scapegoat of you and the people of Alabama as a political maneuver. What I am desirous to do is to do something, to play some part in preventing this very great hurt to the old, the weak, the young, the blind, the disabled by the thousands in the State of Alabama. This is cruel. We should find a way as between your strong advocacy of a point of view and the administrative authorities to avoid this hurt.

I would not be in sympathy with any failure on the part of Alabama to comply with the provisions of the law regarding unlawful discrimination against any person receiving this aid.

Now, to buttress this, and to make the record clear—since the chairman of the committee has read the statements of Senator Pastore, which were pertinent, I would like to read briefly from the debate in which the other side was presented and in part agreed to.

I hope I will not be held to the requirement of reading the whole debate in order not to be out of context. I will read what I think is pertinent.

Of course you anticipate I am going to read something the senior Senator from Tennessee said:

The word "recipient" is the key to the interpretation of this provision. Of course, there are a number of Federal aid programs in which the contractual relationship is between the Federal Government and the local political subdivision; such, for instance, as aid to federally impacted school districts. Here there would be no major problem about limiting geopraphically application of an order terminating aid. In that case, termination of aid would not be affected by State law. But the situation is different in a great many other programs such, for instance, as aid to vocational agriculture teaching, or aid in the agricultural extension program for home economics teachers. The Senator—

I am referring now to the Senator from Connecticut, Senator Ribicoff, former Secretary of Health, Education, and Welfare—

the Senator has been Governor of his State, and I have, before coming to the Senate, been associated with educational programs in my State, so that both of us are familiar with how these programs operate. The contractual relationship in those cases is between the Federal Government and the State.

Mr. RIBICOFF. The Senator is correct.

And, Mr. Chairman, I would like the record to show the extent to which programs are involved or can be involved.

I have here from the record several pages of programs which then Deputy Attorney General Nicholas Katzenbach said were affected by this program.

Just let me read a few of them.

The Department of Agriculture, Area Redevelopment Administration, Bureau of Public Roads, Civil Functions, that is River and Harbor Development—payments to school districts, assistance for school construction, colleges of agriculture and mechanical arts, promotion of vocational education, water supply and water pollution, chronic diseases, communicable diseases activities, control of tuberculsosis, control of venereal diseases, grants for maternal and child welfare, disaster relief, public works acceleration, extension service, soil conservation service.

I would like to put this whole list in the record.

The CHAIRMAN. That will be printed at this point.

(The list referred to follows:)

HOUSE JUDICIARY HEARING ON CIVIL RIGHTS ACT

Programs which may involve Federal financial assistance

	1963 expenditures
Executive Office of the President:	
Office of Emergency Planning: State and local preparedness (p. 52)	0
Funds appropriated to the President:	
Disaster relief: disaster relief (p. 59)	$30,802,000
Expansion of defense production: Revolving fund, Defense Production Act (p. 60)	—56,513,274
Public works acceleration: Public works acceleration (p. 86)	61,843,808
Transitional grants to Alaska: Transitional grants to Alaska (p. 87)	3,110,295
Department of Agriculture:	
Cooperative State Experiment Station Service: Payments and expenses (p. 95)	37,992,460
Extension Service: Cooperative extension work, payments and expenses (p. 96)	74,687,584
Soil Conservation Service:	
Watershed protection (p. 100)	53,092,516
Flood prevention (p. 103)	26,488,410
Great Plains conservation program (p. 104)	9,747,075
Resource conservation and development (p. 105)	0

Programs which may involve Federal financial assistance—Continued

	1963 expenditures
Department of Agriculture—Continued	
Agricultural Marketing Service:	
Payments to States and possessions (p. 113)	$1,432,763
Special milk program (p. 113)	95,369,634
School lunch program (p. 114)	169,597,189
Removal of surplus agricultural commodities (p. 116)	131,805,115
Agricultural Stabilization and Conservation Service:	
Expenses, Agricultural Stabilization and Conservation Service (p. 122)	87,415,517
Sugar Act program (p. 125)	76,929,888
Agricultural conservation program (p. 125)	211,194,214
Land-use adjustment program (p. 127)	2,000,000
Emergency conservation measures (p. 127)	2,701,427
Conservation reserve program (p. 127)	304,342,305
Commodity Credit Corporation:	
Price support and related programs and special milk (p. 132)	3,486,356,042
National Wool Act (p. 137)	69,164,861
Rural Electrification Administration: Loan authorizations (p. 148)	331,656,082
Farmers Home Administration:	
Rural housing grants and loans (p. 151)	184,203,524
Rural renewal (p. 153)	0
Direct loan account (p. 153)	58,948,965
Emergency credit revolving fund (p. 156)	7,888,613
Rural housing for the elderly rovolving fund (p. 155)	0
Forest Service:	
Forest protection and utilization (p. 170)	197,242,562
Assistance to States for tree planting (p. 176)	1,203,697
Payments to Minnesota (Cook, Lake, and St. Louis Counties) from the national forests fund (p. 177)	125,366
Payments to counties, national grasslands (p. 177)	303,074
Payments to school funds, Arizona and New Mexico, act of June 10, 1910 (p. 177)	80,462
Payments to States, national forests fund (p. 177)	27,235,140
Department of Commerce:	
Area Redevelopment Administration:	
Grants for public facilities (p. 188)	476,848
Area redevelopment fund (p. 188)	—499,532
Office of Trade Adjustment: Trade adjustment assistance (p. 202)	2,820
Maritime Administration:	
Ship construction (p. 223)	107,483,152
Operating-differential subsidies (p. 224)	220,676,686
Maritime training (p. 227)	3,297,777
State marine schools (p. 227)	1,420,724
Bureau of Public Roads:	
Forest highways (p. 237)	38,525,999
Public lands highways (p. 239)	2,128,990
Control of outdoor advertising (p. 239)	0
Highway trust fund (p. 241)	[1] 3,017,268,879
Department of Defense:	
Military personnel:	
National Guard personnel, Army (p. 253)	212,109,751
National Guard personnel, Air Force (p. 254)	45,366,036
Operation and maintenance:	
Operation and maintenance, Army National Guard (p. 267)	174,059,283
Operation and maintenance, Air National Guard (p. 268)	193,258,395
National Board for Promotion of Rifle Practice, Army (p. 269)	650,368

[1] This amount is on a checks-issued (gross) basis. Receipts (collections deposited) totaled $3,292,965,983 in fiscal year 1963.

Programs which may involve Federal financial assistance—Continued

	1963 expenditures
Department of Defense—Continued	
Military construction:	
Military construction, Army National Guard (p. 306)	$18,383,216
Military construction, Air National Guard (p. 306)	21,912,946
Civil defense:	
Operation and maintenance, civil defense (p. 313)	34,457,221
Research and development, shelter, and construction, civil defense (p. 314)	11,810,129
Civil functions: Payments to States, Flood Control Act of 1954 (p. 378)	1,613,757
Department of Health, Education, and Welfare:	
Office of Education:	
Promotion and further development of vocational education (p. 402)	34,330,192
Further endowment of colleges of agriculture and mechanic arts (p. 402)	11,950,000
Grants for library services (p. 402)	7,256,890
Payments to school districts (p. 402)	276,910,035
Assistance for school construction (p. 403)	66,241,942
Defense educational activities (p. 404)	198,335,518
Expansion of teaching in education of the mentally retarded (p. 406)	959,631
Expansion of teaching in the education of the deaf (p. 406)	1,382,635
Cooperative research (p. 406)	5,015,385
Foreign language training and area studies (p. 407)	0
Colleges of agriculture and mechanic arts (p. 408)	2,550,000
Promotion of vocational education, act of Feb. 23, 1917 (p. 409)	7,144,113
Office of Vocational Rehabilitation:	
Grants to States (p. 409)	70,651,560
Research and training (p. 410)	24,145,307
Public Health Service:	
Accident prevention (p. 415)	3,679,047
Chronic diseases and health of the aged (p. 416)	16,303,114
Communicable disease activities (p. 417)	10,749,235
Community health practice and research (p. 419)	23,946,767
Control of tuberculosis (p. 420)	6,813,635
Control of venereal diseases (p. 420)	7,843,535
Dental services and resources (p. 421)	2,603,482
Nursing services and resources (p. 422)	8,373,620
Hospital construction activities (p. 423)	187,432,100
George Washington University Hospital construction (p. 424)	0
Aid to medical education (p. 424)	0
Environmental health sciences (p. 425)	0
Air pollution (p. 425)	10,100,876
Milk, food, interstate and community sanitation (p. 426)	8,723,615
Occupational health (p. 427)	4,059,384
Radiological health (p. 428)	13,466,288
Water supply and water pollution control (p. 429)	22,554,121
Grants for waste treatment works construction (p. 430)	51,738,000
National Institutes of Health (pp. 435–444)	723,597,285
Social Security Administration:	
Grants to States for public assistance (p. 460)	2,723,677,540
Training of public welfare personnel (p. 463)	0
Assistance for repatriated U.S. nationals (p. 464)	412,044
Grants for maternal and child welfare (p. 465)	76,057,662
Cooperative research or demonstration projects in social security (p. 468)	952,654
Assistance to refugees in the United States (p. 469)	52,902,237
American Printing House for the Blind: Education of the blind (p. 472)	718,707
Gallaudet College: Salaries and expenses (p. 474)	1,458,615

Programs which may involve Federal financial assistance—Continued

	1963 expenditures
Department of Health, Education, and Welfare—Continued	
Howard University:	
Salaries and expenses (p. 475)	$8,362,261
Construction (p. 476)	2,687,024
Office of the Secretary:	
Juvenile delinquency and youth offenses (p. 480)	4,473,623
Educational television facilities	1,818
Department of the Interior:	
Bureau of Land Management:	
Payments to Oklahoma (royalties) (p. 491)	6,214
Payments to Coos and Douglas Counties, Oreg., from receipts, Coos Bay Wagon Road grant lands (p. 491)	697,449
Payments to counties, Oregon and California grant lands (p. 491)	15,400,136
Payments to States (grazing fees) (p. 492)	917
Payments to States (proceeds of sales) (p. 492)	249,328
Payments to States from grazing receipts, etc., public lands outside grazing districts (p. 492)	183,632
Payments to States from grazing receipts, etc., public lands within grazing districts (p. 492)	200,446
Payments to States from grazing receipts, etc., public lands within grazing districts, miscellaneous (p. 492)	3,902
Payments to States from receipts under Mineral Leasing Act (p. 492)	47,147,555
Payments to counties, national grasslands (p. 492)	92,255
Bureau of Indian Affairs:	
Education and welfare services (p. 493)	77,723,737
Menominee educational grants (p. 499)	396,000
National Park Service: Payment for tax losses on land acquired for Grand Teton National Park (p. 511)	27,287
Bureau of Mines: Drainage of anthracite mines (p. 524)	39,801
Office of Minerals Exploration:	
Salaries and expenses (p. 528)	569,202
Lead and zinc stabilization programs (p. 528)	1,457,023
Bureau of Commercial Fisheries:	
Construction of fishing vessels (p. 533)	543,459
Payment to Alaska from Pribilof Islands fund (p. 536)	702,852
Fisheries loan fund (p. 536)	—1,387,010
Bureau of Sport Fisheries and Wildlife:	
Federal aid in fish restoration and management (p. 542)	5,768,736
Federal aid in wildlife restoration (p. 542)	15,530,052
Payments to counties, national grasslands (p. 543)	—1,970
Payments to counties from receipts under Migratory Bird Conservation Act (p. 543)	582,467
Bureau of Reclamation:	
Construction and rehabilitation (p. 546)	168,185,561
Loan program (p. 551)	14,486,977
Payments to States of Arizona and Nevada (p. 556)	600,000
Upper Colorado River storage project (p. 557)	106,298,150
Department of Labor:	
Office of Manpower, Automation, and Training:	
Manpower development and training activities (p. 600)	51,783,662
Area redevelopment activities: Salaries and expenses (p. 601)	6,676,622
Bureau of Employment Security:	
Unemployment compensation for Federal employees and ex-servicemen (p. 606)	152,858,563
Salaries and expenses, Mexican farm labor program (p. 607)	1,814,958
Farm labor supply revolving fund (p. 608)	1,179,036
Unemployment trust fund (p. 946)	[2] 3,815,629,499
Office of the Secretary: Trade adjustment activities (p. 619)	640

[2] This amount is on a check-issued (gross) basis. Receipts (collections deposited) totaled $4,256,052,867 in fiscal year 1963.

Programs which may involve Federal financial assistance—Continued

	1963 expenditures
Department of State:	
Educational exchange:	
Mutual educational and cultural exchange activities (p. 649)	$26,207,202
Center for cultural and technical interchange between East and West (p. 651)	7,344,731
Federal Aviation Agency: Grants-in-aid for airports (p. 700)	51,493,441
General Services Administration:	
Real property activities: Hospital facilities in the District of Columbia (p. 714)	74,877
Housing and Home Finance Agency:	
Office of the Administrator:	
Urban planning grants (p. 742)	12,388,967
Open-space land grants (p. 743)	265,014
Low-income housing demonstration programs (p. 744)	145,976
College housing loans (p. 745)	283,573,515
Public facility loans (p. 747)	30,047,779
Public works planning (p. 749)	5,864,028
Urban renewal fund (p. 752)	173,208,174
Housing for the elderly funds (p. 757)	18,856,257
Federal National Mortgage Association:	
Special assistance functions fund (p. 761)	—262,295,979
Federal National Mortgage Association secondary market operations (p. 956)	—720,621,211
Public Housing Administration: Low-rent public housing program fund (p. 773)	178,867,436
Veterans' Administration: Direct loans to veterans and reserves (p. 803)	—86,178,301
Civil Aeronautics Board: Payments to air carriers (p. 818)	81,856,762
Farm Credit Administration:	
Short-term credit investment fund (p. 835)	13,310,000
Banks for cooperatives investment fund (p. 836)	—11,979,500
Federal Home Loan Bank Board: Federal Home Loan Bank Board revolving fund (p. 840)	—119,413
Federal Power Commission: Payments to States under Federal Power Act (p. 850)	58,453
National Capital Housing Authority: National Capital Housing Authority trust fund (p. 968)	—2,354,674
National Capital Planning Commission: Land acquisition, National Capital park, parkway, and playground system (p. 860)	1,295,588
National Science Foundation: Salaries and expenses (p. 864)	206,859,160
Small Business Administration:	
Trade adjustment loan assistance (p. 875)	0
Revolving fund (p. 876)	134,320,156
District of Columbia:	
Federal payment to District of Columbia (p. 913)	32,899,000
Loans to District of Columbia for capital outlay, general fund (p. 913)	0
Loans to District of Columbia for capital outlay, highway fund (p. 914)	7,500,000
Loans to District of Columbia for capital outlay, water fund (p. 914)	850,000
Loans to District of Columbia for capital outlay, sanitary sewage works fund (p. 914)	2,400,000
Federal contributions and loans to the metropolitan area sanitary sewage works fund (p. 915)	14,200,000
Repayable advances to District of Columbia general fund (p. 915)	7,000,000
Advances to stadium sinking fund, Armory Board (p. 915)	415,800

Senator GORE. Now I continue to read from the Congressional Record:

Mr. GORE. What the Senator has described is a situation in which the Federal Government would put the onus upon the States to discriminate as between counties and communities by withholding funds from some of them, and unless it did so, the Federal funds would be withheld from the entire state.

After some intervening colloquy, I continued:

Mr. President, as the distinguished Senator from Connecticut knows—

I am coming now to this particular case, to point out that both you and the Federal Government and the Congressmen and the Senators who voted on this bill were well advised as to the extent of the power contained in the act.

Mr. President, as the distinguished Senator from Connecticut knows, the old age assistance program is a matching fund program. The Federal Government provides funds, which are matched by state funds, and, in turn, matched in smaller part by county funds.

Is that not the way it operates in your State, Governor?

Mr. WALLACE. No county funds—State funds.

Senator GORE. In most States I think counties do provide a part. But the State provides all the matching funds.

Mr. WALLACE. Yes, sir.

Senator GORE (reading):

Once the Federal aid is distributed to a State, it is commingled with State funds: Indeed, it becomes a part of the State's funds. It is administered as a State fund. I believe this raises serious legal question as to the supremacy theory, to which the Senator has referred. That is why I have said earlier that the key word here is "recipient".

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

Mr. GORE. I should like to proceed a moment before yielding. Once the State is the recipient, the funds are commingled, and then the funds must be distributed and administered under the terms of State law. I would hope that there would be no discrimination in the old-age assistance program anywhere. I know of none in my State. I would denounce the existence of any if I knew of it.

And I say that to you now, with respect to Alabama or any other State.

Let me conclude this reading from the Record by reading one more excerpt.

Yet if such State failed to withhold funds with respect to Federal aid to education, or other programs, as the Senator has acknowledged, the Federal Government might cut off aid to the entire State. This would punish the people, including the children who may be receiving their only good meal every day from the hot lunch school program, in those counties which had complied fully, and in those schools where there had been compliance, because of the action or the refusal to act on the part of others, over which the children had no control, and for which they were not responsible.

So, Governor Wallace, I read to you the record—lest it be said that Congress did not intend to pass a law with such far-reaching powers.

Congress did pass such a law. And the full weight and effect of it, in my view, has not been brought to bear upon the State of Alabama. The powers are sufficient to crush the economy of your State.

Mr. WALLACE. Yes, sir; that is correct.

Senator GORE. Yet it is the law. It is not for me to advise you as a former Governor and as principal adviser to the present Governor of Alabama, or my colleagues from Alabama. I must say that I have advised my State not only to comply with the law, but to go a step further and agree to comply with what the Secretary says is the law, because the hurt to our people is so great and the hardship so severe. But I give no advice to the State of Alabama.

I just say to you that I hope, as a member of this committee, that I can help and that the committee as a whole can help to modify this impasse so that the lame and aged, and the blind and the young will not suffer this denial of funds.

Mr. WALLACE. Senator, may I make a concluding statement?

Senator GORE. Yes. I apologize for talking so long, but I wanted the record straight.

Mr. WALLACE. I want to say first—and I can assure you no one should make a political issue out of this matter. In the first place, my wife has just been inaugurated. I am not a candidate and she is not a candidate. But during the primary campaign in Alabama, HEW announced that as a result of Alabama and Governor Wallace not signing the compliance form, 112,000 old people were fixing to lose their old-age pensions. It was headlined in every paper. It came just at the climax of the primary campaign in Alabama.

In 1964, when I was in the presidential races in other States, in the primaries, it was also announced then that they were fixing to cut off all the funds to Alabama because of me. And then in the general election campaign this same thing was announced again. It is alway funny that HEW announces they are going to cut off funds and starve people as a result of the actions of Governor Wallace right at the time I was involved in a political campaign.

So if there has been any politics involved in it, it has been on the other side.

Now, I was not going to come to this committee and ask these gentlemen to come until just Monday they called me in and sold me on coming and testifying myself—Mr. Barnes, Mr. King, Mr. Maddox, and the Senator—in fact his office was concerned that I was not coming. I said—"You gentlemen go, you know the facts, you are the experts in the matter, and you go. I do not want to go just to appear before the committee." They insisted that I come. And I finally consented to come.

I want to say to the distinguished Senator from Tennessee—I might not be a political favorite of yours, but you are one of mine, and I cast my vote for you for the vice-presidential nomination in 1956 at the Democratic National Convention.

Senator GORE. Thank you very much.

Well, I do not wish my statement to imply an accusation against you that you were making a political issue of this. I only said I would not be in sympathy with either you or the administration if either sought to do so. This is an impasse that must be resolved in the interests of human rights, as has been referred to here. There are not only human rights involved, but legal and political rights—the right of a citizen, the right of a State, the right of the Federal Government. And also the efficacy of our political system.

As I have said earlier, the saving grace of our system has often been the willingness to refrain from arbitrary use of power rather than to use it when at hand.

Senator HILL. All I want to say is this.

Just think of that situation in Mobile, Ala. You don't get a bed today for less than $25,000, $50,000. That hospital went to the expense of building so they could have an additional 100 beds to take care of these medicare patients. And then they left it entirely to the old person to decide to come to that hospital—entirely. No segregation there, no discrimination whatever. Yet the Department refuses to certify that.

I have here a telegram which was sent to the chairman of the Special Committee of the Medical Society in Mobile. And I quote:

The procedure requiring Negro patients in Mobile to select their hospital is unacceptable.

Why should it be unacceptable, Mr. Chairman, for a patient to select his or her own hospital?

This is a new and uncommon practice.

Is there anything new about that? You and I want to go to a hospital—don't we select our own hospital?

This is a new and uncommon practice usually found only where a well-entrenched pattern of segregation exists.

That is not true at all.

It is a device designed to circumvent the prohibition against direct, overt discrimination. It tends to perpetuate segregation. It thus has the effect of defeating or substantially impairing the objectives of the Act. I would like to suggest that all physicians assist Mobile Infirmary by assuming professional responsibility for choice of hospital based upon doctor's personal convenience and medical knowledge of available facilities or the relation to patient needs.

I don't mind saying to the chairman—I twice went out to the Mayo Clinic to have a hernia fixed. Don't I have a right to select my own hospital, to select my own doctors? Is there any discrimination in that? Of course not.

That is ridiculous and absurd.

It is contrary to any intent—I opposed the bill, as the Senator knows. I made some rather lengthy speeches against it.

But it is ridiculous, absurd, to think that that was the intent of the Congress in passing the bill—that the patient could not select his or her own hospital.

Senator GORE. As well as the doctor of his choice.

Senator HILL. His own doctor.

Senator GORE. Well, of course, some doctors have a choice of hospitals to which they send their patients.

Senator HILL. That is right.

Senator GORE. Would this imply that an order to——

Senator HILL. Well, in this hospital here, the Mobile Infirmary, they expended millions of dollars to get a hundred additional beds to take care of the medicare patients. There is no discrimination here, there is no segregation whatsoever.

Senator GORE. Well, now——

Senator HILL. The fact is there are Negro doctors now on the staff of that hospital. They have not assigned their own patients to that hospital. The patient has made his own selection. There are Negro doctors on the staff of that hospital today.

Senator GORE. The chairman of the committee is expected to return momentarily. Just permit me to add, while we are awaiting his return, that I think it has been helpful that Governor Wallace, the commissioner and legal counsel have come and presented this issue.

The Federal administrative heads will come before the committee.

I hope that both will show a willingness to forbear. I hope that this committee and that I personally can be helpful to them.

Regardless of the extent of the power in the act, it must be administered with compassion, with understanding, and with as near a complete absence of political overtones as possible.

That concludes my statement.

The chairman wishes to make a concluding statement, however, I am sure he will be here momentarily.

The Chair will declare a 5-minute recess.

(Whereupon, a short recess was taken.)

Senator GORE. The committee will come to order.

The CHAIRMAN. Governor—I regret I had to leave the committee room to testify for my committee before the Rules Committee.

I wanted to make this point—and this is about the only thing I have left.

I have here the report of last year on the appropriations for the Departments of Labor, Health, Education, and Welfare, and related agencies.

The chairman of the Appropriations Subcommittee filing this report was Senator Hill of Alabama—although this report spoke for the entire Committee on Appropriations, and it speaks as the legislative intent of the Senate when the Senate passed the bill.

I note on page 71 the committee said this:

> The Committee questions the legality of the revised guidelines as promulgated by the Department of Health, Education, and Welfare pertaining to desegregation in schools and hospitals which receive Federal assistance. The Committee believes that the revised education guidelines contravene and violate the legislative intent of Congress in the enactment of the Civil Rights Act of 1964.

Now, there is a statement which bears the approval of the Senate. And some effort was made to strike down this legislative intent, I must say, by someone on the floor without success. The so-called guidelines being issued by the Department of Health, Education, and Welfare do violate and go beyond the intent of Congress in enacting the Civil Rights Act of 1964.

I must say when the Senate itself puts itself on record as so stating, it seems to me that a State certainly should have a right to contest whether those guidelines fall within that right before the money to the needy people of the State is cut off.

Here is a statement from the Constitutional Rights Subcommittee of the Senate Committee on Judiciary—we asked them for information and they provided it. This was provided to our staff.

> Generally, in American jurisprudence, there is a presumption of innocence until the agency asserting otherwise proves to the contrary. And the burden must be carried by the latter.

In other words, the burden should be carried by those who intend to assert someone is guilty of misconduct.

> Moreover, in the absence of evidence to the contrary, the courts will presume that public officers have not neglected or violated their official duties and have not acted illegally in doing any official act. These presumptions are applicable to all Federal, State, county, and municipal officers, as well as public boards and commissions. The courts also held that to require one to prove his own innocence is a denial of due process.

I must say, Governor, I think that you have presented a very strong case here—you and your administrators—on behalf of Alabama.

Now, if there are other witnesses you want to call—Mr. King, do you want to file a supplemental statement?

Mr. KING. Yes, sir; I have a statement and it has been given to your staff.

The CHAIRMAN. Do you want to summarize it or add to that statement?

Mr. KING. No, sir.

The CHAIRMAN. That will be included as a part of the record.

(The statement referred to follows:)

STATEMENT BY RUBEN K. KING, COMMISSIONER, STATE OF ALABAMA, DEPARTMENT OF PENSIONS AND SECURITY

The Alabama Department of Pensions and Security c[ap]es before you in behalf of every citizen of the State and more particularly in [be]half of those more than 200,000 needy Alabama citizens who are aged, blind o[r] [dis]abled adults, dependent children, or possessed of other disadvantages and who rely on the agency for life itself. I speak, too, for the thousands more whose problems require child welfare or other social services (at least 15,000 or more) without financial aid. This agency since 1935 has conscientiously administered Alabama's welfare programs in accordance with State law and policy and, where applicable, with Federal law and policy.

You are aware that the Secretary of the Department of Health, Education, and Welfare has ordered, effective February 28, 1967, discontinuance of Federal public assistance and child welfare funds to Alabama for alleged failure of the Alabama Department of Pensions and Security to comply with Title VI of the Civil Rights Act of 1964. The Governor of Alabama, through Hon. Lister Hill, Senior Senator from Alabama, has requested that the Senate Finance Committee investigate this whole matter. You are aware that a suit for a declaratory judgment with request for a restraining order has been filed in the U.S. District Court for the Northern District of Alabama, Southern Division. In addition, a motion for postponement of the effective date of action by the Secretary cutting off grants-in-aid to Alabama under Titles I, IV, V, Part 3, X, and XIV of the Social Security Act has been filed with the Secretary.

Gentlemen, the matter clearly is not one of non-compliance. As far back as March 1, 1965, a letter from me as Alabama Commissioner to Mr. Wave L. Perry, Regional Representative, Bureau of Family Services, and Mr. Dwight Ferguson, Regional Child Welfare Representative, Children's Bureau, states quite clearly:

"Please be assured that the Department of Pensions and Security will not deny any individual any aid, care, or service on the grounds of race, color, or national origin."

Again, in a letter to Dr. Ellen Winston, dated August 20, 1965, I stated:

"The Alabama Department of Pensions and Security does not deny aid, care, or service to any individual on the ground of race, color, or national origin."

In both letters, as Commissioner, I referred to action of the State Board of Pensions and Security advising me not to sign compliance forms and to await court action.

The question revolves about what is compliance and the regulations promulgated by the U.S. Department of Health, Education, and Welfare. It is true that the Alabama agency has not signed the forms on compliance prepared by the U.S. Department. There has been no clarification or interpretation of Title VI as related to such forms. Rather, because the Alabama Department has not signed the forms, which Alabama contends go beyond the law, the Secretary is making an arbitrary ruling that Alabama is not complying with the law. This is true despite our repeated intention to abide by said law. Under the title VI regulation of Health, Education, and Welfare, the Alabama agency is required to state more than that it will comply with the law as it is ultimately interpreted in the courts.

We in Alabama have consistently maintained that our compliance with the law will be based on its intepretation by the courts. Provision for judicial review is written into the statute. The Alabama Department maintains that it is unlawful and harmful to innocent parties to discontinue funds without such judicial review, particularly since proceedings have been instituted to secure such review. We question the statement of the Department of Health, Education, and Welfare which reads in part: "to await ultimate judicial review and approval of the Department's regulation before enforcing its provisions would constitute an abdication of the responsibility of this Department." The opposite view as taken by the Alabama Departmnt is that no withdrawal of funds should be called for until final judicial determination of the law has been made.

Further, the U.S. agency has denied the Alabama Department's request for a hearing before the Secretary. It has denied the Alabama request to present additional evidence though significant changes have taken place since the original data were filed.

The Alabama Department has also requested that Title XIX be included in the proceedings. This, too, has been denied, thus requiring a separate action when the considerations in question, particularly as related to third parties, are identical.

There has been no evidence furnished by the U.S. Department of Health, Education, and Welfare to show any discrimination in administration of Alabama's welfare programs. Rather, the U.S. agency merely argues that the Alabama Department has failed to sign the compliance forms. Refusal to sign the forms is not refusal to obey the law.

To give assurances indicated on the form would cause the agency to agree to action it had no authority or facility to carry out. The Alabama Department has no discrimination in its procedures or allowances for assistance and child welfare eligibility, amount of payments, etc. The U.S. agency has not so charged.

Alabama's population is 30 percent Negro, yet 43.3 percent of the assistance recipients are of that race. Non-white persons 65 and over represent 28.6 percent of the total aged population, yet 40.3 percent of the pensioners are non-white. In the matter of dependent children, 66.4 percent of the families aided are non-white, though the non-white under 18 population in the State is only 35.4 percent. In aid to children in day care 70.4 percent are non-white. Does this point to discrimination?

The Alabama Department is gravely concerned over the matter of third party payments. First, the agency has no control over such third parties. To refuse to use—a nursing home, for example—which failed to indicate compliance would deny service to an individual who gravely needed it. The law would provide, not deny, service. Second, the Alabama agency has no personnel to police third parties. The U.S. agency admits the inability of the Alabama Department to force compliance, but at the same time wants the Alabama Department to state that it will secure such compliance.

This brings still another question—how far can Federal control be extended? It appears that the U.S. Department of Health, Education, and Welfare would reach down past the State agency, past the provisions of State law, to not only vendors of service but also to their internal operations. Does the nursing home buy from merchants who practice discrimination? Does the day care center give preference to merchants of either race? These are not passing questions—they are fundamental and basic to the subject before us. The Alabama Department of Pensions and Security is complying with the law insofar as it understands that law. It is seeking judicial ruling to clarify and interpret that law. Therefore, it appears clear that the U.S. agency is going beyond the law in setting up administrative procedures and forms which have not been tested in court nor evaluated outside the Department itself.

One area of third party discussion relates to use by the Alabama Department of Pensions and Security of child-care facilities not operated by the agency. The picture here is changing, especially with regard to day care centers. The recent licensure study on 150 Headstart child development centers, for example, revealed apparent adherence to Title VI by each facility. Changes are also being made toward integration of some institutions and day care centers previously serving a single race. The Department of Pensions and Security, however, has no control over policies of these facilities insofar as adherence to Title VI is concerned.

The situation with regard to hospitals and nursing homes has changed since the Alabama Department filed its original briefs but the right to submit additional evidence has been denied. Through January 20, 1967, however, 36 nursing homes in Alabama have been certified as extended care facilities under Title XVIII. Hospitals approved number 110. The Department says the deductibles under Title XVIII only in the approved hospitals or those certified for emergency care. It also uses the certified extended care facilities whenever they are available. Currently, the failure of the Department of Health, Education, and Welfare to promulgate definitive policies on this matter gravely hampers the administration of the program.

The spirit and will of the Alabama Department is to provide aid or service to people who need it. The Federal funds used for this purpose are substantial and without them the aid and service would be unavailable. The agency be-

lieves that it perforce must utilize third parties just as as they are in the expectation that there will be equal service available to all.

In the light of the foregoing facts, therefore, the Alabama Department urges that the compliance demands of Health, Education, and Welfare be investigated and that any withdrawal of funds wait upon judicial clarification of the law. The Alabama Department respectfully submits that it is in compliance with the law. And the Alabama Department asks for a full investigation of the depth of those regulations as they go beyond the State agency in extending Federal control of the dollar so far in terms of law and practicality as to violate private businesses and individual human rights.

Mr. KING. We do want to record docket No. CR-1 in the matter of Alabama State Board of Pensions and Security and the Alabama State Department of Pensions and Security—I am not sure whether your staff has this. We would like to leave this with the committee.

The CHAIRMAN. We will take that with the staff documents. If we think it appropriate, we will have it printed as part of this record. Otherwise we will keep it with the committee files.

(The document referred to is in the official files of the committee.)

Now, in addition to that, we have a statement from the present Governor of Alabama, Mrs. Lurleen Burns Wallace, and her statement will be printed in the record.

(The statement referred to follows:)

STATEMENT OF MRS. LURLEEN BURNS WALLACE, GOVERNOR, STATE OF ALABAMA, ON ACTION OF SECRETARY GARDNER IN REGARD TO WITHDRAWAL OF FEDERAL ASSISTANCE AND CHILD WELFARE FUNDS FROM ALABAMA

It is important that I add a few words to the statements and other papers that are being filed, and to the arguments that have been presented, in support of Alabama's position as to compliance with Title VI of the Civil Rights Act of 1964 through action of the State Department of Pensions and Security.

I am convinced of the rightness of the position taken by the State which is not only clear willingness to comply with the law but an honest effort to seek a definitive interpretation of the statute by the only authority capable of making the interpretation—the courts of the land.

My concern lies with the human lives, the innocent people, who are affected by the decision. I am a mother who is fortunate in not having to wait for an aid to dependent children check each month to buy food for my children, to pay the rent, and to see that the light, heat and water bills are paid. But this is not the case in 17,157 Alabama families. They would be shivering and hungry and out of their homes without assistance checks. They would be made to suffer when the State agency has declared, in writing, that it will comply with the law and while a court interpretation of the law is being sought. The processes of the law should move to a decision.

I am also a daughter and granddaughter. Like many of you, I have relatives who are past 65. 112,684 aged Alabamians depend on their old age pensions. It would tear my heart to see them deprived of necessities because action is pending to determine the exact meaning of a disputed law and a controversial regulation.

The aged and the children do not understand the technicalities of compliance with the Civil Rights Act of 1964. They would understand the pain of an empty stomach, the chill of an unheated stove, the darkness of an unlighted house, or the stark reality of eviction.

Of equal concern to me are the ill and the handicapped and the blind. There are over 5,000 needy aged in nursing homes. What would happen to them if funds for their care were withdrawn? They often have no relatives—and all are in need of the type care they are receiving. It is unjust to deprive them of care when funds have been appropriated for this purpose.

The Federal Government is supported by 50 states, not 49. Alabama has a rightful share in programs supported in part by Federal grants-in-aid. Any state may question a Federal regulation or test a Federal law in court. This is as it should be.

Alabama has stated as far back as March 1965 that the Department of Pensions and Security would comply witth the Civil Rights Act of 1964. The question then

and the question now revolves about what that law is. Until the answers are forthcoming from the courts it is, in my judgment, illegal, inhumane, and cruel for the Federal Government to seek to stop funds that feed the hungry, that clothe the naked, that shelter the disadvantaged, and that care for the sick and disabled.

I want to add one more significant point. Withdrawal of funds would foster exactly what the Civil Rights Act seeks to prevent. The law assures fair treatment of all citizens, whether they live in Alabama or New York, whether they are white or non-white, of whatever religion or conviction. Yet the Federal authorities are using the law, as they see it, to deny aid to thousands of needy Americans.

It is of interest, too, that while only 30 percent of Alabama's citizens are non-white, the percent of non-white beneficiaries of assistance and child welfare programs is far higher—43.3 percent. Non-white citizens comprise 66.1 percent of dependent children recipients, 40.2 percent of old age pensioners, and 77.6 percent of the children in day care supported by the Department. This is not the whole question but it underlines the injustice of withdrawing funds on the grounds which have been given.

Our cause is a just one. Our position is right, and we intend no deviation from it.

The CHAIRMAN. We have a letter from the Alabama League of Aging Citizens. I would like to read the first paragraph of that.

In the name of human suffering and the literally destitute, the Alabama League of Aging Citizens and its affiliated organizations appeal to you in behalf of 117,000 old age welfare recipients and more than 40,000 innocent children of both races, who are already ill-fed, ill-clad, ill-classed, and ill-housed. These worthy people face hopelessness, helplessness, and actual starvation if the Federal funds are cut off from Alabama.

I ask that this letter be printed in the record at this point.

(The letter referred to follows:)

ALABAMA LEAGUE OF AGING CITIZENS, INC.,
January 23, 1967.

Re urgent appeal for help in reference to State welfare program.

Chairman Russell Long and Members of the Senate Finance Committee, U.S. Senate, Washington, D.C.

GENTLEMEN: In the name of human suffering and the literally destitute, the Alabama League of Aging Citizens and its affiliated organizations, appeal to you in behalf of 117,000 Old Age Welfare recipients, and more than 40,000 innocent children of both races, who are already ill-fed, ill-clad, ill-classed, and ill-housed. These worthy people face hopelessness, helplessness, and actual starvation if the Federal Funds are cut off from Alabama.

The great majority of these people are fine, innocent men, women, and children. They stare into the stark reality of the deflated American dollar, the high cost of living and dying, and now are having to face the fact that there is slipping way from them their last stronghold of financial security. They grope for stability and find none. Their very lives have become a prison in which they live and breathe, obsessed with the fear that their end is at hand. Their feelings and emotions have been stripped naked again. With something of the hopelessness of condemned murders, they wait for the ax to fall on their heads by the hands of the executioners. From the ages gone by echoes the haunting question which we cannot escape even today, even in this trying political battle: "Am I my brother's keeper?"

Of what can these people be convicted? Who can point to their guilt? There is no guilt. Alone, they stand simply as a product of their environment and circumstances. These are the ones who struggled to raise their families through two great depressions and wars, whose tremendous contributions to the security of our nation cannot be numbered. They have tilled American soil, built American roads and highways, worked long and hard in our American businesses and factories for very low wages. These are the ones who gave their children the best educations this world has ever known, and who made American the Number One Nation in the world, and certainly the most blessed.

Because their plight is singularly disastrous, because there are so few champions of their cause, I sincerely beg that you fairly and objectively consider the

true facts surrounding this large number of American citizens who now reside in the State of Alabama, and who have no control of the political issues of our day. I ask that you be as fair and impartial as you would be if we were talking specifically about your Mother and Father, for these are somebody's parents—they could have been yours and mine.

The American people—all of us—are afforded the high privilege of living at one of the greatest and most blessed periods in history. With this privilege comes the certain responsibility of good citizenship—and proper stewardship of that which is ours. As a believer in the Almighty God, I believe that God has entrusted the American people personally and individually with a particular mission to perform. This belief is not original, for this is the belief of the great Fathers of our country, George Washington, Abraham Lincoln, F. D. Roosevelt, John F. Kennedy, and Johnson, the great emancipator of human suffering and his kindred measures of social security.

The most important challenge in the history of this nation faces us now; trying to find ways and means to develop America's greatest asset, the asset of people. Millions of human being with feelings and emotions and ambitions with the common desire to be secure in old age—without the fear of a Gestapo—either in the form of one man or one branch of government or one political party—to condemn them to the gates of desperation and cruelty and total dependency and despair. The precious entity of American Senior Citizens of all races, colors and religions is one of the blessings of our American way of life.

Please know positively that we believe in human welfare—the welfare of All people. This is high on the test of our values. We believe in a Social Structure of Equal Treatment and Equal Opportunities for all of America's senior citizens to live in a society which is dedicated to human welfare and well being.

The number of Americans in Alabama receiving pension checks in the form of welfare benefits are more than 115,000. This upward trend will also continue for many years to come. In addition, medical science will not stand still in its already enormously fruitful effort to further expand man's life span. Thus, we have a new form of society developing—a society in which the number of people over the three score years and ten which has been the hope of man through out all past history, is the age of fully ten percent of the population.

Under the Great Society, every dollar we spend in health maintenance, every dollar we spend to detect incipient disease, to prevent the development of long term chronic conditions needing constant surveillance and care, thanks to the Johnson Administration, today is paying off in savings of billions of American dollars which would otherwise have to be spent in often futile attempts to save or restore damaged lives. Poverty, hunger and ill-health have perpetually plagued mankind. The difference now lies in the fact that man has the capability to wipe out these blights on civilization.

One of the great rallying solgans of the power struggle of those who advocate integration of our nursing homes, hospitals and other health centers by force, has been long the battle cry, "Social Integration versus Human Rights" . . . as if the two are distant and different.

I have seen some suggestions that the real contest is between Social Right and Social Integration—that is not so. The social integration of the hospitals and nursing homes have no rights—human beings have rights, or are supposed to. It should be the right of every human being to choose with whom they associate, whose hands administer to them when they draw the last breath of life—just as they have the right to speak, to worship and to travel from one state to another freely. The only human rights involved in this dispute are the rights to human beings against the claims of other humans. The debate in which Congress and the nation will be confronted is over the assertion of a new right: The right of the individual freedom of choice and equality.

Differently stated, this is a debate or conflict between those who seek to pressure traditions, customs and oral laws, and those who would appropriate a part of the bundle of rights which make up and deprive a great number of citizens of their rights to live in decency, secure and healthy, in the name of equality.

What we are really doing today with guidelines and by-lines is to reduce men to the lowest common denominator. Equality and freedom are not necessarily mutually exclusive in the ideal society, but neither are they always compatible. To create quality by integrating our institutions artificially is to risk the destruction of all liberty—for all people.

Let us be honest. It is not evil to follow traditions. It is not sinful to refuse unlawful enforcement of human integration of any race or creed with the indi-

vidual consent or permission. Tradition or custom may be regarded as man's birthright. Totally absent from the animal realm, it flowered forth in man at the very dawn of history and has persisted as a dominant force in all stages of his evolution. Not a tribe or race of people has been discovered without some form of tradition and custom. Its fears have haunted man's conscious and subconscious life, and its hopes have buoyed him and served as the goals and incentives of his conduct. Tradition is the great conservation force in human culture—it keeps alive and accessible the work of creative geniuses.

In the 18th Chapter of Isaiah in the Old Testament is written, several hundred years before the birth of Christ, the following

"Every Creature Loves His Like
And a man clings to one like himself"

Even in that era of the Israelites of old, people congregated according to his kind. This is an established and recognised characteristic of human nature. It is easier to hurl the rooted mountain from its base, than to force the yoke of slavery upon men who are determined to be free.

In the decline and fall of the Roman Empire, we read of the decay of a world power whose security was thoroughly integrated from top to bottom. There was a complete break down of racial pride, and the integration of the races led to disintegration in government. Government has a responsibility to both the tax payers and the recipients to assure that public funds are not being misused. Further, the Federal Government must maintain confidence with its various pension programs. The public can be seriously undermined by widespread abuses in the pension program.

We Americans are a much independent lot, thank God, and we don't want some person peering over our shoulders every time we receive a pension check. No one wants a pension system with a Big Brother complex: "You do my way—or you starve." Many of our existing legal procedures are not easily adaptable to protect individuals.

I believe in social justice for all Americans. I sincerely believe the old people of Alabama—white or colored, sick or invalid, hungry or destitute,—should have the right to receive such federal financial assistance without compulsory compliance of any intricate requirements imposed with respect to Title VI of the Civil Rights Act of 1964. Further more, I wholeheartedly believe that the State of Alabama should not deny any individual any aid, care, or service on the grounds of race, color, or national origin.

Through the generations, customs and traditions have become the *unwritten laws of the universe, not engraved on pillars or inscribed on paper, which may be eaten by moths, but impressed on the souls of those living under the same beliefs.*

Social integration must be on a voluntary basis. Every human being should have the freedom to choose the people with whom he associates. Forced social integration will be unwillingly accepted—and deeply resented—in the South, simply because the great majority of both races are against it. It matters not if you are from New England States, from the Alleghenies, the West or the South, people aren't going to live by any law they cannot mentally and spiritually accept, especially when the law rubs against the grain of the way of life of the thinking, intelligent people and leaders of both races.

Right or wrong, the South will never have a fully integrated Society. Human nature is what the Almighty made it, and the ultimate strength of the Nation lies in the racial pride of its citizens—each race striving for their maximum degree of accomplishment and achievement.—not in racial integration of its population.

The mainspring of human progress is human liberty. Progress comes through the effective use of our individual energies, personal initiatives, and imaginative abilities; applied to the things and forces of nature in an atmosphere of liberty under the blessing of the God of Israel. That we should all be reduced to a herd of think-alike, do-alike, be-alike sheep is unthinkable. When that day comes, America is doomed.

It is difficult for any average citizen of this land to understand the real danger that our individual liberty faces—it is generally outside the range of experience of the American people. I understand completely. I KNOW the meaning of freedom. You see I was born in Europe and I don't have to have a dictionary to know well the meaning of Dictatorship and Totalitarianism.

In the name of humanity and the generations to come, we must unfalteringly uphold the rich heritage which is ours: The American revolution, the depression, the wars, sacrifices of life and fortune, the unswerving belief in the fundamental

rights of all individuals regardless of race, creed, or nationality. Liberty and freedom of choice are synonymous with America. Few of us ever see people who have lost their freedom—their liberty—their right to live as human beings. Yet we dare not be blind. We are reminded today of the danger of loosing our independence as free-born American citizens. Tragically, our attitude of complacency speaks in our acts if not our words; "It cannot happen here in America. Not true. It CAN happen to us.

We must never forget that the United States, in the midst of this Social Revolution may well plant the seeds of our own destruction while enjoying unprecedented prosperity. The myriads of unwritten customs and usages, as Philo called them, have represented the spirit of tolerance and freedom of action, as opposed to the final word of authorities.

120,000 older persons in Alabama require financial help to function independently or adequately. Many of these individuals do not require institutionalizing, but need aid in management of resources, or help in obtaining medical treatment, or related social welfare services. We must carefully examine our laws, procedures, and practice in the light of current economic and social condition affecting these people to make sure that adequate protection is given to the rights of beneficiaries. The security and happiness of the aged citizens life depends upon the quality of services and goods we give them.

The problems that confront more than 120,000 Alabama senior citizens of both races, and more than 40,000 innocent children of both creeds are indeed legion, but not impossible. All are short of the mere necessities of the good life. Let it be known to all that I have faith in America, in the President of these United States, and in the American people. The dark, foreboding clouds that hang so low over us now, that threaten the very fiber of our American freedom must pass. As we withstand the enemy from without, we must beware the internal decay that would rip the foundations from our Nation. Life, liberty, and the pursuit of happiness must be for ALL of us.

Quoting from the Old Testament:

"Change and decay in all around I see,
O thou Who changest not, abide with me."

We must believe that our Government will not penalize its senior citizens. The American Great Society must not die. Finally,

O' let my country be a land where liberty is crowned with no patriotic wreath, but opportunity,
Equality is real, and life is free.
Freedom of choice is in the air we breath.

Most sincerely,

RUBIN M. HANAN, *President.*

The CHAIRMAN. We will make this record available to the Department of Health, Education, and Welfare.

It is my understanding that the intent of the amendment requiring them to notify us of this matter intends that they should be prepared to defend their action before the committee.

When Congressman Willis offered this amendment on the floor, he said:

My amendment would bring into play other minds in connection with this decision to cut off a Federal assistance program. It would bring into play committees of Congress having jurisdiction over the programs under consideration. The head of the agency would have to give a report to the committees of Congress having jurisdiction over the subject matter. So that at least there would be some responsible minds over the beyond the agency head.

In the last sentence—

No such action shall be effective until 30 days have elapsed after the filing of such report.

We will invite the Secretary of Health, Education, and Welfare to defend his position at a subsequent date.

That concludes the hearing this morning.

Senator HILL. Mr. Chairman, I would like unanimous consent to put in the record a resolution adopted by the board of trustees and the board of censors of the Medical Society of Mobile County at a special meeting held Friday, January 6, 1967. I referred to the Mobile case, as the Senator knows.

I would like to put this in the record.

The CHAIRMAN. Without objection that will be done.

(The resolution referred to follows:)

RESOLUTION ADOPTED BY THE BOARD OF TRUSTEES AND THE BOARD OF CENSORS OF THE MEDICAL SOCIETY OF MOBILE COUNTY AT A SPECIAL MEETING HELD FRIDAY, JANUARY 6, 1967

Whereas, The Mobile Infirmary has not been certified for Medicare by the Department of Health, Education and Welfare; and

Whereas, The withholding of such certification is based on a groundless charge against the physicians of Mobile County by the Department of Health, Education and Welfare as contained in the attached telegram; and

Whereas, The Board of Trustees of said hospital have properly refused to interfere with the patient-physician relationship although such has been demanded by said governmental agency; and

Whereas, The physicians of Mobile County decry this intervention in the practice of medicine specifically forbidden by Public Law 89-97, Sections 1801 and 1802 (attached hereto); and

Whereas, The physicians of this county have become increasingly concerned that their ability to render satisfactory medical care to their patients will be materially jeopardized by these governmental actions; and

Whereas, The Medical Society of Mobile County reiterates its principles that the free choice of hospital and the free choice of physician by the patient is a fundamental prerogative of free men and a basic tenet essential to the best medical care and the patient-physician relationship; and

Whereas, This assault on the patient-physician relationship in Mobile County is an affront to this principle in every American community; be it therefore

Resolved: That this Society will take whatever honorable, ethical and legal steps necessary to answer this unwarranted attack on the medical profession and to prevent any further such actions by any third party; and be it finally

Resolved: That we call upon the Medical Association of the State of Alabama and the American Medical Association to aid us in this fight for the freedom of our patients and for the good of medicine.

Resolution passed without a dissenting vote.

PUBLIC LAW 89-97, 89TH CONGRESS, H.R. 6675, JULY 30, 1965

TITLE XVIII—HEALTH INSURANCE FOR THE AGED

PROHIBITION AGAINST ANY FEDERAL INTERFERENCE

SEC. 1801. Nothing in this title shall be construed to authorize any Federal officer or employee to exercise any supervision or control over the practice of medicine or the manner in which medical services are provided, or over the selection, tenure, or compensation of any officer or employee of any institution, agency, or person providing health services; or to exercise any supervision or control over the administration or operation of any such institution, agency, or person.

FREE CHOICE BY PATIENT GUARANTEED

SEC. 1802. Any individual entitled to insurance benefits under this title may obtain health services from any institution, agency, or person qualified to participate under this title if such institution, agency, or person undertakes to provide him such services.

WASHINGTON, D.C.

DR. H. N. WEBSTER,

Chairman, Special Committee, Medical Society, of Mobile County, Mobile, Ala.:

The law requires the absence of racial barriers to the use of Mobile Infirmary. There is no magic number, no established quota in relation to the composition of

the population. When the hospital takes responsibility and as a consequence present barriers are eliminated, the number of Negro patients, whatever it happens to be, will be sufficient, a fixed ratio of Negro patients is not the objective. The objective is the elimination of practices which systematically exclude some Negroes from this hospital. The procedure of requiring Negro patients in Mobile to select their hospital is unacceptable. This is a new and uncommon practice usually found only where a well-entrenched pattern of segregation exists. It is a device designed to circumvent the prohibition against direct overt discrimination. It tends to perpetuate segregation and thus has the effect of defeating or substantially impairing accomplishment of the objectives of the act. I would like to suggest that all physicians assist Mobile Infirmary by assuming professional responsibility for choice of hospital based upon doctor's personal convenience and medical knowledge of available facilities in relation to patient's needs.

ROBERT M. NASH,
Chief, Office of Equal Health Opportunity,
U.S. Public Health Service.

The CHAIRMAN. That concludes this morning's hearing.

(Whereupon, at 12:30 p.m., the committee stood in recess, subject to call of the Chair.)

PROPOSED CUTOFF OF WELFARE FUNDS TO THE STATE OF ALABAMA

THURSDAY, FEBRUARY 23, 1967

U.S. SENATE,
COMMITTEE ON FINANCE,
Washington, D.C.

The committee met, pursuant to notice, at 10:10 a.m., in room 2221, New Senate Office Building, Senator Russell B. Long (chairman) presiding.

Present: Senators Long, Anderson, Talmadge, Hartke, Harris, Williams, and Carlson.

Also present: Senators Lister Hill and John Sparkman.

The CHAIRMAN. This hearing will come to order.

Mr. Secretary, we are pleased to have you with us today. This hearing was called as a sequel to one held on January 25 in which Governor Wallace appeared in behalf of the State of Alabama.

As I recall it, your order proposing to cut off welfare grants to Alabama stems from Alabama's reluctance to sign a particular form you submitted to them. Despite their not adhering to this procedural requirement, Governor Wallace stated that his State was in compliance with the law, that there was no discrimination in his disbursement of funds to the welfare recipients.

He also testified that his State had advised your Department of their willingness to comply, and that Alabama would conform to the decisions of the courts as to the procedural questions raised by your forms.

There are 200,000 people on the Alabama welfare rolls. They include the blind, the aged, the sick, the infirm, the destitute, the poor children of the State. These people need and rely on welfare payments for their existence. Many—perhaps most—of these people are colored people, Negroes who were supposed to benefit from the passage of the Civil Rights Act, not to be injured by it. It is a cruel fate that those poor people, who should benefit from both the Civil Rights Act and the welfare laws, find themselves caught in a scissors grip between these laws which is costing them their subsistence and, for some who need medical care, it can cost them their survival. These people do not know of procedural issues between the State and the Department of Health, Education, and Welfare. They do know the difference between getting their welfare check on time and not getting it at all. This controversy is a prime example of how form over substance can be carried to an extreme and indefensible conclusion.

Mr. Secretary, we will be glad to hear your statement, and then some of the Senators may have questions they would like to ask you.

I would like to recognize, in addition to Senator Harris, who is here, Senator Hill, of Alabama, the distinguished chairman of the Labor and Public Welfare Committee, and Senator John Sparkman, also of Alabama, the distinguished chairman of the Banking and Currency Committee.

Gentlemen, we are pleased that you can be with us today.

STATEMENT OF JOHN W. GARDNER, SECRETARY, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE, ACCOMPANIED BY JOSEPH MEYERS, DEPUTY COMMISSIONER FOR WELFARE; RALPH K. HUITT, ASSISTANT SECRETARY FOR LEGISLATION; F. PETER LIBASSI, SPECIAL ASSISTANT SECRETARY FOR CIVIL RIGHTS; AND ST. JOHN BARRETT, DEPARTMENT OF JUSTICE

Secretary GARDNER. Mr. Chairman, I appreciate this opportunity to appear before your committee to discuss my decision that the Alabama State welfare agency is not complying with its obligations under title VI of the Civil Rights Act of 1964 and my consequent order terminating Federal assistance to that agency.

The report I forwarded to your committee set out fully the reasons for my decision. At this time I would like to make some general comments about the case and respond to some points raised by former Governor Wallace.

Let me begin, however, by expressing my appreciation of the role of your committee in this proceeding. This committee and the Ways and Means Committee of the House of Representatives are the architects of the welfare programs. You and the Department I represent have a commitment to promote the welfare of the poor and disabled by assisting State programs for their benefit.

I understand—and welcome—the concern of your committee that the procedures laid down by Congress for enforcement of title VI be strictly followed. I can assure you that they have been in this case. We have carefully followed the regulation that was issued by my predecessor and approved by the President. We made every effort for almost 2 years to obtain voluntary compliance. We gave notice and held a hearing. An independent hearing examiner determined that the State agency had failed to comply with the requirements of title VI. The Commissioner of Welfare, after due consideration, approved that determination. After full review of the case I decided that financial assistance should be terminated.

I am sure you will be interested in a report of the current status of the litigation on this matter. Alabama sought a review of my order in the U.S. district court in Birmingham; and the district court issued a preliminary injunction directing the Department to continue Federal payments.

The Alabama lawyers and the Department of Justice do not agree as to whether this review should have been brought in the district court or the court of appeals.

Actions taken pursuant to title VI of the Civil Rights Act are subject to such judicial review as is otherwise provided by law for the particular grant program involved or if there is none, under the review provisions of the Administrative Procedures Act. In four of

the grant programs here involved, judicial review is vested by law in the court of appeals. In the fifth program, there is no specific provision for review.

The State of Alabama has argued that review of all proceedings may be brought in the district court. The Department of Justice has argued that the court of appeals is the appropriate forum. The State of Alabama and the Department of Justice are now seeking, on an expedited basis, a decision in this jurisdictional question and a judicial resolution of the merits before the court of appeals. The State asserts that it will comply if our requirements are upheld. Certainly I will honor court orders. Meanwhile, the Department has already officially informed Alabama that the State will continue to receive Federal welfare grants beyond February 28 pursuant to the preliminary injunction of the district court.

Contrary to the impression that may have been created at last month's hearing, this is not simply a matter of the refusal of the State commissioner to sign a form proposed by the Federal Commissioner.

The Federal Government pays some $100 million each year to the State of Alabama for the operation of its welfare programs. The original Social Security Act of 1935 which first authorized such payments did so on the basis that these are State programs to be administered through State and local governmental agencies. But a State, in order to be eligible for these Federal funds, has always been required under the Social Security Act to submit a plan of operation to the Federal Government for each welfare program. In that plan the State has always had to spell out the terms and methods of administration of its welfare program to enable the Federal Government to determine that the program would comply with conditions established and authorized by the Congress. The Congress provided for this arrangement, and over the years Alabama has never questioned its appropriateness.

In title VI of the Civil Rights Act of 1964, Congress established additional conditions for all federally assisted programs including those authorized by the Social Security Act. Section 601 of title VI provides that no person shall be subjected to discrimination under federally assisted programs. This means that the beneficiaries shall be protected against discrimination from any source in the course of receiving benefits under a federally assisted program, and that federally assisted activities shall not be carried out in a discriminatory setting. This is the clear command of the law and without question applies not only to the denial of benefits, but also to segregation or any other kind of differential treatment on account of race, color, or national origin.

Section 602 requires each Federal agency administering a program of Federal assistance to effectuate section 601 through regulations approved by the President. This has been done in the case of the Department of Health, Education, and Welfare. President Johnson approved our regulation December 3, 1964. That regulation was carefully designed to be consistent with traditional Federal-State public welfare relationships. Section 80.4(b) calls for each State agency to submit a statement as to how it will comply with the requirements of title VI.

This statement requires, first, that the agency examine its federally assisted programs to ascertain if any discrimination exists. Secondly, it must say how it intends to correct any discrimination and to avoid discrimination in its programs. Also the State must establish an adequate procedure to receive and investigate complaints of discrimination. In addition, the regulation requires each State agency to undertake these procedural steps: One, make unknown to individuals ther rights to receive the benefits of the program on a nondiscriminatory basis; (sec. 80.6(d)) and, two, keep necessary compliance records and reports (sec. 80.6(b)).

Thus the statement of compliance required by our title VI regulation is not a new device developed by Federal civil rights officials. It is an adaptation of the standard Federal-State arrangement by which a State qualifies for Federal welfare assistance and has been in operation for many, many years.

The requirements for surveys of compliance, information dissemination, recordkeeping, reporting and complaint procedures all have counterparts in the regular administrative requirements for State participation in Fedeal welfare assistance. All State welfare officials are familiar with such provisions. All States—including Alabama—have included them in their regular welfare plans.

The basic fact of this matter is that Alabama alone, among all of the States, has refused to accept its responsibilities for developing a program for administering its welfare programs in compliance with title VI and the Federal standards issued thereunder. Its welfare agency has made various statements that it does not deny benefits on the basis of race, but it has never submitted an approvable plan for eliminating and avoiding discrimintion in the operation of its federally assisted welfare programs.

The Alabama agency has not been found in noncompliance simply for failing to complete and sign a form proposed in the "Handbook of Policy" issued by the Welfare Administration. Its noncompliance is based on its failure to submit a satisfactory assurance in any form. This it is specifically required to do by section 80.4(b) of the regulation approved by the President.

The handbook and the proposed form have not been approved by the President and title VI does not require this. Within the meaning of title VI, they do not have the force of regulations and were not intended as general orders. They were designed only to show the kind of undertaking that would be considered satisfactory under the regulation; they are a form of guidance.

The order terminating funds was issued only after we had spent 2 years in patient efforts to secure voluntary compliance.

On August 17, 1965, the Commissioner of Welfare determined, in writing, that her attempts to secure voluntary compliance were unsuccessful and a notice of opportunity for hearing was sent to the Alabama agency. This notice listed all members of fact and law constituting noncompliance and specified the programs which would be involved in any termination of funds. As I indicated earlier, the procedural requirements of a compliance hearing have been fully met. A special oral argument before the Commissioner of Welfare was also held at the request of the State agency.

At each stage of the proceeding we have continued to seek the voluntary compliance of the Alabama agency. Even as late as January 12 of this year, 22 months after the case was initiated, I sought in my decision to encourage the State agency to comply with respect to all or even parts of its program.

Unfortunately, none of these efforts to achieve voluntary compliance and to avoid having to terminate funds have been fruitful.

Governor Wallace and the Alabama Welfare Agency contend that I should not have ordered a termination of Federal welfare funds until they had had an opportunity to litigate fully their objections to our title VI regulation. But if Congress had wanted to allow State agencies to defer their performance under title VI until they had fully litigated any objections they might have, it could have easily done so. It could have provided that the only remedy for noncompliance be an action in the Federal courts to compel compliance with the law.

But this is not the pattern of title VI. It directs Federal agencies to withhold funds if voluntary compliance cannot be secured. It authorizes enforcement action before judicial consideration of the matters in dispute. A recipient denied grants may seek judicial review of such administrative action and indeed under title VI judicial review can most readily be obtained after an administrative agency orders a termination of Federal assistance.

As Senator Hartke noted, the actions of the State of Alabama compelled the order I have issued. The Alabama Welfare Agency refused to submit any acceptable plan for complying with title VI on any part of the $100 million in Federal funds it receives annually. Under traditional welfare procedures Federal funds are not provided unless a satisfactory State plan has been submitted for administering the program in compliance with Federal standards.

Senator Gore expressed his concern at your earlier hearing that the findings I have made might be used to cut off Federal assistance under other programs. I want to assure the Senator and your committee that we do not consider that such action would be either appropriate or authorized, and we have not so acted in this case.

Another issue raised at the previous hearing was my action denying the State's application for a stay of the original order.

When I issued the termination order of January 12, I delayed the effective date of that order 6 weeks. Whether the State chose to come into compliance or to seek a court injunction and appropriate judicial review, 6 weeks seemed ample, and indeed, the deadline has not arrived.

For this reason, and with due consideration of all surrounding circumstances, the application for a stay was denied.

The Alabama Welfare Agency refuses to accept any responsibility for assuring that the doctors, hospitals, and nursing homes whom it pays with Federal funds provide care to welfare beneficiaries on a nondiscriminatory basis.

The Alabama welfare commissioner admitted in this proceeding that there is segregation in the care which such third parties provide. There can be no doubt that such segregation by third parties is a violation of title VI. The fact that other titles of the Civil Rights Act do not cover doctors, hospitals, and nursing homes in the care which they provide to their private patients, does not insulate them

from coverage when they provide care to federally assisted beneficiaries under an arrangement with State agencies.

Secretary Celebrezze specifically stated that such practices were covered by the administration's bill in his testimony before the House Judiciary Committee. The language of section 601 makes this a necessary consequence. Section 80.3(b) of our regulation expressly provides for it.

The Alabama agency contends that there can be no State responsibility for third party action because the State cannot compel third party compliance. But it, like all other State welfare agencies, does have the power to cease using or paying those who insist on treating patients on a discriminatory basis—and this is the limit to which it is expected to go if it is unable to secure nonsegregated care by voluntary means.

The Alabama agency says this would reduce still further already scarce facilities for welfare beneficiaries. The State commissioner, however, claims to have significant new evidence of the extent to which hospitals and nursing homes have already come into compliance with title VI in order to qualify for other Federal aid programs. This suggests that additional compliance could be obtained if the Alabama agency would help secure it.

Finally, Governor Wallace need not be concerned that title VI coverage of the federally subsidized services provided by doctors, hospitals, and nursing homes will lead to Federal reglulation of those, such as grocers, who are paid by welfare beneficiaries. Section 80.2(c) of the Department's regulation states categorically that coverage ends once the Federal assistance is received by the ultimate beneficiary.

In addition, the Alabama agency contends that section 601 does not prevent it from continuing to assign caseworkers to beneficiaries on the basis of their color, from maintaining local offices in segregated buildings and from providing services in connection with segregated child care facilities.

Each of these practices is noted in the record of this proceeding and seems clearly contrary to section 601. We have asked that each be eliminated by State welfare agencies. All State agencies but those in Alabama have agreed to do so.

We do not know the full extent of the discrimination in the Alabama welfare program. Under our procedures we have asked each State agency to identify any existing discrimination and to indicate how they propose to eliminate it in the future. The agencies themselves are in the best position to evaluate their noncompliance and all of the State welfare agencies except Alabama did so more than 18 months ago.

We do know, however, that the problem in Alabama is more than a matter of segregated waiting rooms in doctor's offices. There was uncontradicted testimony before the hearing examiner in this case that there are nursing homes receiving Federal funds which refuse to accept Negro patients and both nursing homes and hospitals which segregate Negro patients from white patients. In some cases Negro beneficiaries are apparently forced to go to facilities in other towns or counties even though there is a nearby facility which treats white patients.

Such practices are contrary to title VI regardless of whether or not beneficiaries have complained about them. The State commissioner has offered to show that some institutions in Alabama which formerly discriminated against Negroes have come into compliance but the discrimination of others continues and Alabama refuses to do anything about it unless ordered to do so by the courts.

All of the State welfare agencies, other than that of Alabama, have taken steps to comply with title VI. Statements of compliance have been signed and methods of administration adopted and implemented. Undoubtedly some beneficiaries of welfare programs are still subjected to discrimination in one form or another, but progress is being made. For instance, in Georgia, a county welfare office was removed from a segregated building to protect welfare clients from discrimination; segregated caseloads have been eliminated; nursing homes have been informed of their obligation to provide nondiscriminatory services; and several hospitals which refused to eliminate discrimination are no longer used.

In Florida, clients are assigned to caseworkers without regard to race and payments have been terminated to certain hospitals, physicians, and nursing homes unwilling to eliminate discrimination. South Carolina terminated the use of several hospitals practicing discrimination.

The Tennessee Welfare Agency is actively recruiting Negroes for employment in local welfare offices on a nondiscriminatory basis and has discontinued use of several segregated nursing homes.

Other States including Pennsylvania, North Carolina, and Virginia have taken similar action to assure that institutions and facilities providing services to welfare beneficiaries are operated on a nondiscriminatory basis.

Again with the exception of Alabama, all of the States have participated in joint Federal-State training seminars on programs to eliminate discrimination in nursing homes, and have developed procedures to acquaint beneficiaries with their rights under title VI.

Mr. Chairman, in passing the Civil Rights Act of 1964, the Congress placed certain responsibilities upon all of us who administer programs of Federal assistance. To meet our responsibilities under title VI of that act, we prepared—and the President approved—a regulation governing our welfare programs.

The statement of compliance which we have developed in order to carry out that regulation was not a new device but simply an adaptation of the standard Federal-State arrangement by which a State qualifies for Federal welfare assistance, in fact, an arrangement which has been in effect for 30 years.

Forty-nine out of the fifty States found it possible to submit such a statement. Alabama did not.

Faced with that fact, the Department of Health, Education, and Welfare engaged in a very long period of negotiation. At every stage of the proceeding we moved deliberately and with sober concern for the responsibilities that had been placed upon us.

Given the consistent refusal of Alabama to comply with the requirements of the law, the outcome seems to have been inevitable. No one regrets it more than I.

Mr. Chairman, I shall be glad to answer questions. I have at the table with me Joseph Meyers of the Welfare Administration; Mr. Libassi, my special assistant on civil rights; Slim Barrett of the Department of Justice; Ralph Huitt, my Assistant Secretary for Legislation.

The CHAIRMAN. Thank you very much, Mr. Secretary.

Mr. Secretary, I have here a statement that is part of the legislative history of title VI of the Civil Rights Act of 1964. It was carefully prepared, I am sure, and the Department, I believe, was aware of it when it was entered by Senator Pastore on April 7, 1964, when he was floor managing the civil rights bill. As you know there is no committee report to show any other construction of the act. I believe this has been quoted before. He said:

> There is finally one additional feature of title VI which demonstrates beyond doubt that it is not intended to be vindictive or punitive. I am referring to the fact that the authority contained in the title to cut off funds is hedged about with a number of procedural restrictions and requirements. These would hardly be necessary or appropriate if the bill were designed as a punitive or vindictive measure. These restrictions have already been briefly described but let me here again summarize what must be done before funds can be cut off.

I am not going to read all those, but here is the eighth:

> The aid recipient can obtain judicial review and may apply for a stay pending such review.

Now, that legislative history would appear to me to be contrary to your statement over here on page 9, where you say that—

> But if Congress had wanted to allow State agencies to defer their performance under title VI until they had fully litigated any objections they might have, it could have easily done so. It could have provided that the only remedy for noncompliance be an action in the Federal courts to compel compliance with the law.

I would ask you if this stipulation has been recognized as a part of the legislative history and part of the intent of Congress that the aid recipient can obtain judicial review and may apply for a stay pending such review. Do you recognize that as having been the purpose and intention of Congress in passing title VI?

Secretary GARDNER. It appears to me that we have followed these procedures. There is now in effect a stay of the termination, and we have recognized that. As I understand it, the judicial review will proceed.

The CHAIRMAN. That is where we stand. I have been informed that there is a contest between the Department and the State with regard to the jurisdiction of the district court for the northern portion of Alabama. But there should be no contest as to the question that judicial review is appropriate before the aid is terminated. Let me say that I am not interested in the political aspects between Governor Wallace and the Department. What I am interested in is our responsibility to 200,000 needy people. If it is agreed that prior to the time that the aid to these people is discontinued, the judicial review would proceed and the court would decide the issue as to whether Alabama is in fact discriminating, it seems to me that that might resolve the question.

Now, that is what is happening right now and I just wonder if you agree that that is appropriate and that it should proceed on that basis, whether it is the fifth circuit or whether it is the district court. In

either event, the court ought to decide the matter before the funds are cut off.

They are getting them right now, as I understand it.

Secretary GARDNER. That is correct. We have recognized that and it is perfectly acceptable to us.

The CHAIRMAN. In other words, as far as you are concerned, it is agreeable that the courts should pass on this question before the termination of funds takes place?

Secretary GARDNER. Yes, sir.

The CHAIRMAN. It seems to me that resolves much of what we have in contest here, because I do not believe anyone will quarrel with the fact that the State should and would comply if the court held that it would be discriminating if it did not comply with those requirements.

Of course, there are some differences between what a State would think and what the Department would think. I am well aware of the fact that some of these so-called State-Federal agreements have been signed by the States where they felt they were waiving their rights. Most of the appeals that have come to my attention from the State of Louisiana have not been based on the argument that you should not promulgate a particular regulation; the appeal has been based on the plea that withholding of Federal funds ought to await a decision by the court one way or the other as to whether they were required to do that. I take it by your answer that you are satisfied that it should await a decision by the court.

Secretary GARDNER. Yes, sir.

The CHAIRMAN. That is, if the State had applied for judicial review of the issue?

Secretary GARDNER. That is right.

The CHAIRMAN. Now, as I understand it, there is a contest and some dispute over whether Alabama should sign a form recommended by the Federal Government. Have you indicated that it would be acceptable if Alabama signed some other form and simply said that they would handle these funds without discrimination?

Secretary GARDNER. We are perfectly prepared to negotiate the form in which they indicate their willingness to accept full responsibility and the means that they will adopt to carry out that responsibility. This is the essence of the Federal-State relationship over 30 years of these welfare programs. The State has stepped forward and said what they were going to do and how they were going to do it. This assumption of responsibility for the conditions and arrangements under the program has always been considered essential to the relationship. And this Alabama has been quite unwilling to do.

The CHAIRMAN. Well, the kind of things that States have objected to, and not just in regard to this but other programs as well, have been those third-party requirements. The State felt that you did not have a law which would require these third parties to do certain things. Their fear was that they were to be told they would have to go tell someone who was not covered by the FEPC law that he could not have an all-white shop or could not have any segregation practiced in an all-white plant in the event that he were to supply some commodity or some service to a State agency. Such an example would be the State highway department buying gravel from a contractor who had

all-white personnel or all-Negro personnel, as the case may be, working for him, where he had less than 25 employees. He would not be covered by the FEPC law. The State would have no authority to tell him he could not discriminate in choosing his employees. Yet it might be contended by the Department that this was discriminatory to permit him to sell to the State, even though he had the low bid. Those are the sort of things that States most strenuously object to, where they are called upon to police.

I am sure you can understand how a State might feel about being called upon to do something with which it did not agree—where there is no law, either on its statute books or on yours, to require such a result.

Secretary GARDNER. Well, the example you give is one I am not competent to comment on. But title VI is quite a sweeping provision. If you read it carefully, you find that it does indeed cover these third-party arrangements; because it says quite specifically that no person shall be subjected to discrimination under these federally assisted programs. It is very hard to get around that language. There are no ifs or buts in it. It just says it, flatly. The other States involved have accepted that. It is difficult, but it is not impossible.

The State does have the power to pay or not to pay these third parties, these vendors of medical services, and we are not going to extremes in our approach to this; we are simply asking that every State make a determined and continuing effort to eliminate discrimination in these vendors of services.

The CHAIRMAN. We get to those situations, though, Mr. Secretary, where the quarrel is what constitutes discrimination.

You make reference in your statement here to these situations where a Negro welfare worker is assigned to investigate claims of Negro welfare applicants. Do you regard that as being a discrimination against a Negro?

Secretary GARDNER. No, sir, provided that an arrangement has not been set up in which the job assignments and the individuals to whom that welfare recipient is assigned for professional service are selected on the basis of their color consistently.

The CHAIRMAN. Now, you say "professional service." Are you talking about the investigation of a claim or are you talking about the person who performs medical services for the recipient?

Secretary GARDNER. Either way. I would say if the Negro recipient found himself dealing only with Negro professionals, whether they are caseworkers or doctors or nurses, he would be in a situation in which "discrimination" would be an appropriate word.

The CHAIRMAN. I sometimes find myself wondering, Mr. Secretary, whether the law forbids discrimination in favor of someone. I understand that it forbids discrimination against anyone. But discrimination in favor of someone, provided no one else can show injury, I sometimes wonder whether the law forbids that. For example, from time to time, the executive department has sent out orders that the next person employed in a given spot be a Negro. There have been times when, traditionally, that office has had all whites employed. You have sent orders down that the next person employed there must be a Negro. It can well be contended that that is an order to discriminate in favor of that applicant for that particular job. That has happened re-

peatedly in the executive branch of the Government. I would ask you if you feel that is against the law. Has the Federal Government violated the law, ordering that the next person employed be a Negro, or if you do not have a Negro, get one?

Secretary GARDNER. I think it, incidentally, favors the Negro who gets the job, but the basic target is the situation existing in that office, which it is the intention of the Government to correct.

The CHAIRMAN. In other words, it would be discrimination in favor of the Negro on that particular issue, but you would contend it was done to eliminate a condition of de facto segregation in a particular office. You nod, Mr. Secretary. I would appreciate it if you would say yes or no, because the reporter cannot put down that you nodded.

Secretary GARDNER. Yes.

The CHAIRMAN. Thank you very much.

Are the physicians who furnish services to welfare recipients under part B of title XVIII of the Social Security Act covered by title VI of the Civil Rights Act?

Secretary GARDNER. I will have to have Joseph Meyers answer that.

Mr. MEYERS. As I understand the question, Senator Long, yes, they are if there are services that are provided and are paid for in part by Federal funds, they would be subject to the provisions of title VI.

The CHAIRMAN. In other words, those physicians could not provide services to a welfare recipient for whom the Department of Welfare had purchased coverage under part B, of the medicare program. Here is a legal opinion, in the form of a memorandum to Robert Ball, Commissioner of Social Security, from Mr. Willcox, General Counsel of HEW. It is dated October 16, 1965. The concluding paragraph says:

> We conclude, then, that Title VI of the Civil Rights Act of 1964 is applicable to Part A of Title XVIII of the Social Security Act, but not to Part B, and that Executive Order 11246 is applicable to agreements and contracts under Sections 1816, 1842, 1864, and 1874, but not to agreements under section 1866.

Are you familiar with that?

Mr. MEYER. I am not, sir. Maybe Mr. Libassi is.

Mr. LIBASSI. I do recall that memorandum, Senator Long, and the position of the Department is that services by physicians under that particular provision are not covered by title VI. The position of the General Counsel of the Department, as stated in that memorandum, is the policy of the Department and is guiding our actions in that regard.

The CHAIRMAN. Why would you say that with regard to one program, part A of title XVIII of the Social Security Act, that the Civil Rights Act is applicable, but that it does not apply to part B?

Mr. MEYERS. I think I might clarify a little bit the problem with respect to the Welfare Department under title XVIII, Mr. Chairman. There is a coinsurance provision in part B under which 20 percent is often paid by the Welfare Department with respect to recipient under title XVIII. That part, the 20 percent, which they pay is clearly covered by title VI. I am not familiar with the 80 percent part.

The CHAIRMAN. Here is the way I understand it. A person under part B puts up his $3 and the Federal Government matches that with $3. He puts up his own $3 and is entitled to payment for the services

of a doctor. He can go to any doctor he wants to see. Now, if the State pays that for him because he is unable to pay it himself, as is very often the case, then I understand that you contend that he cannot go to a doctor who has a segregated waiting room or a doctor who treats only white patients or a doctor who treats only Negro patients, as the case may be, because the State has paid the $3 for him from its title XIX welfare funds. Is that the position that the Department takes at the present time?

Secretary GARDNER. The reason for the difference between part A and part B under medicare is that in part B, the Federal Government pays the money directly. It is not paying the money to any intermediary such as a State or a hospital or anything else, of which it can require anything. In part B, it is paying money directly to the individual and he then chooses.

Now, in the welfare arrangements, there is an intermediary, the State, and we are required by title VI to require this.

The CHAIRMAN. It would seem to me that if the State should see fit to simply pay the money for the needy person to go out and obtain the care he needs under title XIX, that the State, having paid the recipient's share of the cost of part B of medicare, should also let him obtain the treatment that he needs from any doctor he wants to retain no matter what that doctor's attitude is, and no matter how that doctor might discriminate in the choice of patients he takes.

Would you quarrel with that?

Secretary GARDNER. Mr. Barrett, would you like to comment on that?

Mr. BARRETT. Senator, I am not familiar enough with these particular medicare programs, I think, to comment on those. However, with respect to the welfare programs in the third party vendor situation, in our judgment as we have expressed it to the court, there should be no question but that where the State is providing service to the ultimate beneficiary, an individual, and in doing so is using a private vendor in lieu of some State agency, the State does not thereby avoid its responsibility to see that the service which it is buying for the ultimate beneficiary is provided on a nondiscriminatory basis. That situation is essentially different from the situation where the State merely makes a payment, say, to the ultimate beneficiary and then the beneficiary is free to go out and get what services he wishes.

The CHAIRMAN. Well, what view would you take of a situation where a State pays the welfare recipient whatever money appears necessary to provide him with medical care and he goes to whomever he wants? Would you contend in that case that the State can be required to insist that that recipient should hire only persons who do not discriminate in their treatment of patients?

Mr. BARRETT. There might be other circumstances that would affect it. But if the payment is simply made to the beneficiary, no strings, he can go get the service where he wants to. Unless there were other factors, that would probably not involve a duty on the part of a State to see that whoever the beneficiary went to, it being beyond the control of the State where he did go, that the State see that that doctor or facility not discriminate. But that is not the situation under these Alabama welfare programs.

The CHAIRMAN. I would hope we could get a more definite answer than that, because you say that unless there are other circumstances, we probably would not. Those words, "unless," "other circumstances," and "probably," are not definite. You do not give people a definite answer which they can rely upon. It seems to me that if a State pays a beneficiary the cost of obtaining medical service he can get whoever he wants to provide that service. That is how you administer part B of medicare. I do not see why you would insist that a State should administer its end any different than you administer yours.

Mr. BARRETT. I do not think the standards would be any different.

Mr. LIBASSI. Senator, I think we can say categorically that title VI does not apply to funds provided to the individual in terms of how he uses or spends those funds. Our title VI regulation, section 80.2, subsection c, specifically provides that the regulation does not apply to any assistance to an individual who is the ultimate beneficiary under any such program. So when the individual is given the money, he is free then to spend the money where he sees fit, in restaurants that are segregated, in grocery stores that do not sell to Negroes, or in doctors' offices that will not treat whites or Negroes.

The CHAIRMAN. In other words, once he receives his money, he has the discretion to spend it wisely or unwisely, to hire a doctor who treats him poorly or who does not treat him poorly, who discriminates or does not.

Mr. LIBASSI. That is right.

The CHAIRMAN. If a State contracts with Blue Shield, are the physicians providing services to welfare recipients required to comply with title VI?

Mr. LIBASSI. Would you repeat the question, Senator?

The CHAIRMAN. If a State contracts with Blue Shield to insure the costs of physicians' services for welfare recipients, are the physicians required to comply with title VI?

In other words, a physician is being paid by Blue Shield; he is not being paid by the State. But a State has contracted with a third party to insure the cost of the physician's services to its welfare recipients. So here you have a case not of the State itself, but of a contractor who agrees to insure the service to the recipients. Now, is that contractor required to tell the physicians that they must comply with title VI and cannot discriminate in the selection of their patients or in the way that they treat them?

What we are talking about is whether we should have one waiting room for whites, one for colored, or one room in which they put a white man, one in which they put a colored one.

Secretary GARDNER. It would be necessary; this would come under title VI, unless some way were developed in which the money flowed directly to an individual. If the money flows from a State through the contractor, then title VI applies.

The CHAIRMAN. Suppose Blue Shield proceeds to say to an individual, you go ahead and get the treatment you require and come to me and I will reimburse you whatever it costs you to get that treatment. In that instance, it is the individual who obtained the treatment for himself and it is not Blue Shield that is paying the doctor. Would the answer be different?

Secretary GARDNER. I cannot answer that.

Mr. LIBASSI. Yes, I think the answer would be different, Senator. As long as the funds are provided directly to the individual who then does what he wishes with the money, then title VI does not apply. But the State cannot use intermediaries or through contractual arrangements or other procedures arrange for the services to be provided and compensated for and avoid title VI.

The CHAIRMAN. What you are saying is if you provide the individual with funds to obtain medical service for himself, the individual has the privilege of doing business with whomever he wants, but if the State is doing it, the State cannot do business with someone who, in your opinion, is discriminating?

Mr. LIBASSI. That is correct.

Secretary GARDNER. The provisions of title VI extend to the point at which the money reaches the ultimate beneficiary. Then it ends.

The CHAIRMAN. You stated I was correct, I believe, that if the State is paying the doctor, the State cannot pay a doctor who discriminates in his practice. If the State pays the individual and the individual pays the doctor, that individual is privileged to hire a doctor who does discriminate.

You nod your head.

Secretary GARDNER. Yes, sir.

The CHAIRMAN. My understanding, thus far, is that the U.S. Government does not have to comply with title VI in paying a doctor under part B of medicare but that Blue Shield does if it pays a doctor for care provided to someone on welfare. That seems a strange anomaly to this Senator. Why would that be the case? Why would it be that way?

Secretary GARDNER. I do not really understand the question, Senator.

The CHAIRMAN. This opinion of Mr. Willcox says that title VI does not apply to part B of medicare. That being the case, the Federal Government can proceed to pay that very doctor that the State government is forbidden by Federal regulations to pay under its welfare program.

Secretary GARDNER. Because a payment to the doctor is an assignment from the patient; that is, the patient has the choice. He can pay the doctor himself and be reimbursed or he can assign the payment to the doctor and the doctor can get it directly. But it is a decision of the patient. It flows through the patient.

The CHAIRMAN. Would the Federal Government object to the State using that same procedure, where the patient has the option either of paying or assigning?

Secretary GARDNER. I would assume that the same rules would apply.

The CHAIRMAN. Did the President approve your order to terminate aid to Alabama?

Secretary GARDNER. No, sir. This was not required.

The CHAIRMAN. The Civil Rights Act says "no such rule, regulation, or order shall become effective unless and until approved by the President." Would not the requirement to terminate aid to the State be an order?

Secretary GARDNER. I think this refers to an order to general applicability. Our authority stems from the Congress and from the regu-

lation which was approved by the President. We were required to notify the appropriate committees of Congress of this, which we did.

The CHAIRMAN. Can you tell me how many hospitals in Alabama have been found in compliance with title VI for purposes of participating under medicare?

Secretary GARDNER. Yes, sir.

Mr. LIBASSI. We have 191 hospitals that have been found in compliance with title VI in the State of Alabama. There are about 11 hospitals that are not at the present time in compliance and have been notified of that fact and offered an opportunity for a hearing under title VI. There are 10 other hospitals in the State to our knowledge, and there may be more, that are not applying for any Federal aid or assistance, and we do not know their status. But there are 191 hospitals in Alabama that have been found in compliance.

The CHAIRMAN. How many nursing homes?

Mr. LIBASSI. We have found 98 nursing homes express some interest in medicare. Of these, 93 have been found cleared for participation in the medicare program and three are still under review and investigation. We have not completed our study.

These are not necessarily extended care facilities that will participate in the program, but these have expressed some interest in doing so.

The CHAIRMAN. If all of these institutions have been found in compliance for purposes of medicare, why could they not continue to be paid under Alabama's welfare program?

Secretary GARDNER. Senator, the problem is that Alabama does not accept responsibility for carrying through the provisions of title VI. As I said, 30 years of welfare plans have established the principle that the Federal Government undertakes certain things and the State undertakes certain things, and they proceed on the basis of a jointly agreed-upon plan. Alabama has simply refused to be a part of any such jointly agreed-upon plan. They have not in any way indicated their willingness to carry forward the program.

Now, we, as you may know, have suggested that they might wish to come forward and seek clearance of 80 percent of the funds which are not paid through third parties and do not involve the complex issues that we have argued about most. They have not been willing to proceed with any such negotiations.

The CHAIRMAN. Mr. Secretary, it has been my experience in dealing with your Department on these title VI issues that there has been a lot of discretion from Washington transferred to the field level. The battles we have fought up here on this question of discrimination have generally been resolved so that treatment could be provided and people could go ahead with men of good will trying to perform a service. I regret to say that the impasse repeatedly occurs at the local level. I think in many instances your Department, and even you as a Secretary, have been injured by the fact that people perhaps did not come to Washington with their problem when they should have.

In Baton Rouge, the impasse over providing medical care for aged citizens under medicaid and medicare was over whether the hospital, having agreed that it would not discriminate, was to be required to buy an ad in the newspaper and advertise that it met the needs of the Federal authority and therefore was going to proceed on a nondiscriminatory basis. They were willing to comply; they just did not like to

accept the chagrin of being made to buy an ad in the newspaper and say we have now succumbed to Federal pressure and we are going to do what Federal authorities tell us that they want us to do. We resolved that in that instance by simply waiving that.

In other instances, we have come across a situation where someone wanted to pay something extra and have a private room, which in my judgment, they are entitled to do. If they pay something extra, they are entitled to have something for it. We worked that out with your Department.

I regret to say our main difficulty has been with those at the field level seeking to impose some theory that really was not insisted on by the Department at the Washington level. I hope that we can resolve some of those things in favor of simply getting on with the service.

I take it you do not contend that there is any problem about a person paying something extra and receiving an additional service, such as a private room.

Secretary GARDNER. You mean a single room?

The CHAIRMAN. Yes.

Secretary GARDNER. I do not see any problem at all.

The CHAIRMAN. One other point that does concern me. It is not what we are here on in this particular hearing, but we are likely to be confronted with quite a problem when school opens this fall on this question of transferring Negro teachers from Negro schools into white schools and white teachers from white schools into Negro schools, where each school is located in a neighborhood that is either predominantly white or predominantly Negro. Does your Department contend that that Supreme Court decision, the *Brown* case, means anything more than that the child is entitled to attend the school nearest his home?

Secretary GARDNER. I would like to have Mr. Libassi answer that question.

Mr. LIBASSI. Senator, the policies of the Department are based on the interpretations of the Court decisions in school cases. The Constitution requires public officials to operate a single, unitary, nonracial school system and public officials are required by the Constitution to take whatever steps are necessary and appropriate to eliminate the dual racial school system. Now, the courts have also indicated that faculty segregation is in violation of the Constitution and that faculty desegregation is essential and part of the process of eliminating the dual school system.

The CHAIRMAN. You say that the courts have ruled that having Negro teachers in Negro schools is violative of the rights of Negroes or whites as the case may be?

Mr. LIBASSI. Yes, Senator, that is correct.

The CHAIRMAN. What decision are you relying upon on that?

Mr. LIBASSI. Mr. Barrett might be able to provide all the precedents for that.

Mr. BARRETT. Mr. Chairman, there are several cases. The two Supreme Court cases are *Bradley* v. *Board of Education, City of Richmond*, and *Rogers* v. *Paul*, which involved an Arkansas school district. There are court of appeals opinions, a number of them, that follow the Supreme Court opinions and attached that reading to those opinions. Among the court of appeals opinions are *Singleton* v. *The City of*

Jackson, Mississippi, School District; *Davis* v. *Mobile County, Alabama*; I believe another is *Kemp* v. *Beasley* and *Clark* v. *Little Rock School District* in the Eighth Circuit.

The CHAIRMAN. Would you furnish us with a memorandum of these cases? I would like to read them.

Mr. BARRETT. I would be very glad to.

(The information referred to appears at p. 138.)

The CHAIRMAN. Is it your contention that a Negro is being discriminated against because he is taught by a Negro teacher? Do you contend that the Negro teacher is not as well qualified or merely that he is a Negro?

Secretary GARDNER. Senator, the problem is not one of a Negro student being taught by a Negro teacher. He may be better taught or worse taught in that situation. The problem is of a dual school system in which the Negro youngster is taught only by Negro teachers and white youngsters only by white teachers. As I understand it, this is the force of the court concern and has been consistently.

The CHAIRMAN. Well, you stated previously that you did not think that the Negro was being discriminated against because he had a Negro caseworker look into his welfare case. My impression there is that he is likely to receive more sympathetic consideration if he had a Negro caseworker than if he did not. My guess would be that a Negro caseworker would be more likely to understand his problem and more likely to be sympathetic to him than a white caseworker. I do not quite understand how you can contend that a Negro is being discriminated against because he has a Negro teacher in an all-Negro classroom in an all-Negro neighborhood, unless you would contend that those Negro teachers are not qualified and therefore not able to give him an adequate education.

Secretary GARDNER. Senator, as I understand the contentions of the courts, they do not refer to the case of an individual Negro child with a Negro teacher but to the cumulative effects of a dual school system which is segregated. It seems to me that that is the target of their concern and that is what they regard as ultimately harmful to the recipients of the education.

The CHAIRMAN. Do you have available to you, now, Mr. Secretary, a report of the Civil Rights Commision which they have not even been able to sell to the Washington Post or to the New York Times which have been their most ardent advocates up to this point? The contention there is that Negro students do not do as well among Negroes as they do among whites. The reaction of this Senator, one individual representing one State, is that what has been happening in their effort to put their best foot forward is that Negro organizations or organizations interested in promoting Negro progress, have set out to find the best qualified Negro children available to apply for or to go to white schools. If he had been taken from an all Negro class—where he was a leader, the class president, the brightest pupil in the whole class—and he moved into a class with white students, he would be in perhaps the lower half of the class and not be one of the outstanding students of the class. Nonetheless, that person might make better grades than somebody else in the class from which he had come. My reaction is if you had left that person where he was, he would still have made a better grade than anybody in that class.

My impression is that that report simply arrives at a conclusion that is obvious on the face of it. If you take the brightest student out of a class, that student is still going to be brighter than any other student in that same class. If you put that student in a little faster class, that student is going to move a little faster than he would with a class that does not move that rapidly. If a child is going to progress at all in a fast-moving class, he is going to move ahead faster than he would if he were left in the slower class.

My question is whether you have done the Negro students a service. You have deprived them of their leaders when you take the brighter one out of a all-Negro school and put them in an all-white school. I wonder whether that is for the benefit of the cause. In my opinion, it does not prove itself.

Are you buying that opinion or just looking at it the way everybody else is at the moment to see if it can prove itself?

Secretary GARDNER. The evidence is not really fully conclusive. We have a good deal of evidence to support the views in the Civil Rights Commission report. I do not regard the evidence as yet conclusive. But so far as I know, there is not systematic evidence to support the view that you have just stated. It may be true, but we do not have the evidence which would back you up in it.

The CHAIRMAN. It seems to me that fundamental to that argument—and fundamental to the argument that you just made—would be the assumption that the Negro himself is inferior and I do not buy that. It seems to me that a little confidence in himself, a little more pride in himself which the Negro had been achieving and had been acquiring would completely obviate the theory that a Negro is being discriminated against because he has a Negro teacher. Now, it may be that we need to bear down harder and work harder to have better qualified Negro teachers. But I find difficulty buying the theory that the Negro is being discriminated against because he has a teacher of his own race. It seems to me to do so is almost to insist on the theory that the man is inferior. I do not buy that.

Secretary GARDNER. I do not buy it, either.

The CHAIRMAN. In certain areas, he might not excel, but in certain areas he has excelled tremendously. In sports contests, the Negro race has been exceptional, to the extent that it has almost taken the whole thing over in virtually every category, whether it be basketball, baseball, football, or boxing. It would seem to me that a very considerable portion of this problem is the Negro deciding for himself that he thinks he is as good as anybody else. Until he does that, I believe that he is discriminating against himself, holding himself back.

Secretary GARDNER. Senator, I do not buy the theory that the Negro is inferior, either. But I think at some point in this discussion, we have gotten on to different tracks, because I certainly believe that it is not a question of native inferiority.

The CHAIRMAN. Well, I would contend, Mr. Secretary, that laws forbidding you to discriminate against a person do not preclude you from discriminating in favor of a person, unless you can show injury to someone else when you do. Now, if a person has some pride in himself, in his family, in his forebears, and pride in his own race, it would seem to me that to permit him the association or the instruction

of someone of his own race whom he admires is actually discriminating in his favor and to deny him that could well be discriminating against him. I do not know whether your Department buys that, but that is the impression I have from it. If you had a white class that preferred a white teacher and you had a Negro class that had a very warm regard and a very kind feeling for Negro teacher, it would seem to me that you would be discriminating against both of them to deny them the teachers they prefer. What is your reaction to that?

Secretary GARDNER. We certainly would agree that in the case of individual teachers, there might be preferences that ought to be recognized. But we buy without reservation the view of the courts that the dual school system is not a suitable system.

The CHAIRMAN. I would say, Mr. Secretary, that whenever you reach into a Negro school and take away from them one of the most popular, best qualified Negro teachers and put that teacher in a white school and then you proceed to give the Negro school as a substitute for that outstanding Negro teacher the most incompetent teacher they have in that white school, you have not done anything for those Negroes but discriminate against them. The Negroes did not want it, the whites did not want it, teachers did not want it—this is a case of Washington telling a State to do what did not need to happen to a single soul.

Secretary GARDNER. Did it need to happen that way? Could they not have sent an equally capable teacher to the Negro school?

The CHAIRMAN. Well, if they did, it might not have happened quite that way. I would say that based on what you are doing, unless you are going to set yourself up in the business of getting into the qualifications of the teachers themselves, you are going to have difficulty in reaching the end which you are trying to achieve. When you integrate just for the sake of integration, just to put whites with Negroes, and nothing else, I would question whether you are doing any particular good for anyone.

Some people think that in your Department, I am sure. But I would question it. I would be curious to know if you think that mixing the races just to mix them—for example, where you have an all-white neighborhood and an all-Negro neighborhood, and close down two schools and put them altogether in one—whether you have accomplished anything at all. Do you really think you have done something worthwhile when you do that?

Secretary GARDNER. I believe that you have, yes.

The CHAIRMAN. Why?

Secretary GARDNER. Well, I believe that ultimately, we cannot have two nations, we have to have one nation in which Americans are Americans and treated equally and without favor on the basis of their color or race or nationality and whatever. I do not see how we can sustain any other system and still believe what we say we believe.

The CHAIRMAN. The evidence is ample and my belief is that you have plenty to show you that any Negro who wants to go to a school with white children can go. That he can do. Once you have established that, if he would equally enjoy going to school with his own or prefer it, I for the life of me cannot see why you quarrel with that result. Some do, but I can't understand why you do.

Can you explain to me why, if he prefers, if he feels more comfortable, happier, better adjusted among his own, what is wrong with that: that he should choose to be among his own?

Secretary GARDNER. We believe that if a genuine free choice situation exists, an ample number of Negro youngsters will choose the white schools and there will break down over a period the attitudes which make it difficult for these two kinds of Americans to work and live and study side by side.

The CHAIRMAN. It has been my experience and observation of people, quite apart from the race issue, that they did better among those where they were accepted, where they were liked, where they were welcomed and appreciated, than to be put among others. I am speaking quite apart from race. To be put among others where they are different is not to do them any favor; they are going to be unhappy, poorly adjusted, miserable.

I do not quarrel with the *Brown* decision; it is the law and I am not going to change it. Any Negro living in a white neighborhood is entitled to go to the school nearest his home. I accept that. I do not for the life of me understand how you can contend that you are doing him a favor by putting him in a school where nobody even speaks to him, where they decline to speak to him. That is a social matter that they have a right to do. You do not have the power to make them invite him to go to another student's home; you cannot do that.

You shook your head, which indicates the answer is no?

Secretary GARDNER. No, sir.

The CHAIRMAN. You cannot require that he be accepted and he is going to be a miserable little fellow for some time there where he is forced to go, where he is not welcome. May I say I am about as much above racial prejudice as most southerners. When I was a baby, I was carried in a Negro woman's arms for about the first 2 years of my life while she did the housework around the house. I always thought she was one of the family as far as I was concerned. Some people say I am left-handed today because she carried me in her left arm which caused my left arm to be free to reach for things. She was much beloved by my family and so was her husband. We wish the very best for those people and all their children.

I just do not understand why one would contend that they must associate contrary to their wishes and their likes and that it is good for them even though they do not want it that way.

Senator Anderson?

Senator ANDERSON. Mr. Secretary, your statement on page 13 says, "We do not know the full extent of the discrimination in the Alabama welfare program." Who would know that?

Secretary GARDNER. I would assume that the Alabama State Welfare Agency would know it if they wish to report on it.

Senator ANDERSON. They are probably not giving information to us. How would we cast an intelligent vote on this matter if we do not know the extent of discrimination?

Secretary GARDNER. Well, I am not sure what you are referring to, but let me say this, that we know that discrimination exists. Evidence of discrimination and a good deal of it was introduced at the hearing.

Senator ANDERSON. Which hearing?

Secretary GARDNER. When we failed to bring the Alabama State Welfare Agency into compliance after a long period of negotiations, they were given an opportunity before an independent hearing examiner and that hearing was held. Evidence of discrimination was introduced in considerable amount. It was never disputed by the Alabama Welfare Agency, nor was contrary evidence offered, and the independent hearing examiner made a specific finding that discrimination existed.

Senator ANDERSON. Therefore, you feel that this committee has sufficient information to act upon this matter, this report?

Secretary GARDNER. There is nothing at issue here in the way of a report on a bill.

Senator ANDERSON. I understand.

Secretary GARDNER. Yes, sir; I believe that we have followed scrupulously and patiently over a 22-month period the provisions laid down for dealing with this sort of case. We have negotiated, we have corresponded, we have discussed it with them. When nothing resulted, we provided the opportunity for a hearing, and that hearing resulted in a finding that discrimination existed and then it was put to the Federal Commissioner of Welfare. She had another hearing and she made the same decision. It was then passed to me and I made the decision to terminate funds.

Senator ANDERSON. I am just asking, because some people may say we are not ready for the order and so forth, may ask a lot of questions. You say you do not know the full extent, but you think there is satisfactory evidence in the hearing?

Secretary GARDNER. Yes, sir.

Senator ANDERSON (presiding). Senator Carlson?

Senator CARLSON. Mr. Chairman, I do not have any questions.

Senator ANDERSON. Senator Talmadge?

Senator TALMADGE. You testified on page 7 that the handbook and proposed form have not been approved by the President and title VI does not require this. Is that correct?

Secretary GARDNER. Yes, sir.

Senator TALMADGE. I hold in my hand the handbook itself, supplement C, issued by the U.S. Department of Health, Education, and Welfare. It is my information that the very forms that the State of Alabama refused to sign appeared in this handbook. How do you consider that they are not a part of the regulations, if that is what you are cutting off funds for because they would not sign?

Secretary GARDNER. The form which they refused to sign does appear here. It does not introduce any new substantive requirement that does not appear in the regulation approved by the President. It is simply a means of communicating with the State and arriving at some mutual agreement as to what the State will undertake to do to meet its obligations in the Federal-State relationship. These forms have been used for 30 years in all of the welfare programs and the State of Alabama, along with all of the States, has accepted this means of dealing with the Federal Government.

Senator TALMADGE. Title VI says no such rule, regulation, or order shall become effective unless and until approved by the President,

Now, you state that the President did not approve this form. Yet you have denied 200,000 aged people and unfortunate children in the

State of Alabama funds because they did not sign an order the President did not approve. Is that correct?

Secretary GARDNER. No, sir. My legal advice has indicated that the sentence you quote does not refer to this sort of form but refers to orders of general applicability. I would be glad to have Mr. Barrett of the Department of Justice comment on that.

Mr. BARRETT. Senator, a regulation of general applicability was adopted by the Department of Health, Education, and Welfare. It was approved by the President. The regulation required that the applicant State agency submit a form of assurance that would contain certain things described in general terms in the regulation and provided that the agency head would actually devise the form, which was done. However, the form itself is not, within the meaning of the statute, a rule or regulation. Therefore, the form itself did not require Presidential approval although the rule providing for it did require such approval and there was such approval.

Senator TALMADGE. In the Secretary's statement, he makes much of the fact that 49 States signed the form, but Alabama did not. Now the very form that was the basis of cutting off the funds from Alabama has never been approved by the President, despite title VI of the act.

Mr. BARRETT. I believe the regulation, Senator, was the basis for terminating the funds. The regulation itself requires the giving of this type of assurance and the assurance not having been signed or given, the regulation which had been Presidentially approved was not complied with.

Senator TALMADGE. As I read this handbook, the whole thing is regulations and orders. Yet you say the President has never approved that.

Mr. BARRETT. That is correct, he has not had occasion——

Senator TALMADGE. What is this if it is not regulations?

Mr. BARRETT. As I understand it, Senator, the so-called handbook is a manual of policies and procedures, governing the operation of HEW in the administration of its program, but not governing them in the sense that it has the status of law or of a regulation.

Senator TALMADGE. That is what Alabama did not sign, the very thing that you say is not a regulation.

Mr. BARRETT. That is correct. They did not sign the assurance.

Senator TALMADGE. And then you cut off the funds because they would not and now you say it is not a regulation at all. What is it?

Mr. BARRETT. The assurance is not a regulation. It is merely a form and statement which the regulation requires. In refusing to execute the statement, the assurance, the regulation, the specific terms of the regulation were not complied with.

Senator TALMADGE. Do you have before you the State of Alabama's letter of August 20, 1965, addressed to Dr. Ellen Winston, Commissioner of the Welfare Administration, Washington, D.C.?

Mr. BARRETT. I do not right at this second, but I can turn to it.

Senator TALMADGE. It was introduced in the testimony by the State of Alabama, and it is signed "Ruben K. King, commissioner." They set out three pages of detailed data that they will comply with the law, are complying with it, will comply with it.

Now, if that particular form that the State of Alabama did not sign is not required, why is this not sufficient?

Mr. BARRETT. Senator, the letter that you referred to, while it does say that they intend to comply with title VI of the Civil Rights Act, and goes into more detail as to what they are doing and what they intend to do makes it clear that, in fact, they are not and do not intend to comply with the regulations or with the requirements of title VI as we construe them.

Senator TALMADGE. Well, when Alabama was before this committee about a month ago, they stated they were complying with the law, would comply with the law, are ready to comply with the law, but their objection was to signing the open-end form that you sent them that you say now is not a part of your regulation.

Secretary GARDNER. Senator, they say that they were complying with the law, but as I indicated earlier, evidence of discrimination was presented at the hearing and was not disputed by the Alabama State people.

Senator TALMADGE. Did you make a finding of discrimination?

Secretary GARDNER. The independent hearing examiner made a finding of discrimination.

Senator TALMADGE. How about you as Secretary of Health, Education, and Welfare? Did you do so?

Secretary GARDNER. It was not for me to do so. I was ruling on another matter, that they had not complied with the conditions which were required.

Senator TALMADGE. That is the form you submitted which you say is not a part of the regulations, nor has the President approved it?

Secretary GARDNER. Senator, in the letter you describe, which is the letter, am I correct, of August 20, 1965——

Senator TALMADGE. I call your attention to Senator Pastore's speech on the floor of the Senate in this matter. He quotes here:

> Sixth: If the agency determines that a refusal or termination of funds is appropriate, it must make an express finding that the particular person from whom funds are to be cut off is still discriminating.

That is in the Congressional Record of April 7, 1964.

Mr. LIBASSI. Senator, the regulation approved by the President provides that a recipient of Federal funds must submit a statement. It does not require that it be submitted in a particular form. It does not require that a form which we have drawn as a suggested form must be signed by the State. The regulation approved by the President says that the recipient must submit a statement of compliance. The State of Alabama has refused to submit any adequate statement of compliance.

It is not a question of violating the handbook and it is not a question of the instructions and procedures being approved by the President. The State simply refuses to assume any responsibility as is required by the Presidentially approved regulation.

Senator TALMADGE. You did not answer my question about whether or not the Secretary of Health, Education, and Welfare determined they were not in compliance?

Mr. LIBASSI. Yes, sir, the Secretary determined that they were not in compliance.

Senator TALMADGE. He did not so testify a moment ago. He said that he acted on another matter.

Secretary GARDNER. On the basis of the hearing examiner's record and the totality of the hearing was a part of my decision. I did not have to——

Senator TALMADGE. Did you determine, the Secretary of Health, Education, and Welfare, that the State of Alabama is not in compliance?

Secretary GARDNER. Yes, sir.

Senator TALMADGE. You state now positively that is so?

Secretary GARDNER. Yes, sir, absolutely.

Senator TALMADGE. Your answer is "Yes"?

Secretary GARDNER. Yes, sir.

Senator TALMADGE. Let me ask you something else: Does the Federal Government have any means available to aid these 200,000 innocent people during such time as the funds are cut off to Alabama?

Secretary GARDNER. The cutoff of funds has been stayed by the court injunction until judicial review is completed. I understand Alabama has indicated that if the court so decides, they will comply.

Senator TALMADGE. If and when the cutoff of the funds does, however, become final, does the Government of the United States have any plans, any means available, to help these 200,000 aged and crippled, sick, lame, and dependent children in Alabama?

Secretary GARDNER. We have the means that we have always had if Alabama is prepared to comply with the law passed by this Congress, Senator.

Senator TALMADGE. Well, if the funds are cut off, what means do you have? What plans do you have?

Secretary GARDNER. If Alabama does not comply, we are compelled under the law passed by this Congress to cut those funds off and we would——

Senator TALMADGE. In other words, the object is to let the 200,000 people starve?

Secretary GARDNER. We have no authority under the law passed by this Congress to do otherwise.

Now, the State has a responsibility. It has always been the first responsibility of the State to care for these cases in any case.

Senator TALMADGE. Does it not seem somewhat incongruous to you that the Government of the United States would be making plans to starve 200,000 people in Alabama at the same time that we are spending a billion dollars a year to feed the starving in India?

Secretary GARDNER. It seems to me that the Federal Government in this case has been very consistent and is prepared to continue its payments to the State of Alabama and to serve these people as they should be served, provided only that Alabama comply with the law passed by this Congress.

Senator TALMADGE. In a question addressed to you by the chairman, you stated that you were agreeable to welfare funds being continued during the litigation in the Fifth Circuit; is that correct?

Your answer is "Yes"?

Secretary GARDNER. Yes, sir.

Senator TALMADGE. Are you now seeking to have the temporary injunction continuing these funds set aside by the Fifth Circuit?

Secretary GARDNER. No, sir: I defer to Justice on this.

Mr. BARRETT. Senator Talmadge, we are seeking a reversal on the merits in the Fifth Circuit. In other words, we are seeking a judicial determination that Alabama has not complied and should comply. The attorneys for the State agency have stated that when that determination is made, if it is made in favor of the Federal Government, they will comply. That being the case, of course, there would be no occasion for further withholding of funds. Until that occurs, the funds will continue to flow.

Senator TALMADGE. Your answer, as I understand it, is that you are seeking to cut off the funds, is that correct, by judicial procedure?

Mr. BARRETT. No, that is not correct.

Senator TALMADGE. You are seeking to expend the funds, is that right? What has the Justice Department done now? Are they seeking to give Alabama funds or deny Alabama the funds? Give me a plain answer.

Mr. BARRETT. As plain as I can state it, the ultimate purpose, Senator, is to give Alabama the funds and to have Alabama comply with the law.

Senator TALMADGE. Is the role of the Justice Department in this issue on Alabama's side, to give them the funds or to deny the funds?

Mr. BARRETT. It is to give them the funds consistent with the law. What we want is compliance with title VI of the Civil Rights Act of 1964.

Senator TALMADGE. I thought you were appealing the decision which enjoined the Department from withholding funds from Alabama. Is that what you have done?

Mr. BARRETT. We are appealing a determination by the district court in the northern district of Alabama which we think is a determination that it is the appropriate reviewing court to review the action of the Secretary. It is our position that the court of appeals is the proper reviewing court. That is why we have taken the case, sought to take the case from the district court to the court of appeals. Now, the State agency itself has now filed a petition in the court of appeals seeking a review on the merits of the question that is now separating us on the contingency that we are right as to which court has jurisdiction. But what we are seeking ultimately, Senator, is a determination of what title VI requires, and that the State meet those requirements and, meeting them, continue to receive the funds.

Senator TALMADGE. Suppose the temporary injunction is dissolved. Would you still agree that welfare funds be continued during the litigation of the procedural issues?

Mr. BARRETT. I do not think that there is any likelihood that the injunction will be dissolved, nor have we sought a dissolution——

Senator TALMADGE. I did not ask for your opinion. I asked you what would happen if it were dissolved.

Mr. BARRETT. I do not think it is going to be dissolved until the merits are decided by the court of appeals. If it is decided adversely to the Government, of course, that will just mean that the State is right.

Senator TALMADGE. Let me ask the question again and see if I can get a yes or no answer.

Mr. BARRETT. I will try to give you one.

Senator TALMADGE. Suppose the temporary injunction is dissolved; would you still agree that the welfare funds should be continued during the litigation of the procedural issues?

Mr. BARRETT. The Secretary has taken that position and made that statement, as I understand it.

Senator TALMADGE. Then the funds would be continued; is that your answer?

Mr. BARRETT. That is my understanding, sir.

Senator TALMADGE. Thank you for your response.

Mr. Secretary, in view of the response of the Department of Justice here, I call your attention to the letter to Chairman Long, dated January 24, 1967. The second paragraph thereof says that: "The State of Alabama has requested a postponement of the effective date of the order and I have denied this request."

In view of the response from the Justice Department that you would favor continuance of the welfare benefits to the State of Alabama during the duration of the determination of the procedural issue, why do you not give the State more time on this issue?

Secretary GARDNER. Senator, after attempting negotiations for almost 2 years, when I finally reached the decision to terminate, I deliberately set the point of termination 6 weeks ahead, and in fact, the deadline has not yet come, so that whether the State of Alabama chose to come into compliance or whether it chose to seek an injunction and appropriate judicial review, it would have plenty of time to do so.

Now, at the time they wrote me this letter, they were already in court. It has seemed to me preferable to leave to the court the question of staying the termination. Since that course was open and I have been dealing with the case for 22 months, it seemed to me perfectly appropriate to turn that over to the court and let them seek an injunction.

Senator TALMADGE. It seems to me, Mr. Secretary, that what ought to be considered in this matter is not the obstinacy of some Federal official or the obstinacy of some State official in Alabama but the fact that you have 200,000 people involved here, the high percentage of which are Negroes who are drawing old-age assistance, the lowest incomes within the State, crippled children, sick people, and others who cannot help themselves. Now, they have not discriminated against anyone, have they?

Secretary GARDNER. No, sir.

Senator TALMADGE. But they will be the ones who will be hurt, will they not?

Secretary GARDNER. I cannot characterize as obstinacy the patient negotiations over 22 months. And a situation in which our action came approximately 18 months after all of the other States had found it possible to comply.

Senator TALMADGE. I call your attention to the brief before the Court of Appeals for the Fifth Circuit. This is the Justice Department's brief, page 4:

We believe that the regulation requiring the submission of the assurance was clearly valid and the issuance of the preliminary injunction by the district court was accordingly an abuse of discretion.

Do you think the judge abused his discretion when he enjoined the Department?

Mr. BARRETT. I might say, Senator, that I believe we are characterizing the lower court's action as an abuse of discretion in that the merits of the controversy were clear in our judgment. Now, that does not mean that we were saying that it was an abuse of discretion in the sense that nobody would have been hurt had the preliminary injunction not been issued. Indeed, I think it was, although I was not there at the proceedings, I believe that it was either expressly or tacitly understood by the court and counsel that the parties were proceeding, that there would be damage and reason for preliminary injunction if the court thought there was a substantial issue of law as to the merits.

Senator TALMADGE. What you are saying is that you want to cut off the money for these unfortunate people in Alabama?

Mr. BARRETT. Not at all. We are saying that we think that Alabama has a clear obligation to comply with the Federal law.

Senator TALMADGE. But you do want to cut off the money to these people who have not discriminated against anyone?

Mr. BARRETT. Well, Senator, the Congress has said in title VI that the funds shall not be used to support the program in which there is discrimination.

Senator TALMADGE. These aged people are not discriminating, are they? These crippled children are not discriminating, are they?

Secretary GARDNER. The State is.

Senator TALMADGE. The sick are not discriminating, are they?

Let me read you something else here from the remarks of Senator Pastore: "The aid recipient can obtain judicial review and may apply for a stay pending such review." That is what you say is judicial discrimination, is it not?

Mr. BARRETT. I am sorry, I am not sure I understand the question, sir.

Senator TALMADGE. I am reading again from Senator Pastore's speech about the procedure here. I am referring to the eighth comment to be made, "The aid recipient can obtain judicial review and may apply for a stay pending such review."

Mr. BARRETT. That is correct. That has been done.

Senator TALMADGE. Alabama has applied for such a stay?

Mr. BARRETT. That is correct.

Senator TALMADGE. And the court has enjoined the Department of Health, Education, and Welfare, has it not?

Mr. BARRETT. That is correct.

Senator TALMADGE. Now, in your brief, you say that is an abuse of judicial discretion, do you not?

Mr. BARRETT. Because we disagree with the State agency as to the merits We are not saying that it is improper for a court to grant an injunction pending the resolution of the merits if there is a substantial question. But we were seeking and have now brought before the court of appeals the question of the merits of this controversy. That is what we want settled. That will determine whether the State agency is right or whether the Secretary is right.

Senator TALMADGE. Mr. Secretary, to show you how heavy the hand of Federal bureaucracy can sometimes fall on innocent people, I have here a file from my own office referring to the St. Joseph Infirmary in Atlanta, Ga. There is one telegram sent to the administrator of this hospital. The writer goes on to tell his name and says that his son,

Ronnie, was in the hospital, very much dissatisfied with the conditions of the room:

I filled out an application in which I gave your staff ample time to give me other accommodations. I asked for and was told that Negroes were always on the back side of the hospital. I did not believe this and it really came as a great shock to me knowing that this hospital, with Christian people, would have such thoughts in their hearts. I am strongly protesting this immoral action and feel that you are violating the 1964 Civil Rights Act.

He writes that he is sending a copy of this to Secretary Gardner, Department of Health, Education, and Welfare, Washington, D.C.; to the regional office of the Department of Health, Education, and Welfare; also to the President of the Atlanta branch of the NAACP, and so on. He feels that his son can receive better accommodations in the hospital and will go to no limits to put a stop to it.

He also says he could get no courteous service on the phone from the hospital personnel. "My doctor's nurse had to call and get information I had tried all day to secure."

Here is what the Department called on the hospital to provide in response to that one telegram:

To assist us in our investigation of the complaint mentioned above, it is requested that you furnish us with the following information as expeditiously as possible: one, hospital census for the day on which the complainant's son, Ronnie, was admitted, showing room numbers, price of rooms, type of payment—welfare, insurance, private paid and so forth, sex, race, whether patient was adult or child, category of illness, medical, surgical and so forth.

It is further requested that we be furnished with the same information for all admissions, discharges and room transfers for a 15-day period immediately prior to the date the complainant's son, Ronnie, was admitted; two, a floor plan showing the hospital's per diem costs for all patient rooms; three, copy of the application form that is completed in advance by or on behalf of the persons requesting room accommodations in the hospital and the method of confirmation or non-confirmation used by the hospital in such instance.

It would also be appreciated if you would furnish us with copies of any written communications, records, and so forth pertaining to the admission, room assignment, and subsequent transfer of Ronnie—

Son of Mr. So and So.

How do you think a hospital can treat patients when they have to spend all their time digging up such voluminous information? We have already a shortage of nurses everywhere. That would require probably a dozen people and 2 weeks' work on their part to respond to the communication which they receive from your Department as a result of a complaint of one person. That is a problem we are getting from hospitals all over the country. They have to quit nursing the sick and treating the ill and start filling out Government papers.

Would you comment on that?

Secretary GARDNER. Yes, sir.

In general, I do not think that this is a typical case at all. In general, the kinds of data you describe are available in our Department for most of the hospitals with which we deal, so that this would not, this data would not have to be gathered afresh. I do not know the background of this case or under what circumstances it was cleared, what kinds of data we had. I will be very glad to look into it and give you a comment on it for the record or not, as you wish.

Senator ANDERSON. Would you like to have the record supplied with that?

Senator TALMADGE. Yes; will you please insert it in the record?

Senator ANDERSON. Without objection.

Secretary GARDNER. We will respond for the record.

(Pursuant to the above discussion Senator Talmadge provided the following material:)

I

ATLANTA, GA., *Dec. 16, 1966.*

Sister MARY MELANIE,
St. Joseph's Hospital,

SISTER MELANIE: My name is Mrs. Dorothy Wright. My son Ronnie is presently in your hospital. I am very much dissatisfied with the conditions of room. I filled out an application which I gave your staff ample time to give me accommodations I asked for. I was told that Negroes were put always on back side of hospital. I didn't believe this and it really came as great shock to me knowing that this hospital as Christian people would have such thoughts in their hearts. I am strongly protesting this immoral action and feel that you are violating the Sixth Civil Rights Act. I'm also sending a copy to Secretary Gardner Dept. of HEW, Washington D.C. regional office of HEW, Atlanta, Georgia, also to Dr. A. M. Davis, president of NAACP so that my people can receive better accommodations in your hospital and will go to no limits to put a stop to it. In inquiring about accommodations received discourteous service on phone from your personnel. My doctor's nurse had to call and get information I had tried all day to secure.

Thanking you in advance,

Mrs. DOROTHY WRIGHT.

II

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
PUBLIC HEALTH SERVICE,
REGION IV,
Atlanta, Ga., December 21, 1966.

SISTER MARY MELANIE,
Administrator, St. Joseph's Infirmary,
Atlanta, Ga.

DEAR SISTER MELAINE: This confirms our telephone conversation of December 19, 1966 relative to the complaint made by Mrs. Dorothy Wright, 248 Mellrich Avenue, Atlanta, Georgia, in a telegram to you dated December 16, 1966 with copies to the Secretary of Department of Health, Education, and Welfare, Washington, D.C., Region IV Office of Department of Health, Education, and Welfare and to Dr. A. M. Davis, President of Atlanta, Georgia Branch of the NAACP. In this telegram Mrs. Wright complained of two things. They were the room accommodations given her son, Ronnie, and discourteous service, on the telephone, by St. Joseph's Hospital personnel.

The above mentioned telegram was forwarded to this office for action by the Regional Office of the DHEW on December 19, 1966. This office has the responsibility of investigating complaints received in which it is alleged that violations of Title VI of the Civil Rights Act of 1964 may have occurred in the area of hospitals receiving funds directly or indirectly from any department or agency of the Federal government.

To assist us in our investigation of the complaint mentioned above, it is requested that you furnish us the following information as expeditiously as possible:

(1) Hospital census for the day on which the complainant's son, Ronnie, was admitted showing room numbers, price of rooms, type of payment (welfare, insurance, private pay, etc.); sex, race, whether patient was adult or child and category of illness (medical, surgical, etc.). It is further requested that we be furnished the same information for all admissions, discharges and room transfers for a 15-day period immediately prior to the date that complainant's son, Ronnie, was admitted.

(2) A floor plan of hospital showing per diem cost of all patient rooms.

(3) A copy of the application form that is completed in advance by or on the behalf of persons requesting room accommodations in the hospital and the method of confirmation or non-confirmation used by the hospital in such instances.

It would also be appreciated if you would furnish us with copies of any written communications, records, etc., pertaining to the admission, room assign-

ment, and subsequent transfer of Pt. Ronnie A. Benton, son of Mrs. Dorothy Wright, 248 Mellrich Avenue, Atlanta, Georgia, who was admitted to St. Joseph's Hospital on December 15, 1966. Please include any information that you may have relative to method of payment arranged by Mrs. Wright and the hospital for the type accommodation requested.

If you conducted any investigation of Mrs. Wright's allegations, it would be highly appreciated if you would furnish this office the results of same.

Sincerely yours,

EDWARD J. PLUMMER,
Compliance Officer.

III

JANUARY 5, 1967.

Mr. EDWARD J. PLUMMER,
Compliance Officer, Department of Health, Education, and Welfare, Regional Office, Region IV, Atlanta, Ga.

DEAR MR. PLUMMER: Your letter that was written to Sister Mary Melanie, Administrator of the Saint Joseph's Infirmary has been brought to my attention.

It is inconceivable to me that such a complaint as the one made by Mrs. Dorothy Wright could result in the harassment which you are causing the Saint Joseph's Infirmary. The information that you have requested is so "voluminous" that I can readily understand why Sister Melanie refused to supply the Department of Health, Education, and Welfare. This is not the first complaint that my office has received, but if your office continues to badger the hospitals of this State in the future, you can rest assured that any further demands by HEW will be refused.

I would appreciate as soon as possible a report made by your agency as to why such extensive information is needed to satisfy Mrs. Dorothy Wright and your agency.

With kindest regards, I am

Sincerely,

HERMAN E. TALMADGE.

IV

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
PUBLIC HEALTH SERVICE,
Washington, D.C., January 27, 1967.

Hon. HERMAN TALMADGE,
U.S. Senate,
Washington, D.C.

DEAR SENATOR TALMADGE: Reference is made to your letter of January 5, 1967, to Edward J. Plummer, Compliance Officer, Region IV, concerning St. Joseph's Infirmary.

I regret that you feel that our request for information in the course of our investigation of a complaint is so extensive as to constitute "harassment." Section 80.7(c) of Title 45 of the Code of Federal Regulations requires that, "The responsible Department official or his designee will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this part. The investigation should include, where appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with this part occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with this part."

The information requested by Mr. Plummer is not deemed excessive but necessary for a proper evaluation of the circumstances surrounding the complaint. It is possible that the investigation, if well supported with sufficient evidence, may lead to the conclusion that the complaint is unfounded, or if it is well founded, that it represents an isolated instance. In any event, we will know that we have considered all of the relevant factors in arriving at a decision.

I hope this brief explanation will help to clarify our position. We regret the inconvenience that our request may cause the hospital, but you may be assured that we want to settle this problem in all fairness to them as well as the complainant.

If we can be of further service, please let us know.

Sincerely yours,

ROBERT M. NASH,
Chief, Office of Equal Health Opportunity.

(The Department of Health, Education, and Welfare subsequently supplied the following information. One letter and one telegram are not included here because they duplicate items I and II provided by Senator Talmadge on p. 101.)

REPORT BY DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE REGARDING THE TITLE VI COMPLAINT AGAINST ST. JOSEPH'S INFIRMARY, ATLANTA, GEORGIA

On December 16, 1966, Mrs. Dorothy Wright, a Negro resident of Atlanta, Georgia, wired a complaint to this Department and others, alleging discriminatory treatment of her son while he was a patient at St. Joseph's Infirmary. Subsequent contact with the complainant and with a local NAACP leader convinced a Regional Compliance Officer for the Public Health Service that the complaint was brought in good faith and that it involved a much broader complaint than originally contemplated. At issue was an allegation that most Negro patients were regularly assigned to the rear area of the hospital.

The Regional Compliance Officer then telephoned the hospital's attorney and explained the need for gathering as much data as possible in an investigation of this type. The attorney expressed his view that no discriminatory actions had been taken by the hospital and he offered whatever assistance might be necessary to prove this to be true. The Compliance Officer also called the hospital administrator who agreed to furnish the necessary data but asked that it be requested in writing.

A written request dated December 21 was submitted to the hospital. In addition to a floor plan, room-price schedule, and copy of the pre-application form, which are items most hospitals would have on hand, a 15-day census for the period preceding the admission of the complainant's son was requested. A "census," or record of which patients occupy which rooms, is a routine request in any investigation into a hospital's patient/room assignment policy. To determine whether there is any basis to such charges, it is necessary to review patient assignments over a period of time. Moreover, since a patient's sex, age, nature of disease, and other factors often enter into patient assignments, this data, which is normally contained in the files of a hospital, must also be requested.

The hospital's attorney responded to this request on December 22 by refusing to submit any of the requested data, and the matter was then transferred to Washington for handling. On January 16, 1967, the Chief of the Public Health Service Compliance Unit (Office of Equal Health Opportunity—OEHO) replied by spelling out the requirements of the law and regulation. He further stated:

"It may well be that the investigation will lead to the conclusion that the complaint is not well founded, or that even if it is well founded, it represents an isolated instance, and that steps have been taken to guard against a reoccurrence that further action in the matter is therefore not warranted.

"We have reviewed the original request for information addressed to the hospital by Mr. Plummer, and we believe that all of the information he requested is necessary for a proper investigation into the allegations of the complaint. As an accommodation, however, we are prepared to recede from his request that you furnish the data set out in his letter for a period of 15 days preceding the date of the admission of the complainant's son, and we will be content with receiving this information for a period of seven days preceding same date."

Following this modification of the original data request, which cut the census period from 15 to 7 days, the hospital's attorney responded by requesting additional information before reconsidering "whether or not to furnish you any part of the requests contained in the letter of December 21." Some of his requests are clearly unreasonable and others impinge on the Department's obligation to prevent possible retaliatory action against complainants.

An appropriate reply is being prepared by the Office of Equal Health Opportunity. It is hoped that this investigation can be concluded without placing any undue burden on the hospital. The Department is willing to make any accommodations which will prevent such a burden yet ensure a meaningful investigation into the charges.

KILPATRICK, CODY, ROGERS, MCCLATCHEY & REGENSTEIN,
Atlanta, Ga., December 22, 1966.

MR. EDWARD J. PLUMMER,
Compliance Officer, Region IV, Department of Health, Education, and Welfare,
Atlanta, Ga.

DEAR MR. PLUMMER: This will acknowledge receipt of your letter of December 21, with reference to the complaint of Mrs. Dorothy Wright against St. Joseph's Infirmary.

St. Joseph's Infirmary is not about to furnish you the voluminous information which you requested. What we are undertaking to do is operate a hospital and not a governmental clerical agency.

I think you will find upon investigation of this matter that St. Joseph's Infirmary has not been guilty of any infraction of the law.

Sincerely,

W. B. CODY.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
January 16, 1967.

WELBORN B. CODY, Esq.
Kilpatrick, Cody, Rogers, McClatchey & Regenstein,
Atlanta, Ga.

DEAR MR. CODY: We refer to your letter of December 22, 1966, addressed to Edward J. Plummer, Compliance Officer, Region IV concerning St. Joseph's Infirmary.

We realize that at times the requirements imposed on recipients of Federal financial assistance may seem onerous. Nevertheless, the information requested must be furnished. Your attention is invited to Title 45 of the Code of Federal Regulations, Section 80.6(b) of which provides in pertinent part as follows:

"Compliance reports. Such recipient shall keep such records and submit to the responsible Department official or his designee timely, complete and accurate compliance reports at such times, and in such form and containing such information, as the responsible Department official or his designee may determine to be necessary to enable him to ascertain whether the recipient has complied or is complying with this part."

Where we have received a complaint against a recipient, we are required by Section 80.7(c) to make an investigation. This section reads as follows:

"Investigations. The responsible Department official or his designee will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this part. The investigation should include, where appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with this part occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with this part."

A failure or refusal to provide the information required to resolve the complaint itself constitutes noncompliance. Continued noncompliance can lead to procedures to terminate Federal financial assistance, including Medicare, under the procedures outlined in Part 80 of Title 45 of the Code of Federal Regulations. On the other hand, if the information requested by Mr. Plummer is furnished, it will be possible for the Office of Equal Health Opportunity to comply with the duties imposed on it under the same regulations, that of investigating the complaint. It may well be that the investigation will lead to the conclusion that the complaint is not well founded, or that even if it is well founded, it represents an isolated instance, and that steps have been taken to guard against a reoccurrence that further action in the matter is therefore not warranted.

We have reviewed the original request for information addressed to the hospital by Mr. Plummer, and we believe that all of the information he requested is necessary for a proper investigation into the allegations of the complaint. As an accommodation, however, we are prepared to recede from his request that you furnish the data set out in his letter for a period of 15 days preceding the date of the admission of the complainant's son, and we will be content with receiving this information for a period of seven days preceding the same date.

If you have any further questions, please feel free to communicate with the undersigned.

Sincerely yours,

ROBERT M. NASH,
Chief, Office of Equal Health Opportunity.

KILPATRICK, CODY, ROGERS, MCCLATCHEY & REGENSTEIN,
Atlanta, Ga., January 25, 1967.

Mr. ROBERT M. NASH,
Chief, Department of Health, Education, and Welfare, Office of Equal Health Opportunity, Public Health Service, Washington, D.C.

DEAR MR NASH: Upon my return to the office, I find your letter of January 16. I note your statement to the effect that your Department is required to make an investigation of each complaint.

My preliminary investigation of this complaint indicates that in the telegram of December 16, which Mrs. Dorothy Wright sent to St. Joseph's Infirmary, certain misrepresentations were made and in view of this situation, I wish you would advise me whether or not you have made any investigation of Mrs. Dorothy Wright and whether or not anyone in your Department has personally talked to the patient, Ronnie A. Benton, to determine the nature of the service and treatment he received while in the hospital.

Furthermore, if you will furnish me with the following information, I will then reconsider whether or not to furnish you any part of the requests contained in the letter of December 21, written to St. Joseph's Infirmary by your local Compliance Officer, Edward J. Plummer. The information requested is as follows:

1. Date and place of each marriage of claimant.
2. Full name of present husband.
3. Name and address of father of Ronnie A. Benton.
4. Was marriage with father of Ronnie A. Benton terminated by death of father or by divorce. If by divorce, in what court.
5. What school does Ronnie A. Benton attend.
6. If not in school, where does he work.
7. Give the name of any person alleged to have been employed by St. Joseph's Infirmary who claimant states was rude to her.
8. Give the exact nature of the conduct of such employee alleged to have been rude.
9. Was Mrs. Wright told by one of the hospital staff that Ronnie A. Benton would be transferred to the first semi-private room which became available?
10. Give the name or description of the person who was alleged to have stated that Negroes were always put on the back side of the hospital.
11. Give the name of claimant's doctor or nurse who had any contact with the hospital with reference to the admission of Ronnie A. Benton.
12. Give the name of the employee at the hospital with whom the claimant first talked when she called the hospital.
13. Has the claimant ever been involved in any litigation?
14. Give the name of any employer where claimant has worked during the last three years.
15. Give the name of claimant's family physician.
16. Give the names of all physicians who have treated claimant during the last five years and the nature of that treatment.

Sincerely,

W. B. CODY.

Senator TALMADGE. Thank you, Mr. Chairman. I have already taken more time than I intended to.

Senator ANDERSON. Senator Hartke?

Senator HARTKE. Mr. Secretary, let's see if I can at least clarify what is involved. As I understand it, the Secretary of Health, Education, and Welfare is advised that Federal grants in the State of Alabama were being cut off—old-age assistance, medical assistance for the aged, aid to families with dependent children, child welfare services, aid to the blind, and aid to permanently and totally disabled. Is that correct?

Secretary GARDNER. Yes, sir.

Senator HARTKE. Now, the Congress passed a law. You did not pass it, did you?

Secretary GARDNER. No, sir.

Senator HARTKE. Are you required to administer the laws faithfully?

Secretary GARDNER. Yes, sir.

Senator HARTKE. What happens if you do not?

Secretary GARDNER. I would be derelict in my duty.

Senator HARTKE. You would be subject to whatever penalties are involved for dereliction of duties?

Secretary GARDNER. Right, sir.

Senator HARTKE. You could be penalized for that?

Secretary GARDNER. Yes, sir.

Senator HARTKE. Do you try to carry out the laws we pass?

Secretary GARDNER. Yes, sir.

Senator HARTKE. Have you carried out the law to the best of your ability?

Secretary GARDNER. Yes.

Senator HARTKE. Let us come back. There really are two laws involved here, basically—probably more than that, but two basic laws. One of them is the one dealing with these programs and providing the funds for the programs; the second law deals with the civil rights part, which has caused the difficulty here. Is that not so?

Secretary GARDNER. Yes, sir.

Senator HARTKE. In effect, what happened is that the civil rights law becomes a part of the original law, all being the law of the United States in one body; is that not correct?

Secretary GARDNER. Yes, sir.

Senator HARTKE. Originally, these 200,000 or whatever number of people it was, the sick, the lame, the blind, had no benefits from the Federal Government whatsoever; is that not true?

Secretary GARDNER. Right.

Senator HARTKE. Not alone in Alabama, but in any State. But we made a determination here in Congress that we would provide certain funds for those people.

Now, it can be equally said that we denied them those funds before that time by not providing for them; is that not true?

Secretary GARDNER. Yes, sir.

Senator HARTKE. That is just a simple fact of life, that if you do not provide money for people, it can be said you are denying it to them. That is the same way—that is a different way of saying the same thing?

Secretary GARDNER. Yes, sir.

Senator HARTKE. So here you have a Federal law providing for certain benefits. Yet the civil rights provision of this, if the original basic law had included the provisions of the Civil Rights Act of 1964, Alabama, under the present circumstances, would have been denied any benefits whatsoever: is that no true?

Secretary GARDNER. That is correct, sir.

Senator HARTKE. In fact, there would not have been a cutoff, there would never have been an allocation in the first place.

Secretary GARDNER. Correct.

Senator HARTKE. So any statement to the effect that somebody has been cut off—they have not been cut off at all. What has happened is that a continuation of the program has been stopped for failure to comply with the program.

Secretary GARDNER. Yes, sir.

Senator HARTKE. And all that I understand the Justice Department has said in substance about the court decision is simply that we feel that the law provides what should be done, the State of Alabama has failed to do so voluntarily, they have gone to court, and we are contesting their failure to comply because we think the law means what it says. Is that not the substance of what it is about?

Mr. BARRETT. That is correct.

Senator HARTKE. You are not accusing anyone of acting in bad faith at this time in the law court, are you? You are just saying they interpret the law differently than you think it should be interpreted?

Mr. BARRETT. That is correct.

Senator HARTKE. It that not the substance of all lawsuits?

Mr. BARRETT. Of many lawsuits, sir.

Senator HARTKE. A difference of opinion.

Let us come back to—there are two elements involved on the local level. One of them is benefits. Now, it is the contention of the State of Alabama that they do not deny benefits on account of race. Is that not true?

Secretary GARDNER. Yes, sir.

Senator HARTKE. Has there been any finding that there has been a denial of benefits on account of race?

Secretary GARDNER. No, sir.

Senator HARTKE. I think there is an important distinction to be made, because all through the experts' testimony, the former Governor of Alabama, who has a wonderful facility of twisting certain characterization of U.S. Senators for what I fear may be purposes other than interpretation of the law—but he keeps on testifying about benefits not being denied on account of discrimination. But admitted there was segregation, did he not?

Secretary GARDNER. Yes, sir.

Senator HARTKE. So there is not any question that the finding by the field examiner, operating under your jurisdiction, found a fact which was the fact to be the truth, and which Mr. Wallace came in here and admitted was the truth?

Secretary GARDNER. And which was not disputed.

Senator HARTKE. Not disputed at all.

Secretary GARDNER. And no contrary evidence presented.

Senator HARTKE. Now, as a result of that finding and of the failure to comply, you made a decision; is that not true?

Secretary GARDNER. Yes, sir.

Senator HARTKE. That there was a failure of compliance with the law. Once having made that finding of fact, if you did, if you provided them with one penny without a stay from the court, you would have been in violation of the laws of the Congress of the United States; would you not?

Secretary GARDNER. Yes, sir.

Senator HARTKE. So instead of being a villain here, you have performed your function admirably, and I compliment you for it.

Secretary GARDNER. Well, thank you, sir.

Senator HARTKE. Now, let me say this: There is another part of the question about discrimination, and as I understand the contention of the Department, it is that they never submitted an approved plan for eliminating and avoiding discrimination, not in the question of bene-

fits but in the operation of its federally assisted welfare program; is that not true?

Secretary GARDNER. That is correct.

Senator HARTKE. Now, forgetting for the moment the question of the Civil Rights Act of 1964, if they had failed to comply with the operation—if they had failed to comply with the original law and had not submitted a plan by which they would have complied with the original welfare provisions, you would have had to make the same finding; is that not right?

Secretary GARDNER. Yes, sir.

Senator HARTKE. Then, this whole question of race would have been out of it, which creates a color to the horizon today——

Secretary GARDNER. All of the way back to 1935, the whole texture of the Federal-State relationship has been based on the idea that the State submitted a statement with certain undertakings, certain commitments as to what it intended to do.

Senator HARTKE. This has been the history not alone in HEW but in practically every Federal-State relationship program?

Secretary GARDNER. Grant programs.

Senator HARTKE. So there is nothing remarkedly new, controversial, or——

Secretary GARDNER. It is controversial.

Senator HARTKE. Well, it is controversial, but there is nothing new about it. OK.

And to try to drag these 200,000 people out in front of all of us as being denied something, if there has been a denial of benefits to these people, it has been a denial voluntarily made by the decision of the State of Alabama and not on the part of the Federal Government; is that not true?

Secretary GARDNER. Yes, sir.

Senator HARTKE. I might say, do you consider these regulations that you have promulgated in accordance with the law stupid? They were classified as that by Mr. Wallace.

Secretary GARDNER. No, sir. We not only believe that they are reasonable, but we have formulated them with great care to conform them to traditional Federal-State practice, so that we were in line with the kinds of things we have been doing for many years with all of the States, including Alabama.

Senator HARTKE. Now, I think, just for the benefit of these hearings, although I know that the law—we take judicial notice of the law—I know that it is in the hearings, but I think it is important again, maybe, to reiterate exactly what section 601 said. It says that no person of the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

Under these programs, the former Governor of Alabama stated that there was such segregation and discrimination, which is an admitted fact.

Now, in regard to this question about the form, let me ask you this: If the State of Alabama had submitted an alternate form which, in

effect, followed the regulation but not the exact wording of your form, would you have accepted such a statement?

Secretary GARDNER. We could have worked that out very easily had they been prepared to negotiate.

Senator HARTKE. But they were not prepared?

Secretary GARDNER. They were not prepared to take responsibility in any way to carry this out. In fact, the letter which Senator Talmadge quoted, of August 20, 1965, the letter from Ruben King, says specifically that they could not take such responsibility.

Senator HARTKE. I think that the question is very clear, and I think the truth of it is, as Mr. Wallace stated, he does not like the law and he is going to do everything he can to avoid complying with the law. I think that is the substance of it.

Let me ask you one technical question here in regard to this Blue Shield statement that was given. As I understand what you have said, it is that as long as the beneficiary, the ultimate beneficiary, the welfare recipient—not the State agency—as long as he receives the money, he can do with that money as he individually pleases?

Secretary GARDNER. Senator, I am not a lawyer, but that is my understanding of it.

Mr. Barrett?

Mr. BARRETT. That is my understanding, too, Senator.

Senator HARTKE. But that any agency, whether it be the U.S. Government or any subdivision, including the State government, as long as it makes the contractual arrangements with, say, the Blue Shield or any other organization, that that organization cannot discriminate any more than the original State agency could from the beginning.

Secretary GARDNER. Right.

Senator HARTKE. In other words, the prohibition here is against discrimination by the administrative agency; is that not right?

Secretary GARDNER. That is right.

Well, the prohibition is against subjecting anyone to discrimination. We can only prevent it up to the point that the ultimate beneficiary receives the money. Then he can do what he wants.

Senator HARTKE. Mr. Chairman, I have no further questions.

Senator ANDERSON. Senator Harris?

Senator HARRIS. Thank you, Mr. Chairman.

Mr. Secretary, I think you have quite properly stated that the promise of America, embodied in the foundation of our country, is the innate worth of each human being, and the right to equality of opportunity. I think you would agree that none of us ever thought that the implementation of that promise would be without difficulty and perhaps even agony.

Title VI delegated to you rather broad powers. It is a broad delegation of power. I, for one, want to say that I feel very good that a person of your ability and background would be handling that delegation in conjunction with the President. You have issued a regulation in pursuance of that broad delegation of power which is embodied in section 80.4. It says that any application for financial assistance would "contain or be accompanied by an assurance that the programs

will be conducted or the facility operated in compliance with all requirements imposed by or pursuant to this part."

Now, that is what is at issue, as I understand it, in the Alabama case?

Secretary GARDNER. Yes, sir.

Senator HARRIS. You have stated here again on questioning from Senator Hartke that the form of that assurance is a negotiable matter, and the form that is in this handbook is not necessarily required, word for word. Is that correct?

Secretary GARDNER. That is correct.

Senator HARRIS. As I understand it, any party aggrieved by your regulation or by this action pursuant to the regulation has two remedies: He can come to the Congress and, if he can, get the Congress to spell out more in detail what it has up to now delegated to you. Is that correct?

Secretary GARDNER. Yes, sir.

Senator HARRIS. Or he may go into the courts and ask the courts to say that this action and your regulation are not in pursuance of the law. It is that latter remedy that is now in process?

Secretary GARDNER. Yes, sir.

Senator HARRIS. As I understand it, you are going to continue on your present course in pursuance of the regulation as you see it until either, one, the Congress has changed the law or spelled it out more clearly or, two, the court were to find that you are not acting in pursuance of the law?

Secretary GARDNER. Yes, sir.

Senator HARRIS. I think that is what you must do. I do not think you have any alternative.

Do you think that a State would be required by this assurance to guarantee nondiscrimination by vendors such doctors and—the important word there is "guarantee"—by doctors or nursing homes or whatever, or by hospitals?

Secretary GARDNER. No, sir; we have not ever been unreasonable about this. "Guarantee" would be a very strong word and an impossible one. What we ask is that each State make a determined and continuing effort to eliminate discrimination in the case of these vendors of services—hospitals, nursing homes, doctors, and so on.

Senator HARRIS. Pursuant to some kind of systematic plan, is it not? You have to have some proper plan?

Secretary GARDNER. That is right. This is the essence of the Federal-State relationship, that they submit a plan saying, in effect, what means they will choose to achieve the end. That enables us then to work with them on a continuing basis.

Senator HARRIS. They have to say, in effect, that they are going to make a reasonable effort and how they are going to go about it to comply with this law?

Secretary GARDNER. That is right, and we allow a good deal of flexibility in the kinds of plans that we accept, but almost all of them require some kind of complaint system, some kind of reporting system, some means of informing the public of their rights, and so forth.

Senator HARRIS. I checked in my own State. We filed a plan and we also filed a certificate of compliance. I understand this morning that 49 States have done that?

Secretary GARDNER. That is correct.

Senator HARRIS. With the sole exception of Alabama.

I do not know whether you could have or not, but you might, under this broad delegation of power, have made some attempt directly by the Federal Government to go in and assume responsibility for individual compliance in these cases. But at any rate, what you have done is not so harsh as that, but you have said if the State will just say that it will assume responsibility for compliance with the law, that will be sufficient.

Secretary GARDNER. We want very much to preserve the traditional Federal-State relationship in which they take the responsibility, we provide the funds. That is why we have to operate on the basis of some kind of initial understanding between us in which they say, yes, we will play our part of this relationship. The last thing we want to do is to go in and enforce anything.

Senator HARRIS. Thank you.

That is all I have, Mr. Chairman.

Senator ANDERSON. The chairman stated that Senator Hill would be given an opportunity to ask some questions.

Senator Hill?

Senator HILL. Thank you, Mr. Chairman.

Mr. Chairman, with reference to the rules and regulations pertaining to the practices and procedures for hearing, it would appear that these rules and regulations were never specifically approved by the President. Is that correct?

Secretary GARDNER. I am not sure which ones you mean.

Senator HILL. The rules and regulations pertaining to the practices and procedures for hearings.

Secretary GARDNER. I do not have that information, Senator. They were not approved, Mr. Libassi says.

Mr. LIBASSI. Senator, these are procedural rules following the Administrative Procedures Act. They are guides to the hearing examiners on how they should conduct the hearings and how the procedures at the time of the hearing would progress. But they are not enforcement or implementing regulations of title VI itself.

Senator HILL. But the law in title VI itself says specifically no such rule, regulation, or order shall become effective until and unless approved by the President. In this case, you seem not to follow that provision of the law.

Secretary GARDNER. The action we took was under a regulation approved by the President. The regulation governs all of these cases.

Senator HILL. How did he approve this?

Secretary GARDNER. Well, we formulated it after the Civil Rights Act of 1964 was passed and sent it in to him and he signed it.

Senator HILL. What was that?

Secretary GARDNER. We sent it to him and he signed it.

Senator HILL. Have you received any complaints from any individuals, any individual persons regarding the administration of the welfare assistance program in the State of Alabama?

Secretary GARDNER. I will have to ask Mr. Libassi. They have some complaints.

Senator HILL. May I ask that he advise the committee as to those individuals that complained? You may provide that for the record.

Senator HARTKE (presiding). Without objection, they may be placed in the record.

(The information referred to, together with a rebuttal statement submitted by the Alabama Department of Pensions and Securities, follows:)

Over the past two years, the Welfare Administration has received 24 written complaints from individuals in which allegations have been made of discrimination on the basis of race in the administration of public welfare programs in Alabama. These complaints have included the following allegations:

Negroes are "cut-off" from public assistance for no reason;

Amounts of public assistance to Negroes are reduced or discontinued solely in retaliation for participating in civil rights activities, for voting, or for enrolling Negro children in "white" schools;

Waiting rooms in certain public welfare officers are segregated.

The Department is prohibited by regulation from releasing to the public the names of individual complainants; however, a recent complaint by the NAACP on behalf of certain individuals is not subject to this restriction and is attached. The correspondence reflects, we think, the general attitude of the Alabama agency to complaints of this nature and demonstrates the need for the State to assume the responsibility imposed by law. The department is investigating this situation.

JANUARY 19, 1967.

Mr. F. PETER LIBASSI,
Special Assistant to Secretary for Civil Rights, Health, Education, and Welfare Department, Washington, D.C.

DEAR MR. LIBASSI: Late in the month of November, 1966, approximately twenty-five tenant farmer families received notices from one Barnes A. Rogers of Gainesville, Alabama, informing them that the land which they had rented as crop land would not be available as of the 1st of January, 1967.

These people believe the action to be retaliatory in nature as the result of their effort to personally receive government allotment checks which had not been received in previous years.

A complaint was filed on this matter with governmental agencies involved. A request for assistance was made in the telegram to the commissioner of welfare (copy enclosed) which evidently was referred to Mr. Ruben K. King, Commissioner of the Department of Pensions and Security for the State of Alabama.

Enclosed herewith are copies of the telegram to Commissioner Winston, Mr. King's letter to me, and my reply to him. This information is being forwarded to you with the hope that you will use your influence and authority toward eliminating the continued existence of such practices and attitudes on the part of local governmental officials.

Respectfully yours,

Rev. K. L. BUFORD,
Alabama Field Director, NAACP, Tuskegee Institute, Alabama.

TUSKEGEE, ALA., *December 29, 1966.*

HON. EDITH WINSTON,
Commissioner of Welfare, Health, Education and Welfare Department, Washington, D.C.:

The families of eighteen tenant farmers face eviction January 1 in Sumter County, Alabama, as the result of a dispute over improper handling of Government allotment checks. Agriculture Department has been advised. Can your Department assist these people until relocation can be arranged? Local welfare agency refuses help. Please advice.

Rev. K. L. BUFORD,
Alabama Field Director, NAACP, Tuskegee Institute, Alabama.

STATE OF ALABAMA,
DEPARTMENT OF PENSIONS AND SECURITY,
Montgomery, January 3, 1967.

Rev. K. L. BUFORD,
Albama Field Director, NAACP,
105 Johnson Street,
Tuskegee Institute, Ala.

DEAR REVEREND BUFORD: I am sick and tired of your continued complaints against the welfare agency of this State. The other day it was Montgomery County—today it is Sumter County.

This Agency will continue to help those in need regardless of race, color, creed or national origin but it will not be forced into any action by pressure groups, such as yours, where help is not warranted.

If you do not like the tone of this letter, you may report it to any agency of the Federal Government that you see fit to do so.

Cordially yours,

RUBEN K. KING,
Commissioner.

JANUARY 19, 1967.

Mr. RUBEN K. KING,
Commissioner, Department of Pensions and Security,
State of Alabama,
Montgomery, Ala.

DEAR MR. KING: This is to acknowledge receipt of your letter of January 3, 1967. In which you stated "I am sick and tired of your continued complaints against the welfare agency of this State." References were made to complaints involving Montgomery and Sumter Counties. I must confess ignorance to any complaint filed by this office against the Welfare Department of Montgomery County. I hasten to add, however, that had a complaint been filed with this office, I would have made a complaint against Montgomery County Welfare Department. I did, however, file a complaint against the Sumter County Welfare Agency because according to statements of persons who faced eviction from their homes were denied the privilege of even filing applications with the Welfare Agency located at York, Alabama, for assistance.

Your statement regarding help to those in need is not an accurate appraisal of the situation in as much as there were some seventy children, in addition to approximately fifty adults involved who had no work nor money for which to buy food nor pay rent.

Your letter stated also "If you do not like the tone of this letter, you may report it to any agency of the Federal Government that you see fit to do so." I shall take your suggestion and shall report it to as many agencies as I think necessary.

It is most regrettable that the filing of one complaint by this office has made you "sick and tired" because there will be complaints filed against every welfare agency in the State of Alabama whenever we receive information that we feel warrants such action.

If you do not want complaints filed, I would suggest that you meet your responsibility in eliminating the cause of the complaints. When this is done, there will be no need for such procedure.

I would prefer that it could be possible to correct the inequities which I have reason to believe do in fact exist, and that we should be able to handle all complaints which may arise on the local level.

Respectfully yours,

Rev. K. L. BUFORD,
Alabama Field Director, NAACP, Tuskegee Institute, Alabama.

(The following letter with respect to the Buford complaints was received from the State of Alabama:)

STATE OF ALABAMA,
DEPARTMENT OF PENSIONS AND SECURITY,
Montgomery, Ala., March 3, 1967.

Senator RUSSELL LONG,
Chairman, Senate Finance Committee,
Senate Office Building, Washington, D.C.

DEAR SENATOR LONG: First let me express to you the appreciation of our Alabama welfare agency, the Department of Pensions and Security, for the interest your Committee has shown concerning Secretary Gardner's order terminating funds which go to needy persons in Alabama. The Alabama agency and the needy people of this State, I am sure, have been heartened by the concern and interest of your Committee. I wish to enter, however, a strenuous objection to Secretary Gardner's answer to Senator Hill's questions concerning complaints received and statements made about the Alabama agency before your Committee.

Secretary Gardner has referred your Committee to a complaint made by Reverend K. L. Buford, Alabama Field Director, NAACP, Tuskegee Institute, in which he has claimed that the Alabama agency refused help to needy persons in Sumter County. At the time these charges were leveled by Secretary Gardner at the Alabama agency, an investigation had already been made by a regional representative of HEW with representatives from the Alabama agency. We wanted your Committee to know the results of this investigation. The complaint was to the effect that the local agency refused to take applications. It was found that the local welfare department in the Sumter County Department of Pensions and Security had taken applications on all persons who requested help. Two of the persons mentioned in the complaint had been receiving two of the largest OAP money grants which the agency can give under its laws and policies. It was learned that another of the persons named in the complaint was already receiving an ADC grant. The application for one applicant was denied because he did not meet eligibility requirements for any type of aid the Alabama agency can give. Three of the people included in the complaint had been known to the agency previously but had not made recent applications. They had neither contacted the agency nor attempted to apply within the past several years.

We detailed some of this information because it appears that the impression given to the Committee was that Alabama was unwilling to help needy people. I also want to call to your attention that the inaccurate complaint took a considerable amount of time of two representatives from the State office as well as considerable time of the county staff. The representative from the HEW regional office expressed satisfaction with the application process in Sumter County and with the application of agency policy in closing or denying applications according to agency rules.

We would like to emphasize that the investigation was made and completed on January 31st and that Secretary Gardner's presentation before the Committee was on February 23rd. We consider that he had access to this favorable report on the Alabama agency and we deplore his reference to this. The agency also deplores taking the time of busy professional people to follow through on baseless complaints. One of the serious difficulties our agency has been laboring under is inadequate staff and heavy caseloads. We have long recommended matching funds for administration on a variable grant basis to provide more Federal matching to help us in our administration of the program.

Again I wish to thank you and your Committee for your interest in the problems confronting the needy people of Alabama.

With best wishes, I am,

Cordially yours,

RUBEN K. KING, *Commissioner.*

Senator HILL. The truth is that you acted in this matter—Alabama said they would comply with the law, but because they did not sign this blank form that you sent to them, then you cut off the funds; is that right?

Secretary GARDNER. It was not cut off because they refused to sign a specific form, it was because they refused to take the responsibility in any form that is necessary if the Federal-State relationship is to go forward. As I said, in the letter Senator Talmadge quoted, Commissioner King said specifically that they could not accept responsibility with respect to these third parties. Under those circumstances, we could not have moved forward.

Senator HILL. Did you say third parties?

Secretary GARDNER. Yes, sir; doctors, hospitals, nursing homes.

Senator HILL. Do you mean if a disadvantaged needy child went down to a doctor's office for dental care, if that dentist had personnel that he had been using to assist him for some several years, you would have to make sure that there was equality between Negroes and whites in his personnel?

Secretary GARDNER. No, sir, that is not one of the requirements.

Senator HILL. Then it would not apply to third parties.

Secretary GARDNER. Well, there are certainly fairly clear requirements of the third parties. I would like Mr. Libassi to give you those more specifically.

Mr. LIBASSI. Senator, the requirements for the vendor—the hospital, the nursing home, or the physician—are simply that they will assure that welfare beneficiaries will be treated without regard to race, that they will be admitted to a hospital, that they will not be segregated, and that they will receive equal treatment.

Now, the State of Alabama, in their reply, specifically stated that they would not assume this responsibility, and the statement of compliance that they submitted for that reason could not be accepted. They said their agency has no authority to control nursing homes and would have no authority to see that compliance was effected.

It goes to each one of these areas, making the same kind of declaration of no responsibility on the part of the State.

Senator HILL. But you have cited for the record the large number of hospitals that have agreed to comply, have you not?

Mr. LIBASSI. Yes, Senator, and I think it is also impressive that the nursing homes have. There are some 150 nursing homes in the State of Alabama that are treating welfare patients. We only know about 90 of them. If the State would assume the responsibility for the remaining 50 or 60 nursing homes, we could be on our way for this program.

But that is the problem; they will not assume that responsibility.

Secretary GARDNER. Our quarrel is not with the doctors and nurses and other health institutions of Alabama. Many of those have cooperated very well and in a very impressive way.

Senator HILL. They are cooperating, are they not?

Secretary GARDNER. Yes, sir; but the State welfare agency has not cooperated.

Senator HILL. The majority of them.

Speaking about the State, do you have any evidence that the State of Alabama has been dragging its heels in this matter? Is it not moving promptly to test the legality of its position in the court?

Secretary GARDNER. I am not sure I understood the question, Senator.

Senator HILL. Do you have any evidence that the State of Alabama has been dragging its heels in this matter? Is it not moving promptly to test the legality of its position in the court?

Secretary GARDNER. I think it has moved promptly to test the legality of its position, certainly.

Senator HILL. Since the days of the Magna Carta, nearly a thousand years ago, has that not been a basic principle of Anglo-Saxon justice, that you have a right to go into court?

Secretary GARDNER. Yes, sir; they have a right, and they are in court.

Senator HILL. Is that not a basic Anglo-Saxon principle, that you can get a court to tell you if you are right?

Secretary GARDNER. Yes, sir, and they are now in court.

Senator HILL. Do you have any reason to doubt that the State of Alabama will comply with the final decision of the courts?

Secretary GARDNER. They have said that they will.

Senator HILL. And they said that when the Governor of Alabama appeared before this committee some 3 or 4 weeks ago; he made it very clear. He stated it not once, but several times, that the State of Alabama would comply with this. That is exactly what the Magna Carta had in mind, that the court had to enforce your rights, and when the court determined your rights, you comply with the decision of the courts.

Secretary GARDNER. We are fully in agreement with that.

Senator HILL. And for that matter, do you not have authority to request a Federal court order enjoining Alabama from discriminating in its welfare programs?

Secretary GARDNER. I do not believe so.

Senator HILL. You would not have any right to go to court?

Secretary GARDNER. I do not think so, do we?

Senator HILL. You did not consider that matter rather than pursue this matter of cutting off 200,000 helpless, handicapped, disabled people, including blind children and others?

Secretary GARDNER. I do not believe we have any legal means of forcing them to run a program.

Senator HILL. You do not think you have any right to go to court?

Secretary GARDNER. No, sir.

Senator HILL. That is rather unusual, is it not, not to be able to go to court?

(Secretary Gardner nods.)

Senator HILL. They have told you time and again they would comply with a court order, have they not, Alabama? As I said, the Governor of Alabama, right in this room some 3 or 4 weeks ago, emphasized that he would comply with any decision of the court.

Do you construe the Civil Rights Act of 1964 to regulate doctors in the assignment of patients to hospitals?

Secretary GARDNER. I believe that that is our construction.

Mr. LIBASSI. I am sorry, Senator?

Secretary GARDNER. Do we construe the Civil Rights Act to affect the assignment of civil rights patients to hospitals? We do?

Mr. LIBASSI. That is right.

Senator HILL. Do you have the right to regulate these doctors?

Mr. LIBASSI. Senator, title VI requires that a hospital admit all patients without regard to their race. The way the hospitals are organized, as you know, the staff of a hospital bring their patients to the hospital. We feel that title VI requires the hospital to assure that its staff will not exclude Negroes from the hospital. But we do not regulate doctors, we do not tell the doctors how to run their practice or how to treat their patients. We do say, though, that the hospital must assure that their staff will not exclude Negroes from the facility.

Senator HILL. Is it not up to the patient himself to determine what hospital he prefers to go to? Is that not his right?

Mr. LIBASSI. I think that the patients right is to the best medical care and advice his physician can give him. If I were seeking to be admitted to a hospital, I would want my doctor to decide on the basis of my medical condition where I would best be treated. Therefore, we feel that the doctors should refer their patients to hospitals in accordance with their best medical and professional judgment without regard to the patient's race.

Senator HILL. Without regard to the wishes of the patient?

Mr. LIBASSI. No, not without regard to the wishes of the patient. If the patient says, "Doctor, I just do not wish to go to that hospital," and the doctor said, "Well, that is all right, that is up to you"; that is not in violation of the Civil Rights Act.

Senator HILL. The patient should have the right to go to any hospital the patient wishes to go to?

Mr. LIBASSI. That is exactly right, and I would hope that the doctor would advise the patient on the basis of his best medical judgment where he should go.

Senator HILL. One of the points you made in your decision, Mr. Secretary, is that the Alabama agency does not have certain case workers assigned to handle certain types of cases. In view of the fact that section 604 of the Civil Rights Act of 1964 prohibits any interference with State employment practice, under what authority of law do you claim the right to interfere with such employment practices?

Secretary GARDNER. We do not claim the right to interfere with employment practices, Senator. We do believe that the assignment of caseworkers should be done without regard to race or color.

Senator HILL. But you do not attempt to interfere with the State, with whom the State shall employ?

Secretary GARDNER. No.

Senator HILL. Because it is simply provided that you shall not have that right, correct?

Secretary GARDNER. Not under title VI; no, sir

Senator HILL. Let me ask you another question, too. Talking about the patient—his rights—does he not have a right to select his own room in the hospital?

Secretary GARDNER. I believe——

Senator HILL. Express his own wishes as to his room?

Secretary GARDNER. I believe that this is correct.

Mr. LIBASSI. Patients are usually assigned to the facility, to the floor, to the ward, or the service, depending upon their medical condition, and if there are alternative facilities available—a private room, a single room—the patient has the right to do that if he is willing to pay the additional cost.

Senator HILL. He has that right?

Mr. LIBASSI. Yes, sir.

Senator HILL. To express his own wishes?

Mr. LIBASSI. That is right.

Senator HILL. Now, of course, it has been brought here time and again that the objective of the public assistance program is aid to the elderly, to the disabled, to the needy children, to the blind, those who have to feel with their sensitive fingers the faces of their beloved to know their own. Do you have any evidence that the State of Alabama has refused aid to an elderly person, a disabled person, a child, a poor blind child or person, because he was a Negro?

Secretary GARDNER. No, sir.

Senator HILL. Is it not a fact that approximately 50 percent of the beneficiaries of these programs are Negroes, and yet Negroes make up only approximately 30 percent of Alabama's population?

Secretary GARDNER. I do not know the exact figures. It is high, though.

Senator HILL. I can tell you, I come from Alabama. About 50 percent of the beneficiaries are Negroes, whereas only approximately 30 percent of the population are Negro.

I wonder if you do not agree that it would have been reasonable to have granted Alabama's request for a stay of the order pending the final decision by the courts, particularly in view of the fact that Alabama said it would abide by the court decision.

And I might add another word. You may recall that last fall, during its consideration of the appropriation bill for your Department, the Senate strongly indicated its intention that your Department exercise the utmost care and caution in the application of title VI. Is not your refusal to allow a stay in the effective date of the order to cut off Federal grants to Alabama precipitant in controvention of the Senate's expressed desire that these matters be handled carefully and with caution?

Secretary GARDNER. The request from Alabama for a stay also contained the request that I act as promptly as possible so that if the stay was not granted, they could seek an injunction. They were in court at the time. It was perfectly clear that they had the alternative of seeking the injunction, as it seemed to me preferable to place this decision in the hands of the court after I had dealt with the case for so long and so unsuccessfully.

Senator HILL. You do not deny their right to go to court?

Secretary GARDNER. No, sir.

Senator HILL. You have no complaint about that?

Secretary GARDNER. No, sir.

Senator HILL. No complaint whatever about the fact that Alabama is seeking its rights within the court?

Secretary GARDNER. No, sir.

Senator HILL. Which, as I said, has been a principle of Anglo-Saxon justice since the days of the Magna Carta, which was adopted nearly a thousand years ago; right?

Secretary GARDNER. Right.

Senator HILL. In fact, yesterday we celebrated the birthday of a very great American, George Washington. One reason I think we fought that Revolutionary War was to merely insure our rights under Anglo-Saxon justice; is that right?

Secretary GARDNER. Yes, sir.

Senator HILL. I thank you, Mr. Chairman.

The CHAIRMAN (presiding). Mr. Secretary, I believe that we had some understanding here that you agreed—at least that you do not deny—the meaning of Senator Pastore's explanation that prior to the cutoff of Federal funds, a State was entitled, "the aid recipient can obtain judicial review and may apply for a stay pending such review."

If I understand it correctly, you agree with that interpretation?

Secretary GARDNER. Yes, sir.

The CHAIRMAN. In other words, an applicant, the recipient in this case, the State of Alabama, does not get it unless they apply for it, but if they ask for it, you agree that prior to the cutoff of Federal funds, they may apply for judicial review and are entitled to a stay pending such review.

Secretary GARDNER. Did Senator Pastore's comments say that they were entitled to a stay?

The CHAIRMAN. He says that the aid recipient can obtain judicial review and may apply for a stay pending such review.

Secretary GARDNER. Yes.

The CHAIRMAN. I would take it that while that is not mandatory upon the court, I would take it that any court, if there was reasonable merit to the State's position, would grant that stay.

Now, frankly, I am something of a lawyer, having practiced for a few years. I used to be a lawyer for the Governor of Louisiana when we would come up here applying for our funds. My impression would be that if a court found that the position of a State had little or no merit, the issue had been decided before, or that the State's position appeared to have little, if any, logic to it, that would be discretionary with a judge. A judge could say, "We do not think that this matter merits a stay." But it would seem to me that where you really have something about which men of good will can honestly disagree, a court should grant a stay. Now, I take it that you agree with that?

Secretary GARDNER. I agree with that, and when the court granted the injunction, I was not in any way opposed to that.

The CHAIRMAN. Well, if your position remains the same, then I do not really believe we have a great deal to quarrel about as far as you and the Finance Committee are concerned. Because it would seem to this Senator that there are issues here that will necessarily have to be decided by the court.

I do think that it would be very unfortunate for innocent parties to be injured, and these are 200,000 people we are thinking about who are powerless to decided this issue for you or for the State of Alabama.

Secretary GARDNER. I agree with that, sir.

The CHAIRMAN. Now, the Justice Department brief to the 5th Circuit stated on page 4:

We believe that the regulation requiring the submission of the assurance was clearly valid and the issuance of the preliminary injunction by the District Court was accordingly an abuse of discretion.

Now, I hope very much that that is not going to be insisted upon until this case is decided. It seems to this Senator that——

Secretary GARDNER. This has been discussed by Senator Talmadge with Mr. Barrett.

Would you care to comment, Mr. Barrett?

Mr. BARRETT. Again, I can say, Senator, that we are intending to urge in that portion of the brief that there is an abuse of discretion because of what we think is the clearness of the merits. We have no particular quarrel with the continuance of Federal funds until the merits are determined. We expect and have sought a determination of those merits in a court of appeals, and we think there will be such determination.

In other words, we are not simply, by this appeal, asking that the funds be discontinued pending a determination. We are asking for the definitive determination of the merits, and we expect and have no objection to the continuance of the funds during that period.

The CHAIRMAN. Well, as long as we understand, and I believe we do, that this is an important case and that it does put at issue a number of practices which can be debated both for and against, and that the decision in all probability, when made, would be binding upon other States, that it would be well that this matter be decided and that the funds be continued until the decision on the merits has been made. I take it you agree with that?

Secretary GARDNER. Yes, sir.

The CHAIRMAN. I do think, Mr. Secretary, that there has been some misunderstanding, because States have been led to believe that this handbook was, in effect, regulations with which a State would be required to comply if a State were to receive the assistance that was provided by law. In your prepared statement on page 7, you said that the handbook and the proposed form have not been approved by the President, and title VI does not require this. The next sentence is very important: "Within the meaning of title VI, they do now"—and I believe that that was intended to be "not."

Secretary GARDNER. "Not," yes.

The CHAIRMAN. That would make a lot of difference. That is a typographical error, supposed to be a "t" not a "w."

They do not have the force of regulations and were not intended as general orders. They were designed only to show the kind of undertaking that would be considered satisfactory under the regulations.

Do I understand correctly now that it is well agreed that this handbook is advisory and it does not have the effect of a general order?

Secretary GARDNER. Or a regulation. But it is essential to get on with our business. We must have some means by which we communicate to the States what our needs are and they undertake certain responsibilities.

The CHAIRMAN. Right.

Now, you have explained that you do not believe an order to withhold funds must be cleared by the President. While I am inclined to think, Mr. Secretary, that that is a matter of fair debate, if the procedure that we have discussed here is that, as a practical matter, this litigation will be decided on its merits before the withholding of funds should take effect, then as far as I am concerned as chairman of this committee, I am not going to quarrel about it. As far as most members of the committee are concerned, if the ends of justice are served, we are not going to quarrel too much about the technicalities of it.

Well, I thank you very much, Mr. Secretary, you and your assistants, for the testimony you have provided here today. I believe that

we have made some progress toward understanding what you propose to do, and I hope very much that this matter can be adjudicated in short order.

Secretary GARDNER. Thank you, Mr. Chairman.

The CHAIRMAN. The hearing is adjourned.

(By direction of the chairman, the following are made a part of the printed record:)

ADMINISTRATIVE PROCEDURES ACT (TITLE V)

(Pertinent Sections, United States Code)

SECTION 1009. JUDICIAL REVIEW OF AGENCY ACTION

* * * * * * *

(d) Relief pending review.

Pending judicial review any agency is authorized, where it finds that justice so requires, to postpone the effective date of any action taken by it. Upon such conditions as may be required and to the extent necessary to prevent irreparable injury, every reviewing court (including every court to which a case may be taken on appeal from or upon application for certiorari or other writ to a reviewing court) is authorized to issue all necessary and appropriate process to postpone the effective date of any agency action or to preserve status or rights pending conclusion of the review proceedings.

[Reprinted from the Federal Register, Friday, December 4, 1964]

U.S. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

TITLE 45—PUBLIC WELFARE

SUBTITLE A—DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE, GENERAL ADMINISTRATION

PART 80—NONDISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS OF THE DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Subtitle A 45 CFR is hereby amended by adding the following new Part 80:

Sec.

AUTHORITY: The provisions of this Part 80 are issued under sec. 602, 78 Stat. 252, and the laws referred to in Appendix A.

§ 80.1 Purpose.

The purpose of this part is to effectuate the provisions of title VI of the Civil Rights Act of 1964 (hereafter referred to as the "Act") to the end that no person in the United States shall; on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from the Department of Health, Education, and Welfare.

§ 80.2 Application of this part.

This part applies to any program for which Federal financial assistance is authorized under a law administered by the Department, including the Federally-assisted programs and activities listed in Appendix A of this part. It applies to

money paid, property transferred, or other Federal financial assistance extended under any such program after the effective date of the regulation pursuant to an application approved prior to such effective date. This part does not apply to (a) any Federal financial assistance by way of insurance or guaranty contracts, (b) money paid, property transferred, or other assistance extended under any such program before the effective date of this part, (c) any assistance to any individual who is the ultimate beneficiary under any such program, or (d) any employment practice, under any such program, of any employer, employment agency, or labor organization, except to the extent described in § 80.3. The fact that a program or activity is not listed in Appendix A shall not mean, if Title VI of the Act is otherwise applicable, that such program is not covered. Other programs under statutes now in force or hereinafter enacted may be added to this list by notice published in the Federal Register.

§ 80.3 Discrimination prohibited.

(a) *General.* No person in the United States shall, on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program to which this part applies.

(b) *Specific discriminatory actions prohibited.* (1) A recipient under any program to which this part applies may not, directly or through contractual or other arrangements, on ground of race, color, or national origin:

(i) Deny an individual any service, financial aid, or other benefit provided under the program;

(ii) Provide any service, financial aid, or other benefit to an individual which is different, or is provided in a different manner, from that provided to others under the program;

(iii) Subject an individual to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit under the program;

(iv) Restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program;

(v) Treat an individual differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility, membership or other requirement or condition which individuals must meet in order to be provided any service, financial aid, or other benefit provided under the program;

(vi) Deny an individual an opportunity to participate in the program through the provision of services or otherwise or afford him an opportunity to do so which is different from that afforded others under the program (including the opportunity to participate in the program as an employee but only to the extent set forth in paragraph (c) of this section.

(2) A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program, or the class of individuals to whom, or the situations in which, such services, financial aid, other benefits, or facilities will be provided under any such program, or the class of individuals to be afforded an opportunity to participate in any such program, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respect individuals of a particular race, color, or national origin.

(3) As used in this section the services, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any service, financial aid, or other benefit provided in or through a facility provided with the aid of Federal financial assistance.

(4) The enumeration of specific forms of prohibited discrimination in this paragraph and paragraph (c) of this section does not limit the generality of the prohibition in paragraph (a) of this section.

(c) *Employment practices.* Where a primary objective of the Federal financial assistance to a program to which this part applies is to provide employment, a recipient may not (directly or through contractual or other arrangements) subject an individual to discrimination on the ground of race, color, or national origin in its employment practices under such program (including recruitment or recruitment, advertising, employment, layoff or termination, upgrading, demotion, or transfer, rates of pay or other forms of compensation, and use of facilities), in-

cluding programs where a primary objective of the Federal financial assistance is (i) to reduce the unemployment of such individuals or to help them through employment to meet subsistence needs, (ii) to assist such individuals through employment to meet expenses incident to the commencement or continuation of their education or training, (iii) to provide work experience which contributes to the education or training of such individuals, or (iv) to provide remunerative activity to such individuals who because of severe handicaps cannot be readily absorbed in the competitive labor market. The following programs under existing laws have one of the above objectives as a primary objective:

(a) Department projects under the Public Works Acceleration Act, Public Law 87-658.
(b) Community work nad training programs under title IV of the Social Security Act, 42 U.S.C. 609.
(c) Work-study program under the Vocational Education Act of 1963, P.L. 88-210, sec. 13.
(d) Programs listed in Appendix A as respects employment opportunities provided thereunder, or in facilities provided thereunder, which are limited, or for which preference is given, to students, fellows, or other persons in training for the same or related employments.
(e) Establishment of sheltered workshops under the Vocational Rehabilitation Act, 29 U.S.C. 32-34.

The requirements applicable to construction employment under any such program shall be those specified in or pursuant to Executive Order 11114.

(d) *Indian Health and Cuban Refugee programs.* An individual shall not be deemed subjected to discrimination by reason of his exclusion from the benefits of a program limited by Federal law to individuals of a particular race, color, or national origin different from his.

(e) *Medical emergencies.* Notwithstanding the foregoing provisions of this section, a recipient of Federal financial assistance shall not be deemed to have failed to comply with paragraph (a) of this section if immediate provision of a service or other benefit to an individual is necessary to prevent his death or serious impairment of his health, and such service or other benefit cannot be provided except by or through a medical institution which refuses or fails to comply with paragraph (a) of this section.

§ 80.4 Assurances required.

(a) *General.* (1) Every application for Federal financial assistance to carry out a program to which this part applies, except a program to which paragraph (b) of this section applies, and every application for Federal financial assistance to provide a facility shall, as a condition to its approval and the extension of any Federal financial assistance pursuant to the application, contain or be accompanied by an assurance that the program will be conducted or the facility operated in compliance with all requirements imposed by or pursuant to this part. In the case of an application for Federal financial assistance to provide real property or structures thereon, the assurance shall obligate the recipient, or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. In the case of personal property the assurance shall obligate the recipient for the period during which he retains ownership or possession of the property. In all other cases the assurance shall obligate the recipient for the period during which Federal financial assistance is extended pursuant to the application. The responsible Department official shall specify the form of the foregoing assurances for each program, and the extent to which like assurances will be required of subgrantees, contractors and subcontractors, transferees, successors in interest, and other participants in the program. Any such assurance shall include provisions which give the United States a right to seek its judicial enforcement.

(2) The assurance required in the case of a transfer of surplus real property shall be inserted in the instrument effecting the transfer of any such surplus land, together with any improvements located thereon, and shall consist of (i) a condition coupled with a right to be reserved to the Department to revert title to the property in the event of breach of such nondiscrimination condition during the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits, and (ii) a covenant running with the land for the same period. In the event a transferee of surplus real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing, facilities on such property for the purposes for which the property was transferred, the Secretary

may agree, upon request of the transferee and if necessary to accomplish such financing, and upon such conditions as he deems appropriate, to forbear the exercise of such right to revert title for so long as the lien of such mortgage or other encumbrance remains effective.

(b) *Continuing State programs.* Every application by a State or a State agency to carry out a program involving continuing Federal financial assistance to which this part applies (including the programs listed in Part 2 of Appendix A) shall as a condition to its approval and the extension of any Federal financial assistance pursuant to the application (1) contain or be accompanied by a statement that the program is (or, in the case of a new program, will be) conducted in compliance with all requirements imposed by or pursuant to this part, or a statement of the extent to which it is not, at the time the statement is made, so conducted, and (2) provide or be accompanied by provision for such methods of administration for the program as are found by the responsible Department official to give reasonable assurance that the applicant and all recipients of Federal financial assistance under such program will comply with all requirements imposed by or pursuant to this part, including methods of administration which give reasonable assurance that any noncompliance indicated in the statement under subparagraph (1) of this paragraph will be corrected.

(c) *Elementary and secondary schools.* The requirements of paragraph (a) or (b) of this section with respect to any elementary or secondary school or school system shall be deemed to be satisfied if such school or school system (1) is subject to a final order of a court of the United States for the desegregation of such school or school system, and provides an assurance that it will comply with such order, including any future modification of such order, or (2) submits a plan for the desegregation of such school or school system which the Commissioner of Education determines is adequate to accomplish the purposes of the Act and this part, and provides reasonable assurance that it will carry out such plan; in any case of continuing Federal financial assistance the Commissioner may reserve the right to redetermine, after such period as may be specified by him, the adequacy of the plan to accomplish the purposes of the Act and this part. In any case in which a final order of a court of the United States for the desegregation of such school or school system is entered after submission of such a plan, such plan shall be revised to conform to such final order, including any future modification of such order.

(d) *Assurances form institutions.* (1) In the case of any application for Federal financial assistance to an institution of higher education (including assistance for construction, for research, for a special training project, for a student loan program, or for any other purpose), the assurance required by this section shall extend to admission practices and to all other practices relating to the treatment of students.

(2) The assurance required with respect to an institution of higher education, hospital, or any other institution, insofar as the assurance relates to the institution's practices with respect to admission or other treatment of individuals as students, patients, or clients of the institution or to the opportunity to participate in the provision of services or other benefits to such individuals, shall be applicable to the entire institution unless the applicant establishes, to the satisfaction of the responsible Department official, that the institution's practices in designated parts or programs of the institution will in no way affect its practcies in the program of the institution for which Federal financial assistance is sought, or the beneficiaries of or participants in such program. If in any such case the assistance sought is for the construction of a facility or part of a facility, the assurance shall in any event extend to the entire facility and to facilities operated in connection therewith.

§ 80.5 Illustrative applications.

The following examples will illustrate the application of the foregoing provisions to some of the major programs of the Department. (In all cases the discrimination prohibited is discrimination on the ground of race, color, or national origin prohibited by title VI of the Act and this part, as a condition of the receipt of Federal financial assistance.)

(a) In grant programs which support the provision of health or welfare services, discrimination in the selection or eligibility of individuals to receive the services, and segregation or other discriminatory practices in the manner of providing them, are prohibited. This prohibition extends to all facilities and services provided by the grantee under the program or, if the grantee is a State, by a political subdivision of the State. It extends also to services purchased

or otherwise obtained by the grantee (or political subdivision) from hospitals, nursing homes, schools, and similar institutions for beneficiaries of the program, and to the facilities in which such services are provided, subject, however, to the provisions of § 80.3(e).

(b) In the Federally-affected area programs (P.L. 815 and P.L. 874) for construction aid and for general support of the operation of elementary or secondary schools, or in programs for more limited support to such schools such as for the acquisition of equipment, the provision of vocational education, or the provision of guidance and counseling services, discrimination by the recipient school district in any of its elementary or secondary schools in the admission of students, or in the treatment of its students in any aspect of the educational process, is prohibited. In this and the following illustrations the prohibition of discrimination in the treatment of students or other trainees includes the prohibition of discrimination among the students or trainees in the availability or use of any academic, dormitory, eating, recreational, or other facilities of the grantee or other recipient.

(c) In a research, training, demonstration, or other grant to a university for activities to be conducted in a graduate school, discrimination in the admission and treatment of students in the graduate school is prohibited, and the prohibition extends to the entire university unless its satisfies the responsible Department official that practices with respect to other parts or programs of the university will not interfere, directly or indirectly, with fulfillment of the assurance required with respect to the graduate school.

(d) In a training grant to a hospital or other nonacademic institution, discrimination is prohibited in the selection of individuals to be trained and in their treatment by the grantee during their training. In a research or demonstration grant to such an institution discrimination is prohibited with respect to any educational activity and any provision of medical or other services and any financial aid to individuals incident to the program.

(e) In grant programs to assist in the construction of facilities for the provision of health, educational or welfare services assurances will be required that services will be provided without discrimination, to the same extent that discrimination would be prohibited as a condition of Federal operating grants for the support of such services. Thus, as a condition of the grants for the construction of academic, research, or other facilities at institutions of higher education, assurances will be required that there will be no discrimination in the admission or treatment of students. In the case of hospital construction grants the assurance will apply to patients, to interns, residents, student nurses, and other trainees, and to the privileg of physicians, dentists, and other professionally qualified persons to practice in the hospital, and will apply to the entire facility for which, or for a part of which the grant is made, and to facilities operated in connection therewith. In other construction grants the assurances required will similarly be adapted to the nature of the activities to be conducted in the facilities for construction of which the grants have been authorized by Congress.

(f) Upon transfers of real or personal surplus property for health or educational uses, discrimination is prohibited to the same extent as in the case of grants for the construction of facilities or the provision of equipment for like purposes.

(g) Each applicant for a grant for the construction of educational television facilities is required to provide an assurance that it will, in its broadcast services, give due consideration to the interests of all significant racial or ethnic groups within the population to be served by the applicant.

(h) A recipient may not take action that is calculated to bring about indirectly what this part forbids it to accomplish directly. Thus a State, in selecting or approving projects or sites for the construction of public libraries which will receive Federal financial assistance, may not base its selection or approvals on criteria which have the effect of defeating or of substantially impairing accomplishment of the objectives of the Federal assistance program as respects individuals of a particular race, color, or national origin.

§ 80.6 Compliance information.

(a) *Cooperation and assistance.* Each responsible Department official shall to the fullest extent practicable seek the cooperation of recipients in obtaining compliance with this part and shall provide assistance and guidance to recipients to help them comply voluntarily with this part.

(b) *Compliance reports.* Each recipient shall keep such records and submit to the responsible Department official or his designee timely, complete and ac-

curate compliance reports at such times, and in such form and containing such information, as the responsible Department official or his designee may determine to be necessary to enable him to ascertain whether the recipient has complied or is complying with this part. In the case of any program under which a primary recipient extends Federal financial assistance to any other recipient, such other recipient shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations under this part.

(c) *Access to sources of information.* Each recipient shall permit access by the responsible Department official or his designee during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with this part. Where any information required of a recipient is in the exclusive possession of any other agency, institution or person and this agency, institution or person shall fail or refuse to furnish this information, the recipient shall so certify in its report and shall set forth what efforts it has made to obtain the information.

(d) *Information to beneficiaries and participants.* Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the program under which the recipient receives Federal financial assistance, and make such information available to them in such manner, as the responsible Department official finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this part.

§ 80.7 Conduct of investigations.

(a) *Periodic compliance reviews.* The responsible Department official or his designee shall from time to time review the practices of recipients to determine whether they are complying with this part.

(b) *Complaints.* Any person who believes himself or any specific class of individuals to be subjected to discrimination prohibited by this part may by himself or by a representative file with the responsible Department official or his designee a written complaint. A complaint must be filed not later than 90 days from the date of the alleged discrimination, unless the time for filing is extended by the responsible Department official or his designee.

(c) *Investigations.* The responsible Department official or his designee will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this part. The investigation should include, where appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with this part occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with this part.

(d) *Resolution of matters.* (1) If an investigation pursuant to paragraph (c) of this section indicates a failure to comply with this part, the responsible Department official or his designee will so inform the recipient and the matter will be resolved by informal means whenever possible. If it has been determined that the matter cannot be resolved by informal means, action will be taken as provided for in § 80.8.

(2) If an investigation does not warrant action pursuant to subparagraph (1) of this paragraph the responsible Department official or his designee will so inform the recipient and the complainant, if any, in writing.

(e) *Intimidatory or retaliatory acts prohibited.* No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by section 601 of the Act or this part, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of this part, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

§ 80.8 Procedure for effecting compliance.

(a) *General.* If there apears to be a failure or threatened failure to comply with this regulation, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this part may be effected by the suspension or termination of or refusal to grant or to continue Federal financial assistance or by any other means authorized by law. Such other means may include, but are not limited to, (1) a reference to the Department of Justice with a recommendation that appropriate proceedings be brought to en-

force any rights of the United States under any law of the United States (including other titles of the Act), or any assurance or other contractual undertaking, and (2) any applicable proceeding under State or local law.

(b) *Noncompliance with § 80.4.* If an applicant fails or refuses to furnish an assurance required under § 80.4 or otherwise fails or refuses to comply with a requirement imposed by or pursuant to that section Federal financial assistance may be refused in accordance with the procedures of paragraph (c) of this section. The Department shall not be required to provide assistance in such a case during the pendency of the administrative proceedings under such paragraph except that the Department shall continue assistance during the pendency of such proceedings where such assistance is due and payable pursuant to an application therefor approved prior to the effective date of this part.

(c) *Termination of or refusal to grant or to continue Federal financial assistance.* No order suspending, terminating or refusing to grant or continue Federal financial assistance shall become effective until (1) the responsible Department official has advised the applicant or recipient of his failure to comply and has determined that compliance cannot be secured by voluntary means, (2) there has been an express finding on the record, after opportunity for hearing, of a failure by the applicant or recipient to comply with a requirement imposed by or pursuant to this part, (3) the action has been approved by the Secretary pursuant to § 80.10(e), and (4) the expiration of 30 days after the Secretary has filed with the committee of the House and the committee of the Senate having legislative jurisdiction over the program involved, a full written report of the circumstances and the grounds for such action. Any action to suspend or terminate or to refuse to grant or to continue Federal financial assistance shall be limited to the particular political entity, or part thereof, or other applicant or recipient as to whom such a finding has been made and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found.

(d) *Other means authorized by law.* No action to effect compliance by any other means authorized by law shall be taken until (1) the responsible Department official has determined that compliance cannot be secured by voluntary means, (2) the action has been approved by the Secretary, (3) the recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance, and (4) the expiration of at least 10 days from the mailing of such notice to the recipient or other person. During this period of at least 10 days additional efforts shall be made to persuade the recipient or other person to comply with the regulation and to take such corrective action as may be appropriate.

§ 80.9 Hearings.

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required by § 80.8(c), reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected applicant or recipient. This notice shall advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action, and either (1) fix a date not less than 20 days after the date or such notice within which the applicant or recipient may request of the responsible Department official that the matter be scheduled for hearing or (2) advise the applicant or recipient that the matter in question has been set down for hearing at a stated place and time. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. An applicant or recipient may waive a hearing and submit written information and argument for the record. The failure of an applicant or recipient to request a hearing under this paragraph or to appear at a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing under section 602 of the Act and § 80.8(c) of this part and consent to the making of a decision on the basis of such information as is available.

(b) *Time and place of hearing.* Hearings shall be held at the offices of the Department in Washington, D.C., at a time fixed by the responsible Department official unless he determines that the convenience of the applicant or recipient or of the Department requires that another place be selected. Hearings shall be held before the responsible Department official or, at his discretion, before a hearing examiner designated in accordance with section 11 of the Administrative Procedure Act.

(c) *Right to counsel.* In all proceedings under this section, the applicant or recipient and the Department shall have the right to be represented by counsel.

(d) *Procedures, evidence, and record.* (1) The hearing, decision, and any administrative review thereof shall be conducted in conformity with sections 5–8 of the Administrative Procedure Act, and in accordance with such rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this section, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. Both the Department and the applicant or recipient shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the officer conducting the hearing at the outset of or during the hearing.

(2) Technical rules of evidence shall not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the officer conducting the hearing. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except ot the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.

(e) *Consolidated or Joint Hearings.* In cases in which the same or related facts are asserted to constitute noncompliance with this regulation with respect to two or more programs to which this part applies, or noncompliance with this part and the regulations of one or more other Federal departments or agencies issued under Title VI of the Act, the Secretary may, by agreement with such other departments or agencies where applicable, provide for the conduct of consolidated or joint hearings, and for the application to such hearings of rules of procedures not inconsistent with this part. Final decisions in such cases, insofar as this regulation is concerned, shall be made in accordance with § 80.10

§ 80.10 Decisions and notices.

(a) *Decision by person other than the responsible Department official.* If the hearing is held by a hearing examiner such hearing examiner shall either make an initial decision, if so authorized, or certify the entire record including his recommended findings and proposed decision to the responsible Department official for a final decision, and a copy of such initial decision or certification shall be mailed to the applicant or recipient. Where the initial decision is made by the hearing examiner the applicant or recipient may within 30 days of the mailing of such notice of initial decision file with the responsible Department official his exceptions to the initial decision, with his reasons therefor. In the absence of exceptions, the responsible Department official may on his own motion within 45 days after the initial decision serve on the applicant or recipient a notice that he will review the decision. Upon the filing of such exceptions or of such notice of review the responsible Department official shall review the initial decision and issue his own decision thereon including the reasons therefor. In the absence of either exceptions or a notice of review the initial decision shall constitute the final decision of the responsible Department official.

(b) *Decisions on record or review by the responsible Department official.* Whenever a record is certified to the responsible Department official for decision or he reviews the decision of a hearing examiner pursuant to paragraph (a) of this section, or whenever the responsible Department official conducts the hearing, the applicant or recipient shall be given reasonable opportunity to file with him briefs or other written statements of its contentions, and a copy of the final decision of the responsible Department official shall be given in writing to the applicant or recipient and to the complainant, if any.

(c) *Decisions on record where a hearing is waived.* Whenever a hearing is waived pursuant to § 80.9(a) a decision shall be made by the responsible departmental official on the record and a copy of such decision shall be given in writing to the applicant or recipient, and to the complainant, if any.

(d) *Rulings required.* Each decision of a hearing officer or responsible Department official shall set forth his ruling on each finding, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to this part with which it is found that the applicant or recipient has failed to comply.

(e) *Approval by Secretary.* Any final decision of a responsible Department official (other than the Secretary) which provides for the suspension or termination of, or the refusal to grant or continue Federal financial assistance, or the imposition of any other sanction available under this part or the Act, shall promptly be transmitted to the Secretary, who may approve such decision, may vacate it, or remit or mitigate any sanction imposed.

(f) *Content of orders.* The final decision may provide for suspension or termination of, or refusal to grant or continue Federal financial assistance, in whole or in part, under the program involved, and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the Act and this part, including provisions designed to assure that no Federal financial assistance will thereafter be extended under such program to the applicant or recipient determined by such decision to be in default in its performance of an assurance given by it pursuant to this part, or to have otherwise failed to comply with this part, unless and until it corrects its noncompliance and satisfies the responsible Department official that it will fully comply with this part.

§ 80.11 Judicial review.

Action taken pursuant to section 602 of the Act is subject to judicial review as provided in section 603 of the Act.

§ 80.12 Effect on other regulations; forms and instructions.

(a) *Effect on other regulations.* All regulations, orders, or like directions heretofore issued by any officer of the Department which impose requirements designed to prohibit any discrimination against individuals on the ground of race, color, or national origin under any program to which this part applies, and which authorize the suspension or termination of or refusal to grant or to continue Federal financial assistance to any applicant for or recipient of such assistance under such program for failure to comply with such requirements, are hereby superseded to the extent that such discrimination is prohibited by this part, except that nothing in this part shall be deemed to relieve any person of any obligation assumed or imposed under any such superseded regulation, order, instruction, or like direction prior to the effective date of this part. Nothing in this part, however, shall be deemed to supersede any of the following (including future amendments thereof): (1) Executive Orders 10925 and 11114 and regulations issued thereunder, (2) the "Standards for a Merit System of Personnel Administration," issued jointly by the Secretaries of Defense, of Health, Education, and Welfare, and of Labor, 28 F.R. 734, or (3) Executive Order 11063 and regulations issued thereunder, or any other regulations or instructions, insofar as such Order, regulations, or instructions prohibit discrimination on the ground of race, color, or national origin in any program or situation to which this part is inapplicable, or prohibit discrimination on any other ground.

(b) *Forms and instructions.* Each responsible Department official shall issue and promptly make available to interested persons forms and detailed instructions and procedures for effectuating this part as applied to programs to which this part applies and for which he is responsible.

(c) *Supervision and coordination.* The Secretary may from time to time assign to officials of the Department, or to officials of other departments or agencies of the Government with the consent of such departments or agencies, responsibilities in connection with the effectuation of the purposes of title VI of the Act and this part (other than responsibility for final decision as provided in § 80.10), including the achievement of effective coordination and maximum uniformity within the Department and within the Executive Branch of the Government in the application of title VI and this part to similar programs and in similar situations.

§ 80.13 Definitions.

As used in this part—

(a) The term "Department" means the Department of Health, Education, and Welfare, and includes each of its operating agencies and other organizational units.

(b) The term "Secretary" means the Secretary of Health, Education, and Welfare.

(c) The term "responsible Department official" with respect to any program receiving Federal financial assistance means the Secretary or other official of the Department who by law or by delegation has the principal responsibility

within the Department for the administration of the law extending such assistance.

(d) The term "United States" means the States of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and the territories and possessions of the United States, and the term "State" means any one of the foregoing.

(e) The term "Federal financial assistance" includes (1) grants and loans of Federal funds, (2) the grant or donation of Federal property and interests in property, (3) the detail of Federal personnel, (4) the sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient, and (5) any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

(f) The term "program" includes any program, project, or activity for the provision of services, financial aid, or other benefits to individuals (including education or training, health, welfare, rehabilitation, housing, or other services, whether provided through employees of the recipient of Federal financial assistance or provided by others through contracts or other arrangements with the recipient, and including work opportunities and cash or loan or other assistance to individuals), or for the provision of facilities for furnishing services, financal aid or other benefits to individuals. The services, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any services, financial aid, or other benefits provided with the aid of Federal financial assistance or with the aid of any non-Federal funds, property, or other resources required to be expended or made available for the program to meet matching requirements or other conditions which must be met in order to receive the Federal financial assistance, and to include any services, financial aid, or other benefits provided in or through a facility provided with the aid of Federal financial assistance or such non-Federal resources.

(g) The term "facility" includes all or any portion of structures, equipment, or other real or personal property or interests therein, and the provision of facilities includes the construction, expansion, renovation, remodeling, alteration or acquisition of facilities.

(h) The term "recipient" means any State, political subdivision of any State, or instrumentality of any State or political subdivision, any public or private agency, institution, or organization, or other entity, or any individual, in any State, to whom Federal financial assistance is extended, directly or through another recipient, for any program, including any successor, assign, or transferee thereof, but such term does not include any ultimate beneficiary under any such program.

(i) The term "primary recipient" means any recipient which is authorized or required to extend Federal financial assistance to another recipient for the purpose of carrying out a program.

(j) The term "applicant" means one who submits an application, request, or plan required to be approved by a responsible Department official, or by a primary recipient, as a condition to eligibility for Federal financial assistance, and the term "application" means such an application, request, or plan.

Effective date. This part shall become effective on the 30th day following the date of its publication in the Federal Register.

Dated: November 27, 1964.

[SEAL] ANTHONY J. CELEBREZZE,
Secretary of Health, Education, and Welfare.

Approved: December 3, 1964.

LYNDON B. JOHNSON.

APPENDIX A

PROGRAMS TO WHICH THIS PART APPLIES

Part 1. *Programs other than State-administered continuing programs.*

1. Experimental hospital facilities (sec. 624, Public Health Service Act, 42 U.S.C. 291n).

2. Health research facilities (title VII, part A, Public Health Service Act, 42 U.S.C. 292–292j).

3. Teaching facilities for medical, dental, and other health personnel (title VII, part B, Public Health Service Act, 42 U.S.C. 293–293h; secs. 801–804, Public Health Service Act, 42 U.S.C. 296, 296a–c).

4. Mental retardation research facilities (title VII, part D, Public Health Service Act, 42 U.S.C. 295–295e).

5. University affiliated mental retardation facilities (part B, Mental Retardation Facilities Construction Act, 42 U.S.C. 2661–2665).

6. Heart disease laboratories and related facilities for patient care (sec. 412(d), Public Health Service Act, 42 U.S.C. 287a(d)).

7. Municipal sewage treatment works (sec. 6, Federal Water Pollution Control Act, 33 U.S.C. 466e).

8. Loans for acquisition of science, mathematics, and foreign language equipment (title III, National Defense Education Act, 20 U.S.C. 445).

9. Construction of facilities for institutions of higher education (Higher Education Facilities Act, 20 U.S.C. 701–757).

10. School construction in Federally-affected areas (20 U.S.C. 631–645).

11. Educational television broadcasting facilities (47 U.S.C. 390–397).

12. Surplus real and related personal property disposal (40 U.S.C. 484(k)).

13. George Washington University Hospital construction (76 Stat. 83, P.L. 87–460, May 31, 1962).

14. Loan service of captioned films for the deaf (42 U.S.C. 2491–2494).

15. Residential vocational education schools (20 U.S.C. 35*l*).

16. Department projects under the Public Works Acceleration Act (P.L. 87–658).

17. Research projects, including conferences, communication activities and primate or other center grants (secs. 301, 303, 308, 624, Public Health Service Act, 42 U.S.C. 241, 242a, 242f, 291n; sec. 4, Federal Water Pollution Control Act, 33 U.S.C. 466c; sec. 3, Clean Air Act, 42 U.S.C. 1857b).

18. General research support (sec. 301(d), Public Health Service Act, 42 U.S.C. 241).

19. Community health studies and demonstrations (sec. 316, Public Health Service Act, 42 U.S.C. 247a).

20. Mental health demonstrations and administrative studies (sec. 303(a)(2), Public Health Service Act, 42 U.S.C. 242a).

21. Migratory workers health services (sec. 310, Public Health Service Act, 76 Stat. 592, P.L. 87–692, Sept. 25, 1962).

22. Intensive vaccination projects (sec. 317, Public Health Service Act, 42 U.S.C. 247b).

23. Tuberculosis and venereal disease control projects (current appropriation Act, P.L. 88–605).

24. Air pollution demonstration and survey projects and control programs (secs. 3 and 4, Clean Air Act, 42 U.S.C. 1857b, 1857c).

25. Water pollution demonstration grants (sec. 4(a)(2), Federal Water Pollution Control Act, 33 U.S.C. 466c).

26. Health research training projects and fellowship grants (secs. 301, 433, Public Health Service Act, 42, U.S.C. 241, 289c).

27. Categorical (heart, cancer, air pollution, etc.) grants for training, traineeships or fellowships (secs. 303, 433, etc., Public Health Service Act, 42 U.S.C. 242a, 289c, etc.; sec. 3 Clean Air Act, 42 U.S.C. 1857b; sec. 4, Federal Water Pollution Control Act, 33 U.S.C. 466c).

28. Advanced professional nurse traineeships, improvement in nurse training and partial reimbursement to diploma schools of nursing (secs. 805, 806, 821, Public Health Service Act, 42 U.S.C. 296d, 296e, 297).

29. Grants to institutions for traineeships for professional public health personnel (sec. 306, Public Health Service Act, 42 U.S.C. 242d).

30. Grants to schools for specialized training in public health (sec. 309, Public Health Service Act, 242g).

31. Grants for special vocational rehabilitation projects (sec. 4, Vocational Rehabilitation Act, 29 U.S.C. 34).

32. Experimental, pilot or demonstration projects to promote the objectives of title I, IV, X, XIV, or XVI of the Social Security Act (sec. 1115, Social Security Act, 42 U.S.C. 1315).

33. Social security and welfare cooperative research or demonstration projects (sec. 1110, Social Security Act, 42 U.S.C. 1310).

34. Child welfare research, training or demonstration projects (sec. 526, Social Security Act. 42 U.S.C. 726).

35. Research projects relating to maternal and child health services and crippled children's services (sec. 532, Social Security Act, 42 U.S.C. 729a).

36. Maternal and child health special project grants to institutions of higher learnig (sec. 502(b), Social Security Act, 42 U.S.C. 702(b)).

37. Maternity and infant care special project grants to local health agencies (sec. 531, Social Security Act, 42 U.S.C. 726).

38. Special project grants to institutions of higher learning for crippled children's services (sec. 512(b), Social Security Act, 42 U.S.C. 712(b)).

39. Demonstration and evaluation projects and training of personnel in the field of juvenile delinquency (Juvenile Delinquency and Youth Offenses Control Act of 1961 (42 U.S.C. 2541, et seq.)).

40. Cooperative educational research (20 U.S.C. 331–332).

41. Language research (title VI, National Defense Education Act, 20 U.S.C. 512).

42. Research in new educational media (title VII, National Defense Education Act, 20 U.S.C. 541–542).

43. Research, training, and demonstration projects under Vocational Education Act of 1963 (sec. 4(c), 20 U.S.C. 35c(c)).

44. Grants for research and demonstration projects in education of handicapped children (20 U.S.C. 618).

45. Training grants for welfare personnel (sec. 705, Social Security Act, 42 U.S.C. 906).

46. Allowances to institutions training graduate fellows or other trainees (title IV, National Defense Education Act, 20 U.S.C. 461–465; sec. 4, Vocational Rehabilitation Act, 29 U.S.C. 34; secs. 301, 433, etc., Public Health Service Act, 42 U.S.C. 241, 289(c), etc.; sec. 3, Clean Air Act, 42 U.S.C. 1857b; sec. 4, Federal Water Pollution Control Act, 33 U.S.C. 466c).

47. Grants for teaching and the training of teachers for the education of handicapped children (20 U.S.C. 611–617).

48. Training persons in the use of films for the deaf (42 U.S.C. 2493(b)(4)).

49. Training for teachers of the deaf (20 U.S.C. 671–676).

50. Research in the use of educational and training films for the deaf (42 U.S.C. 2493(a)).

51. Operation and maintenance of schools in Federally-affected areas (20 U.S.C. 236–244).

52. Grants for teacher training and employment of specialists in desegregation problems (sec. 405, Civil Rights Act of 1964, P.L. 88–352).

53. Issuance to agencies or organizations of rent-free permits for operation, on Federal property in the custody of the Department, of vending stands for the blind, credit unions, Federal employee associations, etc. (Randolph-Sheppard Vending Stand Act, 20 U.S.C. 107–107f; 45 CFR Part 20; sec. 25, Federal Credit Union Act, 12 U.S.C. 1770; etc.)

54. Higher education student loan program (title II, National Defense Education Act, 20 U.S.C. 421–429).

55. Health professions school student loan program (title VII Part C, Public Health Service Act, 42 U.S.C. 294; secs. 822–828, Public Health Service Act, 42 U.S.C. 297 a–g).

56. Land-grant college aid (7 U.S.C. 301–329).

57. Language and area centers (title VI, National Defense Education Act, 20 U.S.C. 511–513).

58. American Printing House for the Blind (20 U.S.C. 101–105).

59. Future Farmers of America (36 U.S.C. 271–291) and similar programs.

60. Science Clubs (20 U.S.C. 2 (note)).

61. Howard University (20 U.S.C. 121–131).

62. Gallaudet College (31 D.C. Code, Ch. 10).

63. Hawaii leprosy payments (sec. 331, Public Health Service Act, 42 U.S.C. 255).

64. Grants to schools of public health for provision of comprehensive training and specialized services and assistance (sec. 314(c), Public Health Service Act, 42 U.S.C. 246(c)).

65. Grants to agencies and organizations under Cuban Refugee program (22 U.S.C. 2601(b)(4)).

66. Grants for construction of hospitals serving Indians (P.L. 85–151, 42 U.S.C. 2005).

67. Indian Sanitation Facilities (P.L. 86–121, 42 U.S.C. 2004a).

68. Areawide planning of health facilities (sec. 313, Public Health Service Act, 42 U.S.C. 247c).

69. Training institutes under sec. 511 of the National Defense Education Act of 1958, as amended (20 U.S.C. 491) and under title XI of such Act as added by P.L. 88-665 (20 U.S.C. 591-592).

Part 2. *State-administered continuing programs.*

1. Grants to States for control of venereal disease, tuberculosis, and for public health services (heart, cancer, mental health, radiological health, etc.) (sec. 314, Public Health Service Act (42 U.S.C. 246), and current appropriation act).

2. Grants to States for water pollution control (sec. 5, Federal Water Pollution Control Act, 33 U.S.C. 466d).

3. Grants to States for vocational rehabilitation services (sec. 2, Vocational Rehabilitation Act, 29 U.S.C. 32).

4. Grants to States for projects to extend and improve vocational rehabilitation services (sec. 3, Vocational Rehabilitation Act, 29 U.S.C. 33).

5. Designation of State licensing agency for blind operators of vending stands (Randolph-Sheppard Vending Stand Act, 20 U.S.C. 107-107f).

6. Grants to States for old-age assistance and medical assistance for the aged (title I, Social Security Act, 42 U.S.C. 301-306).

7. Grants to States for aid and services to needy families with children (title IV, Social Security Act, 42 U.S.C. 601-609).

8. Grants to States for aid to the blind (title X, Social Security Act, 42 U.S.C. 1201-1206).

9. Grants to States for aid to the permanently and totally disabled (title XIV, Social Security Act, 42 U.S.C. 1351-1355).

10. Grants to States for aid to the aged, blind or disabled or for such aid and medical assistance for the aged (title XVI, Social Security Act, 42 U.S.C. 1381-1385).

11. Grants to States for maternal and child health services (title V, part 1, Social Security Act, 42 U.S.C. 701-705).

12. Grants to States for services for crippled children (title V, part 2, Social Security Act, 42 U.S.C. 711-715).

13. Grants to States for special projects for maternity and infant care (sec. 531, Social Security Act, 42 U.S.C. 729).

14. Grants to States for child welfare services (title V, part 3, Social Security Act, 42 U.S.C. 721-725, 727, 728).

15. Grants to States for public library services and construction (20 U.S.C. sec. 351-358; P.L. 88-269).

16. Grants to States for strengthening science, mathematics, and modern foreign language instruction (title III, National Defense Education Act, 20 U.S.C. 441-444).

17. Grants to States for guidance, counseling and testing of students (title V-A, National Defense Education Act, 20 U.S.C. 481-484).

18. Grants to States for educational statistics services (sec. 1009, National Defense Education Act, 20 U.S.C. 589).

19. Surplus personal property disposal donations for health and educational purposes through State agencies (40 U.S.C. 484(j)).

20. Grants to States for hospital and medical facilities (title VI, Public Health Service Act, 42 U.S.C. 291-291z).

21. Grants to States for community mental health centers construction (Community Mental Health Centers Act, 42 U.S.C. 2681-2688).

22. Grants to States for vocational education (Smith-Hughes Act, 20 U.S.C. 11-15, 16-28; George-Barden Act, U.S.C. 15i-15q, 15aa-15jj, 15aaa-15ggg; Supplementary Acts, 20 U.S.C. 30-34.

23. Grants to States for mental retardation facilities (Part C, Mental Retardation Facilities Construction Act, 42 U.S.C. 2671-2677).

24. Arrangements with State vocational education agencies for training under the Area Redevelopment Act and the Manpower Development and Training Act of 1962 (42 U.S.C. 2513(c), 2601, 2602).

25. Grants to States for comprehensive planning for mental retardation (title XVII, Social Security Act, 42 U.S.C. 1391-1394).

[F.R. Doc. 64-12539; Filed, Dec. 3, 1964; 4:23 p.m.]

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
SUBCOMMITTEE ON CONSTITUTIONAL RIGHTS,
January 20, 1967.

Mr. TOM VAIL,
Chief Counsel, Committee on Finance,
U.S. Senate, Washington, D.C.

DEAR TOM: This is in reply to your letter of January 18 requesting information concerning the burden of proof in disputes between a state and the Department of Health, Education and Welfare under section 602 of the Civil Rights Act of 1964.

The three important considerations in legislative history are: (1) the report of the committee to which the original legislation is referred; (2) statements of the leading participants in the floor debate—primarily the floor manager; and (3) committee hearings conducted on the legislature. However, the legislative history of section 602 is scant, and were references are found, vague.

In the present case there is no Senate committee report on which to rely and the House report on the 1964 Civil Rights Act did not deal specifically with the issue before your Committee. Present section 602 of Title VI of the 1964 Act was added after the committee hearings were held. Nevertheless, some light was shed on the withholding provisions during Senate committee hearings on S. 1731 and S. 1750 in 1963. You may wish to examine pages 369 to 419 of the hearings entitled "Civil Rights—the President's Program, 1963." However, Senator Ervin feels that the floor debate is more revealing.

The opening statement of then Senator Humphrey, floor manager of the bill, H.R. 7152, appearing at page 6307 of the daily edition of the Congressional record of March 30, 1964 and continuing on page 6324 contains references to Title VI and specifically to termination of Federal assistance. No where in his entire explanation of Title VI does he mention a requirement that states or political subdivisions give affirmative assurances that they are not violating the Act or the regulation promulgated by the agency.

The following quotation is indicative of the attitude of the proponents toward termination. It appears at page 6324 of the Senate proceedings.

"Termination of assistance, however, is not the objective of the title—I underscore this point—It is a last resort, to be used only if all else fails to achieve the real objective, the elimination of discrimination in the use and receipt of Federal funds. This fact deserves the greatest possible emphasis: cutoff of Federal funds is seen as a last resort, when all voluntary means have failed."

Although there is no discussion of any requirement that a Federal beneficiary carry the burden of proof that it is not discriminating, Senator Pastore, assigned as team captain to lead discussion on Title VI, referred on two occasions to the possibility of requiring affirmative assurances from recipients of Federal aid. On page 6839 Senator Pastore said There might be rules, for example, governing the conduct for recipients of assistance, or orders specifying a standard form of written assurance or understanding to be given by each applicant for assistance, or perhaps a standard provision-of-assistance contract." Therefore, the most sweeping assumption expressed was that a statement of assurance of compliance might be in order.

Generally, in American jurisprudence there is a presumption of innocence until the agency asserting otherwise proves to the contrary and the burden must be carried by the latter. Moreover, in the absence of evidence to the contrary, the courts will presume that public officers have not neglected or violated their official duties and have not acted illegally in the doing of any official act. These presumptions are applicable to all Federal, state, county and municipal officials as well as public boards and commissions. See 20 Am. Jur. sections 170 through 175. The courts have also held that to require one to prove his own innocence is a denial of due process. See on this point: *Speiser* v. *Randall* 357 U.S. 513, 521 (1958), *Morrison* v. *California* 291 U.S. 82, 88-90 (1934); *Tot* v. *U.S.* 319 U.S. 463, 469 (1943).

The question then becomes: did Congress delegate such authority to the Executive branch as to allow the ordinary burden of proof and the presumption of validity of official acts to be switched from its traditional place in the law? There is nothing either in the language or the history of the Act to indicate that such a delegation of power was intended.

Applying the above information to the Alabama situation, it would seem that the State might be required in advance to assure that it would not discriminate. However, nothing more is required of Alabama and no funds may be cut off until the United States comes forward with evidence that the State is discriminating and individuals are being denied benefits to which they are entitled solely on the basis of race.

I hope this information will be helpful to you.

Sincerely yours,

GEORGE B. AUTRY,
Chief Counsel and Staff Director.

MOBILE, ALA., *January 30, 1967.*

Hon. RUSSELL B. LONG,
Chairman, Senate Finance Committee,
Washington, D.C.:

Many Alabama citizens who have sought to carefully study the overall racial situation in this State and who have followed the alacrity of former Governor George Wallace to exploit his political ambitions, are amazed at the apparent gullibility of the Senate Finance Committee in rumored support of his suspected determination to make pawns of the aged and needy people in this domain with a new bid to defy Federal authority.

We agree wholeheartdely with the views of Senator Vance Hartke of Indiana that Mr. Wallace alone is responsible for the unfortunate dilemma which confronts Alabama with regard to Federal funds for public and child welfare programs in this State.

The argument the ex-Governor now makes about obeying the courts is stultified by the fact that he, as Governor, defied the courts consistently and is regarded as having either directly or indirectly contributed to the crescendo of racial turmoil which gripped Alabama for at least three of the four years he was chief executive of the State. Court orders meant nothing to him when he stood in the door at the University of Alabama to bar two Negro students, or the numerous times he sent State troopers throughout the State to prevent Negro students from attending public schools. His general resistance to Federal authority, whether by court order or otherwise, helped give our State the bad image it reflects among the various people of the world.

We submit that segregation exists in Indiana but it is not encouraged or abetted by the Governor or others in high authority who have sworn to uphold the Constitution and represent equally all the people of the State.

We urge the Senate Finance Committee to support the position of the Department of Health, Education, and Welfare in this challenge to the principles of equal justice for all citizens, irrespective of race, color or creed.

J. L. LEFLORE,
Director of Case Work,
The Citizens' Committee, Non-Partisan Voters League,
Alabama Conference for Social Justice.

MOBILE, ALA., *January 30, 1967.*

Dr. JOHN W. GARDNER,
Secretary, Department of Health, Education, and Welfare,
Washington, D.C.:

We commend the Department of Health, Education, and Welfare for remaining steadfast in its determination that Alabama, like all other states, must meet the full requirements of the 1964 Civil Rights Act if the State hopes to continue receiving Federal funds for public and child welfare programs.

If defiance of Federal authority is countenanced, disrespect for our entire system of law and order may prevail.

Best wishes.

J. L. LEFLORE,
Director of Case Work,
The Citizens' Committee, Non-Partisan Voters League,
Alabama Conference for Social Justice.

MOBILE, ALA., *January 30, 1967.*

Mrs. LURLEEN B. WALLACE,
Governor, State of Alabama,
Montgomery, Ala.:

We urge our State to meet the reasonable requirements as set forth by the Department of Health, Education, and Welfare for public assistance and child welfare programs to end a deplorable situation which may deprive two hundred thousand elderly and needy Alabamians of food, rainment and shelter unless the spurious issue involved is settled. The plight of these people should not be made a political football in what appears to be a power struggle with the Federal Government. If Alabama crosses the Rubicon in this matter we may reap retributive justice which could bring despair to our indigent people and a serious defeat to our economy, social order and image.

J. L. LEFLORE,
Director of Case Work,
The Citizens' Committee, Non-Partisan Voters League,
Alamaba Conference for Social Justice.

JANUARY 27, 1967.

DEAR SENATOR LONG: I think Mr. Wallace has a point—see that people of Alabama are taken care of and get on then with legality part after.

It certainly will give the people of the country a bad taste—since we are feeding the world without a test of legality, etc.

I wouldn't be intimidated into signing anything without reading the fine print let alone something I thought was illegal.

Respectfully yours,

Mrs. OLIVE BENKBY.

P.S. The people of other countries might get jittery—thinking we're running out of money.

BAY MINETTE, ALA., *January 27, 1967.*

Senator RUSSELL B. LONG,
United States Senate,
Washington, D.C.

DEAR SENATOR LONG: The State of Alabama is in trouble. As you know the welfare fund plans to be cut off by February 28th is the dead line. You see the blind elder homeless one will suffer. The man that got job it won't hurt them. It looks hard to punish the blind who have no control. It seems that you are on this committee. It looks hopeless to me. It may be you could persuade them not to cut off the welfare fund from needy children.

Yours in His name.

Yours truly,

McKINLEY INGE.

ALABAMA OLD-AGE PENSION FOUNDATION, INC.,
Bay Minette, Ala., January 26, 1967.

Senator RUSSELL LONG,
Senate Office Building,
Washington, D.C.

DEAR SENATOR LONG: As the first and only President of the Alabama Old-Age Pension Foundation, a non-profit corporation organized in 1958, I am writing to urge that you and your great Committee which is considering the dispute between the State of Alabama and Mr. Howe look to the real parties of interest, every person in these United States.

Surely an attempted grasp of power politically on the part of a Federal Bureau should not be allowed to use the old, sick and infirm in Alabama as hostages to be starved at the will of one federal employee wishing to assert his authority.

You may be sure and each member of your Committee they will be remembered in the prayers of the old, sick and infirm who wish to be released from the threatened grasp of Mr. Howe in an effort to demonstrate to an elected official the authority of an appointed official.

Respectfully,

C. E. GARRETT.

[From the Monroe, Louisiana, Morning World, Jan. 21, 1967]

CONFISCATING FROM ALABAMA

Whatever further evidence we may need that the federal government is bent on confiscating the property of those who do not conform to its whims and orders is found in Alabama. In that state, some 200,000 recipients of welfare payments of different kinds may be cut off because former Governor George Wallace, who has passed from the stage of governor to that of assistant or aide to his wife, Mrs. Lurleen Wallace, the new governor, has fought against the national regime's efforts to dominate and socialize this nation.

The federal government is about to institute a program of confiscation by taxation against Alabama. It contemplates seizure of private property, namely income, without compensating the people from which this money is taken.

Governor Wallace first defied the federal government's right to tell the people of Alabama what they must do in the matter of choosing their associates. He declared the federal government was not all-powerful and asserted the people of Alabama should be governed by state laws and by democratic processes. He denied the federal government's right to say that the schools of Alabama must be integrated and stood at the door of the University of Alabama to tell federal agents they had no right to enter. Only when the government took over the National Guard in Alabama and told him he would be thrust aside forcibly and that Negro students would be escorted into the university by armed forces did he yield. He yielded then only physically but not in spirit.

Wallace has made no secret of his war against many of the federal government's programs. He has been among those opposing many types of federal aid on the the ground that federal aid means federal control. He has cast himself somewhat in the role of David and has gone out to battle Goliath, the federal giant. In this, he has found strong support in many other parts of the nation. In 1964 before the 1965 nationwide turn against "black power" movements in this country, Wallace ran in three states—Wisconsin, Maryland and Indiana—on presidential preferential primary tickets and made amazingly good showing against favored candidates in those states. He has talked of forming a third party.

Because of the powerful potential Wallace has built in politics, the national administration has set out to try to beat him down to size. To do this, it has announced its intention of engaging in "taxation without representation" or "confiscation without compensation." The dictator-happy national administration has tossed a stone at Wallace that could seriously hurt the entire state of Alabama. The plan is to cripple Alabama financially by taxing it and then by failing to give it back its share of federal money.

John W. Gardner, Secretary of the Health, Education and Welfare Department, has ordered about $96 million a year in federal public welfare aid to Alabama cut off effective February 28.

The reason given for this is that since 1965 the Alabama Department of Pensions and Security has refused to signify compliance with Title 6 of the 1964 Civil Rights act (which we believe to be unconstitutional because it denies individuals the right to choose their associates). It is this section which requires elimination of discrimination by states receiving federal aid money, and which allows the federal government to halt the flow of such money, if it decides discrimination exists.

In order to gain passage of this inquitous bill, it was necessary for the national administration to give Congressmen from the Northern states the impression their states would not be affected, as they were told a "pattern of discrimination" had to be established. Many of the Northern states still practice segregation by districting. It is our contention that school segregation, hospital segregation and other kinds of segregation do not constitute discrimination—and that position was taken by the United States Supreme Court prior to the era of Chief Justice Earl Warren and reportedly even he formerly took an opposite position from his present stand.

Former Governor Wallace and the powers in Washington have been through other skirmishes, each of which has left state rights reduced but none of which has harmed Wallace politically.

In this confrontation, a court challenge of the Federal action is expected to delay any welfare fund cutoff well beyond the February 28 deadline. But there is an issue larger than whether Wallace or the Federal Government will prevail.

Both sides are toying in a contemptuous way with the lives of about 200,000 Alabama citizens, more than half of them elderly people who are threatened with loss of old-age and medical-care benefits. About 11 per cent of the Federal aid which could be stopped goes to 17,000 needy families, and about eight per cent to persons who are permanently disabled.

To make these people suffer because of Governor Wallace's feud with federalism would be a heartless act on the part of HEW.

A secondary issue lies in the fact that Alabama income taxpayers would continue to be nicked by the Federal Government for HEW's national welfare programs while possibly being deprived of any of the benefits.

It is easy enough for Washington bureaucrats to say that George and Lurleen Wallace and the voters of Alabama asked for it, but it is brutal to penalize the poor, the aged and the disabled in an effort to punish the Alabama power structure.

This is another example of the federal government's determination to use "aid" money as a political weapon.

(Information requested by the chairman on p. 89 follows:)

MARCH 2, 1967.

Hon. RUSSELL B. LONG,
Chairman, Finance Committee,
U.S. Senate,
Washington, D.C.

DEAR SENATOR LONG: During the course of Secretary Gardner's testimony before your Committee on February 23, 1967, you raised the question whether the Supreme Court's decision in the *Brown* case requires the desegregation of a public school faculty in which teachers have previously been assigned on a racial basis as part of a dual racial public school system. You asked that this Department furnish the Committee a memorandum discussing the case law in this area. The case law, I believe, clearly imposes on public school authorities the affirmative, constitutional duty to desegregate their faculties so that the rights of pupils to the "equal protection of the laws" under the Fourteenth Amendment will no longer be denied.

In 1954 the Supreme Court of the United States declared that the segregation of public school students according to race violates the Fourteenth Amendment. *Brown* v. *Board of Education*, 347 U.S. 483 (1954). A year later, the Court, in determining how judicial relief could best be fashioned, mentioned the problem of reallocating staff as one of the reasons for permitting the desegregation process to proceed with "all deliberate speed." *Brown* v. *Board of Education*, 349 U.S. 294, 301 (1955).

Two cases decided by the Supreme Court in late 1965 indicate that school boards may no longer postpone the responsibility owed their students of desegregating faculty. In *Bradley* v. *School Board of Richmond, Virginia*, 382 U.S. 103 (1965), the Court took the view that faculty segregation had a direct impact on a desegregation plan, and that it was improper for the trial court to approve a desegregation plan without inquiring into the matter of faculty segregation. In reaching this conclusion the Court, in a unanimous opinion, commented that "there is no merit to the suggestion that the relation between faculty allocation on an alleged racial basis and the adequacy of the desegregation plans is entirely speculative." And in ruling that there should be no further delay in a hearing on the question of faculty desegregation, the Court further emphasized that "delays in desegregation of school systems are no longer tolerable." 382 U.S. at 105.

In *Rogers* v. *Paul*, 382 U.S. 198 (1965), the Supreme Court extended the undelayed right to challenge teacher segregation to students who had not yet themselves been affected by the School Board's gradual desegregation plan. The Court stated (382 U.S. at 200):

"To theories would give students not yet in desegregated grades sufficient interest to challenge racial allocation of faculty: (1) that racial allocation of faculty denies them equality of educational opportunity without regard to segregation of pupils; and (2) that it renders inadequate an otherwise constitutional pupil desegregation plan soon to be applied to their grades."

Relying on the *Bradley* case, the Court of Appeals for the Fifth Circuit, the circuit covering the states of Alabama, Florida, Georgia, Louisiana, Mississippi and Texas, ruled in January 1966, in a suit also brought by Negro students, that

it was "essential" that the plan of desegregation for Jackson, Mississippi, "provide an adequate start toward elimination of race as a basis for the employment and allocation of teachers, administrators, and other personnel." *Singleton* v. *Jackson Municipal Separate School District*, 355 F. 2d 865, 870. And in a case decided in August 1966, the same Court ruled that the plan of desegregation for Mobile, Alabama, "must be modified in order that there be an end to the present policy of hiring and assigning teachers according to race by the time the last of the schools are fully desegregated for the school year 1967-68." *Davis* v. *Board of School Commissioners of Mobile County*, 364 F. 2d 896, 904.

The Courts of Appeal for the Fourth Circuit (Maryland, North Carolina, South Carolina, Virginia and West Virginia), the Eighth Circuit (Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota and South Dakota) and the Tenth Circuit (Colorado, Kansas, New Mexico, Oklahoma, Utah and Wyoming) have similarly held. In a suit brought by pupils in Durham, North Carolina, the Court stated:

"We read the [*Bradley*] decision as authority for the proposition that removal of race considerations from faculty selection and allocation is, as a matter of law, an inseparable and indispensable command within the abolition of pupil segregation in public schools as pronounced in *Brown* v. *Board of Education*, *supra*, 347 U.S. 483. Hence no proof of the relationship between faculty allocation and pupil assignment was required here. The only factual issue is whether race was a factor entering into the employment and placement of teachers." *Wheeler* v. *Durham City Board of Education*, 363 F. 2d 738, 740 (C.A. 4, 1966).

The Court in *Wheeler* went on to require (at p. 741):

"Vacant teacher positions in the future * * * should be opened to all applicants, and each filled by the best qualified applicant regardless of race. Moreover, the order should encourage transfers at the next session by present members of the faculty to schools in which pupils are wholly or predominantly of a race other than such teacher's. A number of the faculty members have expressed a willingness to do so. Combined with the employment of new teachers regardless of race, this procedure will, within a reasonable time, effect the desegregation of the faculty."

Chambers v. *Hendersonville Board of Education*, 364 F. 2d 189 (C.A. 4, 1966), involved the problem of Negro teachers who lost their jobs when an all-Negro school was abolished. The School Board treated them as new applicants. The Court held that this was discriminatory and invalid under the Fourteenth Amendment, stating (at p. 192):

"First, the mandate of *Brown* v. *Board of Education*, 347 U.S. 483 (1954), forbids the consideration of race in faculty selection just as it forbids it in pupil placement. See *Wheeler* v. *Durham City Board of Education*, 346 F. 2d 768, 773 (4 Cir. 1965). Thus the reduction in the number of Negro pupils did not justify a corresponding reduction in the number of Negro teachers. *Franklin* v. *County Board of Giles County*, 360 F. 2d 325 (4 Cir. 1966). Second, the Negro school teachers were public employees who could not be discriminated against on account of their race with respect to their retention in the system. *Johnson* v. *Branch*, 364 F. 2d 177 (4 Cir. 1966), and cases therein cited. * * *"

In a suit brought by pupils in El Dorado, Arkansas, the Eighth Circuit Court of Appeals recognized "the validity of the plaintiff's complaint regarding the [School] Board's failure to integrate the teaching staff. Such discrimination is proscribed by *Brown* and also the Civil Rights Act of 1964 and the regulations promulgated thereunder." *Kemp* v. *Beasley*, 352 F. 2d 14, 22 (1965). The Court elaborated on this theme in *Smith* v. *Board of Education of Morrilton*, 365 F. 2d 770, 778 (1966):

"It is our firm conclusion that the reach of the *Brown* decisions, although they specifically concerned only pupil discrimination, clearly extends to the proscription of the employment and assignment of public school teachers on a racial basis. Cf. *United Public Workers* v. *Mitchell*, 330 U.S. 75, 100 (1947); *Wieman* v. *Updegraff*, 344 U.S. 183, 191-192 (1952). See *Colorado Anti-Discrimination Comm'n* v. *Continental Air Lines, Inc.*, 372 U.S. 714, 721 (1963). This is particularly evident from the Supreme Court's positive indications that non-discriminatory allocation of faculty is indispensible to the validity of a desegration plan. *Bradley* v. *School Board of the City of Richmond*, supra; *Rogers* v. *Paul*, supra. This court has already said, 'Such discrimination [failure to integrate the teaching staff] is proscribed by *Brown* and also the Civil Rights Act of 1964 and the regulations promulgated thereunder.' *Kemp* v. *Beasley*, supra, p. 22 of 352 F. 2d."

In a recent decision of the Eighth Circuit, *Clark* v. *Board of Education of Little Rock School District*, No. 18368 (December 15, 1966), the Court required of the Little Rock, Arkansas School Board (slip op., p. 15) a "positive program aimed at ending in the near future the segregation of the teaching and operating staff." The Court stated (slip op., p. 13) :

"We agree that faculty segregation encourages pupil segregation and is detrimental to achieving a constitutionally required non-racially operated school system. It is clear that the Board may not continue to operate a segregated teaching staff. *Bradley* v. *School Board of City of Richmond*, 382 U.S. 103 (1965) * * * It is also clear that the time for delay is past. The desegregation of the teaching staff should have begun many years ago. At this point the Board is going to have to take accelerated and positive action to end discriminatory practices in staff assignment and recruitment."

The Court then proceeded to outline the essential ingredients which such "action" must include (pp. 13–14) :

"First, * * * future employment, assignment, transfer, and discharge of teachers must be free from racial consideration. Two, should the desegregation process cause the closing of schools employing individuals predominately of one race, the displaced personnel should, at the very minimum, be absorbed into vacancies appearing in the system *Smith* v. *Board of Education of Morrilton School District, No. 32*, supra. Third, whenever possible, requests of individual staff members to transfer into minority situations should be honored by the Board. Finally, we believe the Board make all additional positive commitments necessary to bring about some measure of racial balance in the staffs of the individual schools in the very near future. The age old distinction of 'white schools' and 'Negro schools' must be erased. The continuation of such distinctions only perpetrates inequality of educational opportunity and places in jeopardy the effective future operation of the entire 'freedom of choice' type plan."

In a suit brought by pupils in Oklahoma City, Oklahoma, the Court of Appeals for the Tenth Circuit recently affirmed a lower court order requiring that by 1970 "there should be the same percentage of non-white teachers in each school as there now is in the system." *Board of Education of Oklahoma City Public Schools, Independent District No. 89* v. *Dowell*, No. 8523 (January 23, 1967), slip op., p. 22, affirming, 244 F. Supp. 971, 977–978 (W.D. Okla. 1965). The District Court had stated (p. 978) that such a requirement provided "for stability in school faculties during the integration process, * * * keying the change to personnel turnover figures indicating that approximately 15% of the total faculty is replaced each year." Although the evidence showed that there was no difference in the quality of performance between the white and non-white personnel in the school system, the Court of Appeals held (p. 22) that where "integration of personnel exists only in schools having both white and non-white pupils, with no non-white personnel employed in the central administration section of the system", there is "racial discrimination in the assignment of teachers and other personnel." Relying on the Supreme Court's decisions in *Bradley* and *Rogers*, the Court stated (p. 22) that "[t]he [lower court] order to desegregate faculty is certainly a necessary initial step in the effort to cure the evil of racial segregation in the school system."

Numerous district courts, in applying the law as elucidated by the Supreme Court and the courts of appeal of their various circuits, have entered orders in school desegregation cases requiring the desegregation of faculty and staff. In entering such orders, a few of the district courts have also set forth their reasons in memorandum opinions. One such opinion was issued by the United States District Court for the Eastern District of Virginia in refusing to approve a plan submitted by the School Board of Greensville County, Virginia, on the ground that the plan must, but failed, to include a provision for the employment and assignment of staff on a nonracial basis. *Wright* v. *County Board of Greensville County, Virginia*, 252 F. Supp. 378 (E.D. Va. 1966). In holding that a faculty desegregation provision approved by the Commissioner of Education was not sufficient, the court stated (at 384) :

"The primary responsibility for the selection of means to achieve employment and assignment of staff on a nonracial basis rests with the school board. * * * Several principles must be observed by the board. Token assignments will not suffice. The elimination of a racial basis for the employment and assignment of staff must be achieved at the earliest practicable date. The plan must contain well defined procedures which will be put into effect on definite dates. The board will be allowed ninety days to submit amendmetns to its plan dealing with staff employment nad assignment practices."

The United States District Court for the Western Distric of Virginia, in providing for similar relief in the case of *Brown* v. *County School Board of Fredcrick County*, 245 F. Supp. 549, 560 (1965), said:

"[T]he presence of all Negro teachers in a school attended solely by Negro pupils in the past denotes that school a "colored school" just as certainly as if the words were printed across its entrance in six-inch letters." See also *Kier* v. *County School Board of Augusta County*, 249 F. Supp. 239, 247 (W.D. Va. 1966).

The cases which I have reviewed establish, in my judgment, the constitutional duty of school authorities to disestablish imposed racial segregation of faculties and recognize that this obligation emanates from the principles enunciated in the *Brown* decision.

Sincerely,

RAMSEY CLARK,
Deputy Attorney General.

(Whereupon, at 12:50 p.m., the hearing adjourned.)

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