UNITED STATES OF AMERICA

Congressional Record

PROCEEDINGS AND DEBATES OF THE 91st CONGRESS
FIRST SESSION

VOLUME 115—PART 23

OCTOBER 21, 1969, TO OCTOBER 28, 1969
(PAGES 30643 TO 32004)

UNITED STATES GOVERNMENT PRINTING OFFICE, WASHINGTON, 1969

CHARITABLE CONTRIBUTIONS

Appreciated Gifts—Tangible Personal Property.—The Committee reconsidered an earlier vote with respect to charitable contribution deductions for gifts of appreciated tangible personal property (see press announcement of October 13, 1969). Upon reconsideration, the Committee removed gifts of tangible personal property—art objects, paintings, etc.—from the types of property the appreciation in value of which would have to be taken into account by the donor in computing his charitable contribution deduction. (Under the House bill, the donor of such property must either (a) reduce his charitable contribution deduction to the amount of his tax basis for the gift property, or (b) claim a charitable contribution deduction for the full fair market value of the property and include the amount of appreciation in value in his gross income for tax purposes.) This Committee amendment would not apply, however, unless gain from the sale of the appreciated asset would have been taxed as a long-term capital gain. This rule would allow a donor to continue to contribute works of art to museums, educational institutions, etc., and compute his deduction under the rules of present law.

RETREAT ON CIVIL RIGHTS

Mr. MONDALE. Mr. President, most interested Americans by now are well aware that the Nixon administration's record in the area of civil rights leaves much to be desired. Hardly a day goes by without articles in the press about departures by the Nixon administration which have had the effect of weakening civil rights and equal opportunity programs. As legislators who have been involved in the enactment of these programs, we should be concerned about what is happening—or perhaps more accurately, not happening—in this administration.

The October 13 issue of Congress Biweekly contains an article, written by Marvin Caplan, director of the Washington office of the Leadership Conference on Civil Rights and a legislative representative of the industrial union department of the AFL-CIO, chronicling the miserable record of this administration in civil rights. I urge all readers of the CONGRESSIONAL RECORD to take a few moments to read Mr. Caplan's article which documents the shocking and consistent civil rights retreats of the Nixon administration.

I ask unanimous consent that the article be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

RETREAT ON CIVIL RIGHTS

(By Marvin Caplan)

Down here in Washington they're weakening the programs.

The modest advances in school desegregation, voting rights, equal employment, the war on poverty are being slowed or face the threat of slowdown. Such is the artistry of the performance that most people do not grasp the import of what is happening; there is even the illusion, sometimes, that we are making progress. Except for an occasional outburst—(Roy Wilkins, for instance, that gentle man, exclaiming at the policy statement on school desegregation, "It's almost enough to make you vomit"), scattered demonstrations at the cuts in anti-poverty funds, a threatened rebellion by Justice Department civil rights attorneys—there are few signs of public indignation. Most people are quietly, resignedly settling for less—how much less we may not know for some time yet. What is certain is that in spite of the occasional development that raises hope—a proposal for welfare reforms that has some promising features, a suit to stop housing discrimination—we are losing momentum in our attempt to deal with domestic problems.

The Nixon Administration's retreat on school desegregation provided the first portent of what was to come. Only ten days after President Nixon took office, Secretary of Health, Education and Welfare, Robert H. Finch, was confronted by five Southern school districts that were scheduled to lose their Federal aid money for stubbornly failing to desegregate their schools. He announced the cutoff—actually he had no choice—but in an unprecedented show of leniency gave the five diehard districts 60 days in which to come up with acceptable proposals for desegregation. He dispatched teams to help them develop plans and put the money in escrow in case something could be worked out.

It is a measure of the insensitivity to the politics and moral imperatives of school desegregation that Finch was reportedly hurt and surprised when civil rights groups angrily attacked him for his move and when the *Atlanta Constitution* said his action "slaps the face of every Southern school board and every Southern school superintendent who has moved with great difficulty to obey the law" and "strentghen the forces of defiance."

His announcements of the cutoff was a model for the sort of statement the Administration has issued in subsequent domestic crises, balancing the inescapable need to enforce the law ("When all of the alternatives have been exhausted") with an "however" (the dispatch of teams, the funds in escrow) that opens loopholes in the law and heartens opposition to it.

The truth is Mr. Finch did not have to issue a statement. He didn't have to do a thing. The fund cutoff, under HEW's procedures at that time, would have gone into effect automatically. His statement and his slight alteration in established policy, the rhetoric of upholding the law while yanking it down a bit, sets a pattern one can trace thereafter in other decisions on domestic policy. An outrageous deed is balanced with a palliative, or it is disclaimed until it is too late to do anything about its effect. This, at any rate, is the pattern that runs through the school desegregation moves.

In March, only a month after the furor over the five school districts, an HEW intra-agency memorandum was leaked to the press. Emanating from Robert C. Mardian, a conservative Republican who was scheduled to become the Department's General Counsel, it described how a statement "clarifying" HEW's guidelines for school desegregation could be used to relax those guidelines. Roy Wilkins, as chairman of the coalition Leadership Conference on Civil Rights, whose representatives only a week earlier had received personal assurance from Finch that there would be no erosion of the guidelines and no relaxation in enforcement, immediately demand to know from Mardian and Finch if the press reports on the memo were true. Neither answered him. But Finch issued a statement disavowing any official standing for the memorandum; it was "a working paper" representing Mr. Mardian's personal views.

Mardian was confirmed as General Counsel and went on to become one of the authors of a clarifying statement that *was* official, a joint pronouncement on school desegregation by Mr. Finch and U.S. Attorney General John Mitchell. Issued July 3, the statement was less blatant in its manipulation of the law than the Mardian "working paper." But in its ambiguity, its desire to placate everyone and its inability to satisfy anyone, it surpassed the Finch statement on the five districts. While avowing an unequivocal commitment to "ending racial discrimination in schools, steadily and speedily" it reinterpreted the guidelines in ways designed to dilute them. It broadened the base for granting extensions of time to districts that were expected to desegregate their schools in the 1969-70 school year or lose Federal aid. More seriously, it announced an important shift in enforcement, from administrative action to litigation. HEW's use of its ultimate sanction—the threat of a fund cutoff—had brought many Southern school districts into line. Henceforth, the July 3 statement said, enforcement would no longer rest so much with HEW but "to the extent practicable . . . would be handled by the Justice Department." Since court action in school cases generally takes longer than administrative action and results in less desegregation, this was an ominous change.

Events since July 3 strengthened such forebodings. As though anticipating the cries of rage from civil rights groups, Justice announced, shortly after the statement was issued, that it was undertaking a spate of desegregation suits, so many that the *Washington Post* was moved to say it was "a little like the finale of *Hellzapoppin.*" There was more appearance than substance. Many of the court actions were not new; they were already in the pipeline. And one, the statewide suit against Georgia, affords a good example of how court action can undercut administrative remedy. For there is every likelihood that at least 36 Georgia districts, whose Federal funds were cut off for failing to comply with the law, may now have their money restored during the time it takes to move the suit through the courts.

Worse has followed from HEW's and Justice's closer collaboration. They went into court last month to ask that desegregation be delayed in some 30 Mississippi school districts. Even the *Wall Street Journal* felt that went too far. "The Mississippi delay opens a wide door for delay throughout the South," it said and hoped this was not the start of a trend. Forty Justice Department attorneys threatened to quit, but as yet have not.

The same consideration the Administration tends to show to violators of the law in school cases appears, at least in one notable instance, in the Administration's dealings with defense contractors. On February 7, the Defense Department awarded $9.4 million worth of contracts to three major textile companies—Dan River Mills, Inc., Burlington Industries and J. P. Stevens, Inc.—even though they were all in violation of Federal regulations prohibiting racial discrimination by firms doing government work. Deputy Secretary of Defense David Packard, in making the awards, ignored the requirement that such firms must submit, in writing, goals and timetables and assurances of compliance before they can be eligible for new contracts. He appears to have acted entirely on the basis of oral assurances he received in telephone conversations or talks with the officials of the three companies.

This insensitivity was further reflected, when Clifford Alexander, the Negro chairman of the Equal Employment Opportunity Commission, during a Senate subcommittee inquiry into the award of the textile contracts, was accused by the late Senator Everett M. Dirksen of "punitive harassment" of businessmen and was subsequently advised, in a public speech by Jerris Leonard, Assistant Attorney General for civil rights enforcement, to resign his chairmanship. That the President later mildly disavowed Leonard's suggestion did nothing to correct the slight and only increased the impression of confusion that seems to attend the Administration's handling of civil rights.

But confusion can be a charitable excuse. In testimony before Congress, Administration officials have shown how ringing statements in support of a law can accompany plans to sabotage it. An example of this is the Justice Department's stand on one of the crucial civil rights issues of this Congress—whether or not to continue the pro-

tections of the Voting Rights Act of 1965. In its brief history the law has shown its great value. More than 800,000 Negro voters have been registered under it and some 400 black officials have been elected in the South since its passage. But key provisions of the law, those that prohibit discriminatory literacy tests and set up the system of Federal registrars, are scheduled to expire August 6, 1970. Considering how difficult it is to get civil rights legislation through Congress, proponents of the law support a bill that would simply extend the key features of the Act another five years. The South, of course, opposes this.

Justice wrestled with the matter a long time, Attorney General Mitchell postponing his testimony before a House Judiciary subcommittee four times. When he finally appeared it was to unveil a complicated bill of his own that under the guise of improving the law threatens to let it die. Echoing a familiar Southern criticism, he proposed that the ban on literacy tests, which under the present formula applies to 7 Southern states, be extended nationwide, even to the 13 states that have never used their tests to bar voters because of race. More dangerous still, he proposes eliminating the present requirement that states covered by the Act must clear new voting laws and practices with the Attorney General or the District Court of the District of Columbia before putting them into effect. Instead, states would be able to pass any election laws they pleased, leaving it to an understaffed Justice Department to catch up with them.

Republican and Democratic members of the subcommittee rejected Mr. Mitchell's proposals. Rep. William M. McCulloch, of Ohio, ranking Republican on the Judiciary Committee, said the Administration was aligning itself with the Attorney General of Mississppi who wants the law "scuttled" so that voting discrimination can "thrive again" in the South. Committee Chairman Emanuel Celler (D., N.Y.) likened Mr. Mitchell's proposal to an "apple of Sodom" which looks delicious until it is picked, when it turns to dust and ashes in the hand. Mr. Celler's committee reported out the simple five year extension and it will shortly become the pending business before the House.

Again, professing only to improve the law, the Administration has come forward with a plan to strengthen the EEOC that is, at least suspicious. Since its inception in 1964, the EEOC has suffered under many disadvantages, one of the gravest being its inability to order violators of the law to stop discriminating. To remedy this, 35 Republican and Democratic Senators have introduced a bill that would, among other things, give EEOC the customary power all regulatory agencies have to issue cease-and-desist orders. EEOC has repeatedly asked for this power. In fact its new chairman, William Brown III, who succeeded Cliff Alexander and is also a Negro, supported the cease-and-desist authority in a speech he gave the week before he appeared before a Senate Labor Subcommitte. There, he shifted ground and came out for an Administration bill that would do no more than allow the Commission to go into court, should conciliation fail, and seek to enjoin unlawful employment practices through litigation. EEOC now depends on Justice to carry its cases into court.

Hearings on the EEOC legislation continue, but the Administration's new proposal endangers the enactment of the cease-and-desist authority.

HOPE FOR THE FUTURE?

Sometimes the Administration can weaken enforcement by silence. Earlier this year, for instance, it was silent when Rep. Jamie Whitten (D. Miss.) succeeded in adding to the Labor-HEW appropriations bill, two amendments that would require HEW to accept "freedom of choice" plans for desegregating schools even though the Supreme Court has held such plans unacceptable unless they effectively end racially separate school systems. Attempts to strike or nullify the Whitten amendments failed on the House floor, on one occasion by four votes. Civil rights forces urged the Administration to speak out against the amendments. It did not. Republican House leader Gerald Ford, of Michigan, said nothing, but during the unrecorded "teller votes," when members walk up the center aisle of the House and are counted by tellers, he joined the Dixiecrats in support of the amendments.*

Since then, the Administration has had a change of heart. The night before the Civil Rights Commission issued its highly critical report on desegregation, Secretary Finch announced his opposition to the Whitten amendments; indeed, his press release said he "reiterated" it, though he had never officially expressed it before. It is up to the Senate, now, to try and lift this yoke from HEW's neck and it may do so, if the Administration will do more than issue statements.

There is, unfortunately, little to sustain such hope. The Administration has shown little disposition to fight for domestic programs even when it is announced in support of them. And its current economy drive can only inhibit it further, particularly in areas like education and anti-poverty where large sums are needed. So, though it professedly supports fair housing the Administration has done nothing to help the Department of Housing and Urban Development obtain enough money to adequately enforce the existent laws.

Alloting too little money is, of course, a traditional way Congress has of undermining programs it doesn't like. Asking too little money for programs is the Administration's way of weakening them. So is putting people in charge that have little sympathy for their assignments.

It is hard to estimate the effect the Administration's attitudes and practices have had on good men still in government. There are still good men of both parties in HEW, committed to strong enforcement of the law. They are under enormous pressure to conform to the Finch-Mitchell compromises and if they finally give up, disheartened, who can blame them?

*Democrats, too, must share the blame for this defeat. At least 50 Republicans voted against the Whitten amendments and did not follow Ford. The absence from the floor of many liberal Democrats (the hour was late) and the help of Rep. Edith Green (D., Ore.) who spoke in favor of the amendments, carried the day for Whitten.

DEFENSE SNAFUS

Mr. HATFIELD. Mr. President, being in Washington, where defense policies have been under scrutiny and criticism in recent months, one begins to wonder what impact the conglomerate of disclosures of questionable policies is having on the American public. While my home State of Oregon may be more than 3,000 miles away, there is little need for curiosity, for the repercussions and suspicions of the people there can be loudly heard.

It is with high regard for the startling compilation of defense-related "snafus" by Eric Allen, Jr., editor of the Medford Mail Tribune, that I ask unanimous consent that his review of discrepancies in military policies be printed in the RECORD. It indicates that the public, too, is questioning defense spending.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

SNAFUS HAPPEN—BUT . . .

Few Americans expect perfection in their public servants.

But . . .

When a high officer sells confiscated guns for his own enrichment, then pays no income tax on the proceeds, the while protesting that he "meant no harm";

When the nation's "No. 1 enlisted man" is accused of criminal conspiracy to defraud for his own profit;

When Army Green Berets are accused of murder and then unaccused, all within weeks, and without the American people being told the truth;

When a Cuban jet fighter plane can get to within minutes of a major Air Force base (where the President's plane is being kept) before being detected;

When the Army tests deadly chemical-biological-bacteriological weapons in secret in at least two states (and winding up lying about the tests and about killing some thousands of sheep);

When the spy-ship U.S.S. *Pueblo* is sent unprotected on a secret mission, is captured by a 10th rate naval power, its crew is subjected to prison tortures and indignities, and when the U.S. has to lie publicly to get them home again;

When the Army ships deadly gas across country in trains with the intent of dumping it in the Atlantic Ocean, and is stopped only by a public outcry;

When a Navy submarine sinks at drydock;

When an Army tank, developed at the cost of millions of dollars, proves so faulty as to be unusable;

When an Army weapon jams repeatedly under combat conditions;

When cost over-runs of a new airplane approach a total estimated in the billions of dollars;

When the chief of Selective Service, an Army general, refuses to follow court orders not to use the draft as punishment for young draft-eligible men of whose conduct he disapproves;

When brutal physical punishment is regarded as standard procedure in a Marine Corps brig—

When all these things happen, one is entitled to wonder about the kind of returns we are getting for the dollars we pour into the military establishment.

Goof-ups happen, and "snafu" is a word with Army origins, and everyone understands this.

But for $80 billion a year aren't we entitled to something better than all this?

THE PESTICIDE PERIL—LXXI

Mr. NELSON. Mr. President, last week's U.S. News & World Report featured a comprehensive report on the controversy over the seriousness of the dangers to our environment and to human health from the use of persistent, toxic pesticides.

The article states that those who favor continued use of DDT and related pesticides note that "these chemicals have enhanced the world's health and food supply with virtually no evidence of harm to mankind."

Those advocating improved controls on DDT and other persistent pesticides acknowledge the role these chemicals have played in the past, but they believe that the evidenced destruction of fish and wildlife and potential links to cancer in man justify steps to eliminate the hazards of pesticides. The anti-DDT forces "see their accumulation in the environment as a time bomb that will explode at some future date with disastrous effects to mankind."