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ABSTRACT

By early 1969, 82 percent of a public opinion poll called for the expulsion of college students who broke laws while participating in campus demonstrations, and 84 percent thought these students should lose federal loans. Essentially three issues faced Congress at this time: (1) Did Congress have a clear rationale for involvement in campus affairs? (2) How could Congress respond to the public's desire to halt campus disruptions? (3) How could Congress deter such disruptions? A related issue is the effectiveness of the federal aid cutoff riders in curtailing campus disruptions and punishing student demonstrators. Punitive legislation of the type represented by the cutoff riders appears both unwise and unworkable. Disciplinary procedures and sanctions should be left to the educators. Three actions Congress can take are: (1) to stipulate in all student/faculty financial aid legislation that federal aid may be terminated if, after a hearing, campus authorities deem such termination an appropriate remedy; (2) to consider enacting measures that can lessen forms of extreme violence; and (3) to recommend that the Executive branch take certain action to assist local police and campus officials separately and in concert to develop effective strategies to cope with escalating violence on and off campus. (Author/KE)

Congress and the Student Aid Cutoff Riders

by

Frank Kemerer

February 1973

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The few and scattered militant campus demonstrations in 1967 provoked uneasiness and concern in Congress and the public but no clear call for action. In 1968 with the proliferation of campus disruption across the land, public opinion turned decidedly against demonstrations. By early 1969, 82% of the public called for expulsion of college students who broke laws while participating in campus demonstrations, and 84% thought they should lose federal loans.[1]

Essentially three issues faced Congress at this time: (1) Did Congress have a clear rationale for involvement in campus affairs? (2) How could Congress respond to the public's desire to halt campus disruptions? and (3) How could Congress deter such disruptions? The purpose of this paper is to examine briefly each of these issues and then to analyze how effective the federal aid cut-off riders were in curtailing campus disruptions and punishing student demonstrators. A concluding section will examine what the author believes is a more suitable alternative.

The Issues

Congressional opinion varied concerning the advisability of intervention into campus affairs. Historically, the government had eschewed direct involvement. Although in recent years the federal government had made funds available in ever increasing amounts to students and institutions so that the benefits of higher education could be more widely dispersed, it had clearly repudiated any attempt to interfere with internal campus

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[1] Gallup Poll results reported in The Chronicle of Higher Education, March 24, 1969, p. 4.

matters.[2] By 1968, however, a number of Congressmen, perturbed about campus disruption and feeling the pressure of public opinion, felt that Congress had an obligation to intervene. The most obvious rationale for such intervention was that Congress should exercise responsible control over the expenditure of federal funds. Congressman Scherle (Rep. - Iowa) called for the termination of Federal aid to students who engaged in campus disruption.

> Mr. Chairman, I cannot for the life of me understand why the taxpayers of this country should be forced to finance illegal activity at our colleges and universities throughout this country..... The taxpayers of this country have paid a great deal of money to educate youngsters and I do not see why they should be asked to continue to pay for the frivolity and the riots and the demonstrations that we have had running rampant throughout this country.[3]

He also urged termination of funds to institutions whose administrators lack "the guts to discipline (their) own."[4]

It could be argued, however, that federal funds were not being misused since (1) it was unclear how many of the tiny group responsible for the disruptions were direct beneficiaries of federal aid and (2) even those who did demonstrate spent only a small fraction of their time engaging in militancy. A similar argument can be made about the relationship between federal grants to faculty members and institutions and violent campus demonstrations. Although some Congressmen like Scherle

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[2] Section 804 of the 1965 Higher Education Act states:

"Nothing contained in this Act shall be construed to authorize any department, agency, officer, or employee of the United States to exercise any direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any educational institution, or over the selection of library resources by any educational institution." 79 Stat. 1270 (1965)

[3] 114 Cong. Rec. 23,360 (1968).

[4] Stated during questioning of Dr. Nathan Pusey, President of Harvard University, before the Special Subcommittee of the House Committee on Education and Labor. Hearings on Campus Unrest, 91st Cong., 1st Session, p. 740 (1969).

felt that Congress indeed had every reason to become directly involved in campus affairs over the disruption issue, it is difficult to sustain such precedent-shattering action. A much stronger case can be made for indirect Congressional action, as this paper will seek to point out.

Thus, those who did urge intervention seemed to be reacting from an emotional --- and political --- position. Consequently, these Congressmen varied in their specific proposals, dependent in part upon how serious they viewed the situation to be. Senator John L. McClellan (Dem. - Ark.) introduced a bill providing criminal sanctions against those who disrupt a federally assisted college or university.[5] A number of bills were introduced during this period to cut off all federal funds to institutions experiencing campus disruptions, while other Congressmen sought broad anti-riot legislation based on Congress' power to regulate interstate commerce. A more restrained approach was taken by those urging Congress to do no more than render increased assistance to states in law enforcement.

These and similar proposals met with varying degrees of political success, primarily because a bipartisan band of House liberals, most of them members of the House Education and Labor Committee, effectively blocked or modified passage of many of the measures.[6]

The actions of the House liberals and the reluctance of the Senate to be-

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[5] Details of the proposal reported in The Chronicle of Higher Education, Aug. 11, 1969, p. 2.

[6] For the tactics and successes of this group, see 25 Cong. Q. Almanac, pp. 728-9 (1970).

coming entangled with higher education in any respect limited Congressional action to financial aid sanctions against students who participate in campus disruptions. It was Congress' desire that sanctions against these students would act as a deterrent to those who might be tempted to engage in riotous behavior. It was also hoped that this action would satisfy the public's desire for effective governmental response to what they viewed as anarchy occurring on the nation's campuses.

The Provisions

The model provisions, which were successfully added to various appropriation and authorization measures (and thus avoided factional House debate), are section 504(a) and (b) of the 1968 Higher Education Act[7], section 411 of the 1968 Department of Health, Education and Welfare Appropriational Act[8], and the so called "independent rider"[9]. Coverage eventually extended to all federal student aid programs except programs administered by the Veterans Administration and programs under Social Security.

Section 504 (a) and (b) require:

> "Part A. If an institution of higher education determines, after affording notice and opportunity for hearing to an individual attending, or employed by, such institution, that such individual has been convicted by any court of record of any crime which was committed after the date of enactment of this Act and which involved the use of (or

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[7]Pub. L. No. 90-575, 82 Stat. 1062 (1968).

[8]Pub. L. No. 90-557, 82 Stat. 995 (1968).

[9]Departments of Labor, and Health, Education and Welfare, and Related Agencies 1970 Appropriation Act #407, 84 Stat. 48 (1970); Departments of State, Justice, and Commerce, the Judiciary, and Related Agencies 1970 Appropriation Act #706, 83 Stat. 427 (1969).

assistance to others in the use of) force, disruption, or the seizure of property under control of any institution of higher education to prevent officials or students in such institution from engaging in their duties or pursuing their studies, and that such crime was of a serious nature and contributed to a substantial disruption of the administration of the institution with respect to which such crime was committed, then the institution which such individual attends, or is employed by, shall deny for a period of 2 years any further payment of, or for the direct benefit of, such individual under (here the rider states which programs it covers). If an institution denies an individual assistance under the authority of the preceeding sentence of this subsection, then any institution which such individual subsequently attends shall deny for the remainder of the 2 year period any further payment to, or for the direct benefit of, such individual under any of the programs (here the rider states which programs it covers).

"Part B. If an institution of higher education determines, after affording notice and opportunity for hearing to an individual attending, or employed by, such institution, that such individual has willfully refused to obey a lawful regulation or order of such institution after the date of enactment of this Act, and that such refusal was of a serious nature and contributed to a substantial disruption of the administration of such institution, then such institution shall deny, for a period of 2 years, any further payment to, or for the direct benefit of, such individual under (here the rider states which programs it covers)."

Section 504 has been called the "school-administered" rider because it required the institution to determine whether federal aid should be terminated.[10]

Section 411 requires:

"No part of the funds appropriated under this Act shall be used to provide a loan, guarantee of a loan or a grant to any applicant who has been convicted by any court of general jurisdiction of any crime which involves the use of or the assistance to others in the use of force, trespass, or the seizure of property under control of any institution of higher education to prevent officials or students at such an institution from engaging in their duties or pursuing their studies."

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[10] This and the following terminology in regard to these provisions have been adapted from Robert Haddock's thorough review of this legislation. His article, "Federal Aid to Education: Campus Unrest Riders," appears in Stanford Law Review 22: 1094 (May, 1970).

Section 411 has been called the "self-executing" rider since it is not clear whether the institution or a federal agency is to implement its provisions.

The "independent rider," like the self-executing rider above, is not completely clear on whom the burden of its enforcement falls.[11] Unlike Section 504 (a) and Section 411, it makes no reference to conviction by any court of record and thus calls for an "independent" determination of applicability. Its provisions are as follows:

> "Part A. No part of the funds appropriated under this Act shall be used to provide a loan, guarantee of a loan, grant, the salary of, or any remuneration whatever to, any individual applying for admission, attending, employed by, teaching at or doing research at an institution of higher education who has engaged in conduct on or after August 1, 1969, which involves the use of (or the assistance to others in the use of) force or the threat of force or the seizure of property under the control of an institution of higher education, to require or prevent the availability of a certain curriculum, or to prevent the faculty, administrative officials or students in such institutions from engaging in their duties or pursuing their studies at such institution.
>
> "Part B. Provided, That such limitation upon the use of money appropriated in this Act shall not apply to a particular individual until the appropriate institution of higher education at which such conduct occurred shall have had the opportunity to initiate or has completed such proceedings as it deems appropriate but which are not dilatory in order to determine whether the provisions of this limitation upon the use of appropriated funds shall apply: Provided further, That such institution shall certify to the Secretary of Health, Education, and Welfare at quarterly or semester intervals that it is in compliance with this provision."

As previously indicated, Section 504 (a) and (b) and Section 411 (but not the independent rider) have been added to a number of authorization and appropriation acts since their advent.[12] This paper will not attempt to

[11] Part B was not applied to the 1970 HEW Appropriation Act. See explanatory note 26 in Ibid., p.1100.

[12] See Appendix attached to Ibid; note that this Appendix does not cover post-1970 acts.

detail their history except to note that the 1972 Higher Education Act continues the thrust of 504 in its Section 497, "Eligibility for Student Assistance."

The Limited Effectiveness of the Aid Cutoff Riders

Statistically, the federal cutoff riders were not very successful. The Office of Education reported in October, 1969, that while 361 students at 68 institutions (out of 2200) lost benefits through action taken by campus officials the previous year, only 50 students were deprived of benefits under the federal cutoff laws, 49 of them losing aid under Section 504 (a) and (b).[13] From July, 1969, through June of 1970, 430 students lost federal aid, 40 of them under the terms of federal anti-disruption statutes.[14] Throughout this period, the federal legislation covered 1.5 million students.

Nor can it be shown that this legislation had a significant deterrent effect on campus disruption. Student protest demonstrations increased in frequency through 1969 and 1970, lessening to the 1968-1969 level in academic year 1970-71.[15]

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[13] The Chronicle of Higher Education, October 20, 1969, p. 2.

[14] Ibid., October 26, 1970, p. 2.

[15] The 1968-69 figures, compiled by Alan E. Bayer and Alexander W. Astin of

(cont. next page)

There are five major reasons for the ineffectiveness of this legislation.

1. Few students were actually covered by the laws.
2. Availability of alternate means of financial assistance to those who were covered.
3. The burdens of administrating the cutoff riders.
4. Negative impact of this legislation on the college community.
5. Limited support for the riders in and out of government.

First, the federal riders actually applied to few individuals since many demonstrators didn't receive federal aid. In fact, a number of observors have pointed out that many of the most radical campus leaders have come from middle income or wealthy families.[16] Viewing the cutoff statues with "deep concern," the American Bar Association Commission on Campus Government and Student Protest warned that the laws "could operate in a dis-

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15 (cont.)

the American Council on Education, reveal that only about 22% of the Nation's campuses experienced violent and non-violent demonstrations that year. See their article "Violence and Disruption on the U.S. Campus, 1968-69" in Educational Record, Fall, 1969.

In "New Evidence of Campus Unrest 1969-70" also in Educational Record, Winter, 1971, Astin indicates that the figures for the previous year were considerably underestimated. Using new sampling techniques, he concludes that in 1969-70, more than 9000 campus demonstrations occurred involving about 65% of all institutions of higher education.

Using these same sampling techniques, Astin reports that for the 1970-71 academic year, campus disruption declined to just below the level of the 1968-69 period, when, using the revised estimate, he indicates approximately 50% of the colleges experienced disruptions, a figure considerably higher than the 22% previously reported for this year. See Time, Oct. 4, 1971, p. 74.

The Urban Research Corporation, as reported in the April 6, 1970, Chronicle of Higher Education, found that between mid-January and March 23, 1970, violence occurred in 23% of the protests as compared with 20% during the same period a year before. More major incidents of student protest occurred during the 1970 period, but with more than half of them occurring on campuses that had not had protests before. In short, campus protest seemed to have spread. Astin reports the same conclusion in the Time article.

16 See, for example, Richard Flacks "The Liberated Generation: An Exploration of the Roots of Student Protest" in the Journal of Social Issues, Vol. 23, No. 3, 1967.

criminatory manner because they could apply only to those who receive federal financial aid, a specific class of needy students."[17]

By "operating in a discriminatory manner," the riders may have run afoul of the Constitutional equal protection provisions read into the 5th Amendment, which applies to Congress. In the past the Supreme Court has treated de jure classifications by government affecting race and ethnicity as "suspect."[18] More recently, the Court has expanded the equal protection doctrine to include "fundamental interests" individuals have. The Court has held that the government cannot regulate these interests unless it has a compelling reason.[19] Reasonable regulations of fundamental interests (e.g., a half-time elementary school attendance law) may be judged unconstitutional if they have a de facto disproportionate impact upon a particular group (e.g., possibly the poor).[20]

As applied to the cutoff riders, the argument would be that Congress can show no compelling reason for such legislation which disproportionately affects a poor student's fundamental interest in obtaining a college education. While a discussion of the legal arguments surrounding this assertion is beyond the scope of this paper, suffice it to say that the facts that it is a college

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[17] The Chronicle of Higher Education, February 24, 1970, p. 3.

[18] Korematsu v. U.S., 324 U.S. 214, p.216 (1944).

[19] Tinker v. Des Moines School District 393 U.S. 503 (1969).

[20] Harper v. Virginia Board of Elections, 383 U.S. 663, p.668 (1966).

and not a high school education which the legislation affects and that a student has other sources of funds if federal aid is terminated appear to weaken this argument considerably.[21]

A further reason for the limited applicability of the cutoff riders is that only a few students receiving federal funds could legally be subject to the sanctions. Testifying before the House Subcommittee on Health, Education and Welfare Secretary Robert Finch pointed out that, "Many, if not most of these (federal aid recipients who are involved in campus disorders) are minors, and under applicable State law, may frequently be subject only to juvenile court proceedings. In no state does such a proceeding result in criminal conviction."[22] Without "conviction by a court of record" as specified in Section 504 (a) and Section 411, no action could be taken under these statutes.

The second major reason for the marked degree of ineffectiveness of this legislation was that alternative means of aid were available to students covered by the statutes. Therefore one may confidently speculate that some campus financial aid officials may have given known campus activists non-federal financial assistance to begin with, thus avoiding the issue entirely.

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[21] For a more detailed constitutional analysis of federal campus unrest legislation, see Joseph Cox "Higher Education and the Student Unrest Provisions," Ohio State Law Journal 31:111 (1970). For both federal and state legislation, see Gregory Keeney "Aid to Education, Student Unrest, and Cutoff Legislation: An Overview," University of Pennsylvania Law Review 119:1003 (May, 1971). Cox finds this type of legislation constitutional; Keeney does not.

[22] Hearings, supra at 534.

Thirdly, the burdens placed on campus administrators undoubtedly caused a number of them to evade implementing the riders. As we have seen, it is difficult to know for sure what Congress intended by this legislation. During his testimony before the House Subcommittee on Education, Secretary Finch indicated how inconsistent and confusing the federal riders were:

> . . . under Section 504, before a student can be disqualified for assistance, the university has to find his crime was "of a serious nature," and contributed to a substantial disruption of the administration of the institution. Those particular findings are not required under section 411. In this and other respects, section 504 (a) confers somewhat greater discretion on institutions of higher education than section 411.
>
> A student against whom an adverse determination is made under section 504 (a) is disqualified from receiving assistance under the relevant programs for a period of two years. Under section 411. . . the disqualification would be permanent.
>
> Moreover, the applicability of section 411 may turn on the nature of the convicting court. Thus, a student subjected to a section 504 proceeding may suffer somewhat different consequences than a student whose assistance is terminated under section 411.[23]

Nor did Mr. Finch's agency clarify all of the inconsistencies through legislative guidelines issued to campus administrators. For example, section 411 makes no mention of enforcement by campus officials and thus debatably requires implementation from Washington. HEW took such a literal interpretation until March 22, 1969, when a letter to campus presidents from Secretary Finch delegated responsibility of enforcement to educational institutions.[24] However, the "independent rider" attached to the 1970 HEW Appropriation Act has been interpreted by Secretary Finch as depending upon HEW for administration.[25]

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[23] Hearings, supra, pp. 540-41.

[24] See Cox, supra, p.116 and Haddock, supra, p.1099.

[25] Haddock, supra, p.1100. This law review article is extremely illuminating in detailing the inconsistencies and confusions surrounding this legislation.

In actual situations, the task of interpreting these statues became nearly insurmountable. In his article in the Stanford Law Review, Robert Haddock traces the issues a campus official would have had to face if a student receiving an educational opportunity grant were to have been convicted in May, 1969, for breaking a window in what the university later determined was a non-disruptive act:

> . . . his conduct falls within the reach of both a school-administered and self-executing rider. The university must then reconcile the differences between the two. Reconciliation, however, is difficult. Does the school terminate aid because there was "force," as stipulated in the self-executing appropriation rider, or does it refrain from doing so because the crime was not "of a serious nature" and did not contribute to a "substantial disruption," as required by the school-administered authorization rider? And if the university does withdraw aid, should the termination period be for 2 years, as provided for in the school administered rider, or for an unspecified period of time, as permitted by the self-executing rider? Does the authorization rider take precedence because it is permanent legislation? Or does the rider that metes out the stricter punishment, even if it is the appropriation rider?[26]

With an interpretive task of this magnitude facing beleagured campus officials during the 1968-1971 period, it is not surprising that few students lost federal aid under the cutoff riders.

Campus officials were also heavily burdened by the voluminous bookkeeping necessary in implementing the statutes. Robert Haddock offers this striking commentary on the subject.

> For example, suppose that at the end of fiscal year 1969 a school has not distributed all of the money given to it to fund student work-study grants in that year. When it receives its fiscal 1970 funds, it must segregate them from the funds left over from 1969 and keep track of which students were receiving which year's funds, since a self-executing rider applies to the 1969 money and an independent rider applies to the 1970 money.

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[26] Haddock, supra, p. 1101.

This accounting becomes particularly difficult in two cases. The first arises when a school deals with an agency that does not spend all its appropriated money in one year but accumulates it for use in future years. This forces a school, in addition to having to keep track of its own backlog of funds, to find out if the money it is receiving from the agency in any given year was appropriated in that year or appropriated in some past year and backlogged by the agency. A second difficult accounting situation occurs in dealing with federal loans. If a student receives an NDEA loan in 1969 and one in 1970, the 1969 loan is subject to the self-executing rider attached to the 1969 HEW Appropriation Act, and the 1970 loan is subject to the independent rider attached to the 1970 HEW Appropriation Act.

The student then graduates and in 1971 begins to repay the loans. Under the present program an educational institution that receives repayments on federal loans can use them to make further loans. But how should those subsequent loans be treated? Is loan money appropriated in 1969 and 1970 and repaid in 1971 subject to the unrest provision applying to funds appropriated in 1971 (assuming that Congress passes a 1971 rider)? If the latter, how does the school determine which part of the repayment in 1971 was for money borrowed in 1969 and which part was for money borrowed in 1970? And how is the interest paid on these loans treated? Neither Congress nor the federal agencies have offered any guidelines for such situations.[27]

The cutoff riders also placed a heavy burden on already overtaxed campus judicial machinery. Many institutions had come into the activist era with woefully inadequate student disciplinary procedures. Even for those institutions with more workable judicial systems, the threatened extra case load resulting from implementation of the language of the statutes may have been sufficient, I believe, to deter campus administrators from avid cooperation with the government. For example, Hopkins and Myers writing in the Case Western Reserve Law Review describe the interpretive task facing an instiution holding a hearing under sections 504 as follows:

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[27] Ibid., pp. 1102-1103.

> The institution. . . must find that the individual's conduct meets five tests (under 504 (a)): (1) the conduct must be such as to warrant court conviction for commission of a "crime"; (2) the "crime" must involve "the use of (or assistance to others in the use of) force, disruption, or the seizure of property under control of any institution of higher education"; (3) the conduct must "prevent officials or students in such institution from engaging in their duties or pursuing their studies"; (4) the "crime" must be "of a serious nature"; and (5) the "crime" must "contribute to a substantial disruption of the administration of the institution with respect to which such crime was committed". . . Likewise, to have assistance terminated under 504 (b), an individual must engage in conduct meeting three tests: (1) he or she must have "willfully refused to obey a lawful regulation or order of (the) institution"; (2) such refusal must have been "serious"; and (3) it must have "contributed to a substantial disruption of the administration of (the) institution."[28]

In the only federal case to date dealing specifically with the federal cutoff riders, a three-judge federal district court in Illinois recently invalidated Section 504 as being too broad and vague, and thus violating students' First Amendment rights of freedom of speech, assembly and association. The court did not challenge Congress' right to pass such legislation but stipulated that the standards for aid termination must be sufficiently precise to guarantee that constitutionally protected rights not be infringed.[29]

Faced with this difficult interpretive task at the time, it is possible that many campuses avoided the issue entirely by not holding hearings. It is equally likely that in the face of the all-or-nothing nature of the penalty, many college officials "looked the other way" when confronted with conduct that would deserve a lessor sanction, particularly under section 504 (b) and the independent rider where no conviction by a court of

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[28] B.R. Hopkins and J.H. Myers "Government Response to Campus Unrest", Case Western Reserve Law Review, 22:408, April, 1971, p. 426.

[29] Jeanne Rasche v. Board of Trustees of the University of Illinois, U.S. District Court, Northern District of Illinois, Eastern Division, Dkt. No. 71 c. 2959, December 21, 1972.

record is required.[30]

Note that in light of other recent Supreme Court decisions requiring procedural due process be accorded students before disciplinary action take place[31], it is clear that hearings were required under these latter riders. The fact that the other provisions required hearings is further indication that 504 (b) and the independent rider should have been read in this manner. If nothing else, the lack of any provision for a hearing in some of the legislation and the provisions stipulating two hearings in other legislation indicates how hastily these Congressional statutes were put together.

It should also be noted that where two hearings are required as in 504 (a) and section 411, one before a court of record and the second on campus, the time lapse between conviction and completion of the campus hearing might be many months.[32]

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[30] According to its statement of April 28, 1968, reprinted in Hearings, supra p. 411, the American Association of University Professors feared that many campus officials would so react "not because of any improper disregard for the adherence to its (the government's) regulations, but because it is a normal human response to recoil from imposing sanctions which appear to be excessive in relation to the harm caused by the individual accused," p. 414.

[31] See Dixon v. Alabama State Board of Education, 294 F.2d 150(1961). Leading cases dealing with termination of welfare payments also stipulate that notice and a hearing are necessary. See Goldberg v. Kelly, 397 U.S. 254 (1970) and Wheeler v. Montgomery, 397 U.S. 280 decided the same day. Since the consequences of aid termination to students may be as serious as the consequences flowing from school discipline (Dixon) and termination of welfare payments, it would appear that a hearing is in order. For a detailed discussion of this issue see Keene, "Aid to Education, Student Unrest, and Cutoff Legislation: An Overview," op.cit., p. 1028.

[32] In his testimony before the House Subcommittee on Education, Secretary Finch indicated that it would not be unusual for several years to go by before the legal issues could be finally resolved. Hearings, supra, p.532.

Fourthly, the discriminating nature of the sanctions coupled with their punitive nature may actually have induced some students to take up a more active role in demonstrations as a number of Congressional critics had feared. The National Commission on the Causes and Prevention of Violence (Eisenhower Commission) concluded that "'(i)f aid is withdrawn from even a few students in a manner that the campus views as unjust, the result may be to radicalize a much larger number by convincing them that existing government institutions are as inhumane as the revolutionairies claim.'"[33] Although there is no clear way of ascertaining whether this legislation had such an effect, the possibility is plausible enough to call into question the advisability of passing such restrictive legislation at a time of intensified emotional stress. The fact that demonstrations increased after passage of these riders is a further reason to ponder the wisdom of this legislation.

A final factor explaining the ineffectiveness of federal cutoff riders is the lack of support coming from both the political and academic worlds. The Johnson Administration in particular was opposed to this kind of legislation. In a statement released just prior to his leaving office, former Secretary of Health, Education and Welfare Wilbur J. Cohen came out strongly against cutoff riders.

> . . . I have serious doubts as to the wisdom and appropriateness of the recently enacted student unrest provisions. In my view, they may impair the development of needed improvements in communication among administrators, faculty, and students on many of our campuses, as well as do lasting injury to the delicate balance between government and university which underlies our system of federal assistance to higher education.[34]

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[33] The Chronicle of Higher Education, June 16, 1969, p. 8.

[34] Reprinted in Hearings, supra, p. 31.

The Nixon Administration was less outspoken in its opposition, but overtones of displeasure were clear in public statements both by the President and by Secretary Finch, even though both men tailored their public pronouncements to have strong political impact on the man in the street.[35] The President in his Message on Higher Education in March of 1970 said he opposed punitive statutes because "'(i)n the first place they won't work, and if they did work they would in that very process destroy what they nominally seek to preserve.'"[36]

With this kind of opposition from the Executive Branch, it is not surprising that administrative agencies like HEW and OE were slow to clarify ambiguities.

Throughout this period, the Office of Education denounced the cutoff riders as an attempt "'to utilize the power of the federal purse to control what is and should be essentially a matter of internal university administration. . . .'"[37]

In Congress, aside from lukewarm Senate support and open opposition from House liberals, the cause of financial aid sanctions was further hindered by a report in the fall of 1969 issued by 22 House Republicans, who had toured more than 50 campuses the preceding summer. In their statement, the legislators cautioned against "'rash legislation'" which plays "'directly into the hands of hardcore revolutionaries.'"[38] The lack of Con-

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[35] The Chronicle of Higher Education, April 7, 1969, p. 4.

[36] Text reprinted in Ibid., March 23, 1970, p. 2.

[37] Ibid., October 14, 1968, p. 2.

[38] Ibid., January 5, 1970, p. 7.

gressional consensus and leadership undoubtedly contributed to the ineffectiveness of the legislation. It is likely that more than one Congressman was content with the cutoff riders, knowing that while they could not be administered efficiently even under the best of circumstances they were politically expedient: the appearance of taking action would go a long way to placate public opinion.

Virtually every independent professional group and blue-ribbon panel studying campus violence made recommendations against this type of Congressional action. Typical of the type of conclusion reached by the likes of the Eisenhower Commission, the Scranton Commission, the AAUP, and the ACLU is this statement, dated April 18, 1969, by the American Council on Education:

> Violations of criminal law must be dealt with through the ordinary processes of the law, and universities must attempt to deal with disruptive situations firmly before they reach the stage of police action. Governmental attempts to deal with these problems through special punitive legislation will almost certainly be counter-productive.[39]

The ineffectiveness of the provisions was assured when campus officials found them so hastily drawn as to be unworkable. For all the reasons previously cited in this paper, it is safe to presume that many institutions utilized the very weaknesses inherent in this legislation "to frustrate Congress' intended sanction by finding that an individual's otherwise disruptive conduct (did) not meet all of the requirements for a denial of federal assistance."[40] It is difficult to find any other explanation

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[39] Complete statement reprinted in Hearings, supra, p. 598.

[40] Hopkins and Myers, supra, p.426-27.

for the paucity of aid denials taking place under these Congressional provisions.

Conclusion

After reviewing the political implications of the federal riders dealing with student unrest, one cannot escape the conclusion that "campus unrest becomes an exceedingly perplexing, murky, and often viscerally disturbing social condition, beyond the bounds of legislative or federal administrative regulations."[41] The fact that campus unrest apparently has disappeared as quickly as it arose does not lessen concern for the proper role the federal government ought to play in this area. With social conditions changing more rapidly than ever, campus unrest is likely to reappear at some point in the future. And when it does, Congress will again be beseiged with calls for action.

Whatever policy the federal government follows, a basic prerequisite is consistency. Much of the ineffectiveness of the legislation under study stems from the confusing nature of the various provisions, resulting in reluctance of campus officials to implement the statutes. As Hopkins and Myers conclude,

> From a purely administrative standpoint, a single federal statute imposing conditions on federal assistance to students, faculty, and even institutions would be considerably preferable to a host of differing, overlappying provisions. . . .[42]

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[41] Hopkins and Myers, supra, p.413.

[42] Hopkins and Myers, supra, p.435.

A consistency argument can be brought against Section 497 of the Higher Education Act of 1972, since that provision incorporates Section 504 whose subsections (a) and (b) represent different approaches to the same legislative end.

More basic to the entire issue, however, is the proper role of government vis-a-vis campus unrest. Punitive legislation of the type represented by the cutoff riders is both unwise and unworkable. Congress, I believe, ought to leave the administration of college campuses, including disciplinary procedures and sanctions, to the educators. Campus disruption does not offer a sufficient rationale for Congress to break its traditional role of non-involvement in campus affairs.

There are three actions, however, which Congress can take which will indirectly assist harrassed campus authorities. First, Congress ought to stipulate in all student/faculty financial aid legislation that federal aid may be terminated if, after a hearing, campus authorities deem such termination an appropriate remedy.[43] All other riders ought to be allowed to expire; section 497 ought to be deleted from the 1972 Education Amendment.

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[43] Congress had such a policy previous to the enactment of the mandatory cutoff riders in 1968. According to a previous provision written into a three year authorization of federal programs, an institution of higher learning could terminate federal aid to a student who had been convicted by a court of record or had willfully refused to obey a lawful campus regulation. Aid termination was dependent upon notice and a hearing. See The Chroncile of Higher Education, October 14, 1968, p. 1.

Secondly, in the face of escalating campus disruption and violence, Congress ought to consider enacting measures which can lessen forms of extreme violence, e.g., laws prohibiting interstate transportation of explosives.[44]

Thirdly, when widespread disruption threatens, Congress should recommend that the Executive Branch take certain action to assist local police and campus officials separately and in concert develop effective strategies to cope with escalating violence on and off campus.[45] Congressional re-

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[44] This specific recommendation was contained in the final report of the President's Commission on Campus Unrest (Scranton Commission). See the reprint of the full text in The Chronicle of Higher Education, October 5, 1970. President Nixon sent a bill to Congress asking for strengthening of existing laws on explosives control on March 25. The bill became part of the 1970 Omnibus Crime Control Act but was dropped in conference. 1970 Cong. Q. Almanac, pp. 551-2.

[45] Mostly independent of Congress, the Justice Department has taken the following actions relative to campus violence since 1968:

1. Provided assistance to college administrators through its Community Relations Service in the form of trained mediators.
2. Assisted local police departments in developing know-how to deal with campus disturbance. The 1968 Omnibus Crime Control and Safe Street Act, PL 90-351, 825 Stat. 197, set up the Law Enforcement Assistance Commission within the Department of Justice which has provided this service. See Baxter "Faculty and Government Roles in Campus Unrest," 50 Educational Record, pp. 418-19 (1969), for a detailed suggestion concerning the role of local police in dealing with campus disruption.
3. Recommended that campus administrators establish working relations with local police and judicial officials. In testimony before the House Subcommittee on Education, Attorney-General John Mitchell stated that in his Law Day Speech of September, 1969, he "recommended that the college administrators have liaison with local law enforcement agencies to have a plan (to deal with campus violence)." He also recommended that "college administrators go into the courts. . . to provide for law enforcement. . . rather than having (them) trying to work in an extra territorial area at the college campuses in these areas where they do not have the expertise." Hearings, supra, p. 875 - 876.

The Office of Health, Education and Welfare, as well as the Office of Education, has also provided numerous services pertaining to campus disruption to campus administrators. See testimony by Secretary Robert Finch in Hearings, supra.

commendations have power in their own right, as the notorious Gulf of Tonkin Resolution so clearly demonstrates.

This kind of limited Congressional action allows campus officials the discretion and the opportunity to "put their own house in order." More importantly, it keeps the federal government from directly interfering with the administration of higher education, an interference which works to the disadvantage of both, as the campus unrest riders so aptly demonstate.