unique ability to take complicated matters and explain them, so that all could understand. He was a tremendous asset to the State of Missouri, and will be greatly missed.

Justice Elwood L. Thomas is survived by his wife, Susanne, sons Mark and Steven, and daughter Sandra.

SMALL ETHANOL PRODUCERS CREDIT LEGISLATION

HON. DAVID MINGE

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Friday, August 4, 1995

Mr. MINGE. Mr. Speaker, Representatives TOM LATHAM, PAT DANNER, GIL GUTKNECHT, EARL POMEROY, JIM OBERSTAR, COLLIN PETERSON, TIM JOHNSON, and I are introducing a bipartisan bill that will make a relatively minor correction to the Federal Tax Code relating to the application of the Small Ethanol Producers Credit. This legislation will allow small ethanol cooperatives the same opportunity to utilize the Small Ethanol Producers Credit that other business entities such as trusts, S-Corporations, and partnerships currently utilize.

The Small Ethanol Producers Credit (Internal Revenue Code Section 40(b)(4)) was passed into law in 1990. The credit was created because Congress determined that tax incentives were an appropriate way to help small producers build ethanol plants. This credit is only available to those entities that produce less than 30 million gallons of ethanol annually. They are eligible for a 10-cent per gallon tax credit for the first 15 million gallons produced. Cooperatives are not eligible because the Internal Revenue Service has ruled that the Code does not permit the credit passthrough to patrons of a cooperative. Without specific inclusion in the Internal Revenue Code, thousands of farmers will be unable to benefit from this credit. This inadvertent exclusion of cooperatives is tragic and should be corrected.

Increasingly, cooperatives are the primary business organization involved in ethanol production in the Midwest. This form of operation usually passes cooperative tax attributes on to its participating patrons. The ineligibility of farmers who are patrons of small ethanol plants denies the tax benefit to those being taxed for cooperative income.

In the Second District of Minnesota alone, four small cooperatives are either currently in production or under construction. At least 18 other small ethanol cooperatives are in the planning stages in Minnesota, Iowa, Missouri, North Dakota, South Dakota, and Illinois. On average, each of these cooperatives is comprised of approximately 300 farmers. For some, the availability of the Small Ethanol Producers Credit determines their start-up viability and whether or not they can compete in the marketplace. This legislation is supported by the National Council for Farm Cooperatives, the American Farm Bureau Federation, the National Corn Growers Association, and the National Farmers Union.

For years, farmers have been encouraged to diversify their business operations. Value-added production, such as ethanol plants, holds great promise to boost rural economies. Ethanol cooperatives provide an excellent opportunity to create local jobs and local profits. I hope that Congress can make this correction to the Tax Code so that small farmers will be able to benefit from the same ethanol credits that other types of businesses presently utilize.

CELEBRATING THE CAREER OF JUDGE DAMON J. KEITH

HON. JOHN CONYERS JR.

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Friday, August 4, 1995

Mr. CONYERS. Mr. Speaker, I rise today to pay tribute to one of the truly great Federal jurists of our era, the Honorable Damon J. Keith, a member of the Sixth Circuit Court of Appeals for 18 years and a member of the U.S. District Court for Eastern Michigan for 10 years, who recently announced he would assume senior status. He was born and raised in Detroit and attended Northwestern High School, where he was a champion track athlete. He graduated from West Virginia State University and received his J.D. from Howard University Law School. He furthered his legal education with an advanced law degree from Wayne State University in Michigan. Not long after, he formed his own law firm, Keith, Conyers, Anderson, Brown & Wahls which included my brother, Nathan Conyers. However, it soon became clear that he was drawn as much to public service and civic activism as he was to the private practice of law. He was particularly drawn to problems of racial discrimination, so that in the end he could not escape the brightly burning flame of the civil rights movement which illuminated the path to racial justice for his generation.

In the early years of the civil rights movement in which Damon Keith's activism began, a major concern was the gross housing inequity in urban areas and uneven access to federally funded housing. Between 1940 and 1960, approximately 3 million African-Americans migrated from the South to the North. As a young attorney, Keith had seen the percentage of the black population in Detroit explode from 9 percent to 29 percent in that 20-year span. In the midst of this demographic transformation he was appointed president of the Detroit Housing Commission in 1958 to address the needs of the growing African-American population. In that same year, Michigan and two other States attempted to address widespread discrimination stimulated by the wave of urban migration with open housing bills, but all of them failed. This grim reality brought housing issues to the forefront of the civil rights movement. In 1961, Martin Luther King, Jr. wrote in The Nation magazine that the urban renewal program has, in many instances, served to accentuate, even to initiate, segregated neighborhoods. He explained that a large percentage of the people to be relocated are Negroes, [and] they are more than likely to be relocated in segregated areas.

The struggle for equal rights appeared to reach a climax in 1964 with the passage of the Civil Rights Act which forbade discrimination in public accommodations and in the workplace. But with this great victory came challenges of equal magnitude which broadened the goals of the civil rights movement. There were riots in Chicago, Rochester, Harlem, and Philadelphia after racial incidents with police, and a brave biracial group of activists formed the Freedom Democratic Party in an attempt to make the Mississippi delegates to the Democratic National Convention more representative. It was as a witness to these national milestones that Keith was to reach a milestone of his own when Gov. George Romney rewarded him for his distinguished service on the Housing Commission by appointing him to serve simultaneously as chairman of the Michigan Civil Rights Commission. He continued in both of these capacities until 1967 when President Lyndon Johnson decided this kind of activist legal approach ought to be rewarded, and appointed him to the U.S. District Court for the Eastern District of Michigan. Later, he became chief judge of that court. It was in this arena where Judge Keith eloquently resolved important cases of national consequence, and his depth and breadth as a national figure was established. In a series of decisions, Judge Keith was able to elaborate a seldom heard theme: how under the Constitution, the power of government must ultimately give way to the rights of common people. It was through these cases that Keith brought his erudition, scholarship and courage to the courtroom and made profound and enduring contributions to the law.

Judge Keith's foundation in housing rights, built upon the landscape of the civil rights movement, guided his decision in Garrett versus City of Hamtramck. Evidence in this case revealed that a combination of a lack of low-income housing and widespread prejudice was forcing Hamtramck's African-American residents to flee the city. The decision in this class-action suit stated that:

Fifty-seven percent of the black families dislocated by the project moved out of Hamtramck while only 33 percent of the white families relocated out of the city . . . it was inevitable that substantially more blacks than whites would be removed from Hamtramck . . . the city plans presently include scheduled renewal and industrialization of two additional fringe areas . . . both of which are predominantly black; no plans for replacement housing for citizens presently residing in those areas exist. Thus it is apparent that the city is strategically working to achieve a reduction in its total population and indeed hopes to successfully accomplish such by elimination of those residential areas of the city containing black residents.

In that opinion, Judge Keith decided that the Housing Act of 1949 and by the equal protection clause of the fourteenth amendment required the city of Detroit to provide alternative housing for minorities displaced by the city's federally funded urban renewal program. The same bold sense of social responsibility displayed in Garrett versus Hamtramck was found in many other cases he heard and his intellectual rigor ensured that many of his decisions had a national impact.

One case that had a huge impact was United States versus Sinclair in 1971, in which Judge Keith declared that the defendants had a right to all transcripts and memoranda relating to illegally tapped conversations which the government intended to use in court. U.S. Attorney General John Mitchell maintained that he had acted under the authority of the president in authorizing wiretaps without a warrant since the matters at hand involved the sacrosanct concept of national security. On close examination though, Judge Keith found that

the Justice Department's claim could not stand and that the attorney general was subject to the constraints of the Fourth Amendment. ''The great umbrella of personal rights protected by the Fourth Amendment has unfolded slowly, but very deliberately, throughout our legal history,'' declared Keith. Proceeding prudently but firmly, he pointed out:

The contention by the Government that in cases involving national security a warrantless search is not an illegal one, must be cautiously approached and analyzed. We are, after all, dealing not with the rights of one individual defendant, but, rather, we are here concerned with the possible infringement of a fundamental freedom guaranteed to all American citizens.

The Government claimed that the President should have the authority to collect information on subversive domestic organizations. Judge Keith called this position untenable. He decided broadly against arbitrary executive wiretap prerogatives, asserting:

It is to be remembered that in our democracy all men are to receive equal justice regardless of their political beliefs or persuasions. The executive branch of our government cannot be given the power or the opportunity to investigate and prosecute criminal violations under two different standards simply because certain accused persons espouse views which are inconsistent with our present form of government.

United States versus Sinclair brought the dominant themes of Judge Keith's jurisprudence to an early maturity: to harness the power of government for social good wherever possible, and reign in unchecked authority whenever necessary. His opinion withheld scrutiny in appeals all the way up to the Supreme Court, which wrote:

[W]e do not think a case has been made for the requested departure from Fourth Amendment standards. The circumstances described do not justify complete exemption of domestic security surveillance from prior judicial scrutiny. Official surveillance, whether its purpose be criminal investigation or ongoing intelligence gathering, risks infringement of constitutionally protected privacy of speech. Security surveillance are especially sensitive because of the inherent vagueness of the domestic security concept, the necessarily broad and continuing nature of intelligence gathering, and the temptation to utilize such surveillance to oversee political dissent. We recognize . . . the constitutional basis of the President's domestic security role, but we think it must be exercised in a manner compatible with the Fourth Amendment.

Executive branch officials had also maintained that matters pertaining to internal security are too sensitive for the courts to handle because of the risk to secrecy. But the Supreme Court refused to let the judicial branch of government be marginalized:

We cannot accept the Government's argument that internal security matters are too subtle and complex for judicial evaluation . . . If the threat is too subtle or complex for our senior law enforcement offices to convey its significance to a court, one may question whether there is probable cause for surveillance. Nor do we believe prior judicial approval will fracture the secrecy essential to official intelligence gathering.

Judge Keith's words echoed throughout the nation that day in 1972 when the Supreme Court upheld his decision. It was only in retrospect that the nation learned the full magnitude of Sinclair: the next day President Nixon's Plumbers terminated one of their taps out of fear they might have to reveal the transcripts some day. The wisdom of Sinclair reverberated in the highest chambers of government again in May 1973, when a judge dismissed the indictment of Daniel Ellsberg for releasing the Vietnam War's Pentagon Papers because the prosecution had tapped his phone and not properly informed the court.

Sinclair remains relevant today, since the House of Representatives will soon consider the expansion of wiretap powers in so-called counter-terrorism legislation, H.R. 1710 (and its companion H.R. 1635). It would add ambiguous felonies to the list in which electronic surveillance is allowed and expand the authority to conduct roving wiretaps of multiple phone lines without specifically naming those phones and without a court order. Furthermore, in direct contradiction to Sinclair and other court decisions, it would allow the admission of evidence obtained through illegal electronic surveillance in many instances. These excessive provisions ensure that Judge Keith's words will be revisited soon, whether it's due to surveillance of the Michigan Militia or the gay rights group ACT–UP.

His reputation as a leading jurist and civic activist was not lost on President Carter, and in 1977 he appointed Judge Keith to the Sixth Circuit Court of Appeals, the position from which he now is retiring. He participated in 1200 opinions on the Court of Appeals and with the conservative shift of the Sixth Circuit he wrote countless dissents. Dissent was natural for him; he knew that righteousness was not predicated on popular impulse, but on public truths meant to survive the scrutiny of history. His article entitled ''What Happens to a Dream Deferred'' in the Harvard Civil Right-Civil Liberties Law Review in 1984 eloquently elaborated his philosophy of the necessity of dissent and the relationship between the individual and the majority:

Those who decide in favor of the unbridled freedom of the individual point to this country's long tradition of favoring and supporting personal freedom. They conveniently fail to recognize that this country has another tradition, one of slavery, segregation, bigotry and injustice. America is doomed to be forever unequal if we remain unwilling to acknowledge this tradition and make provisions for bringing black Americans into the mainstream of life . . . The belief that majoritarian control invariably guarantees the right result in these situations is blind to the teachings of history and counter to the antimajoritarian constitutional principles which form the basis of our civil rights and liberties.

Judge Keith was convinced that protection of public freedoms should not end with civil rights and his insight extended to questions of gender as well.

In 1986, Judge Keith dissented in the Appeals Court in the case of Rabidue versus Osceola Refining Co. in which the majority opinion rejected the plaintiff's complaint for injury for sexual harassment since the harassment had not caused serious psychological problems. Seven years later the Supreme Court advanced Judge Keith's view of that same issue in Harris versus Forklift Systems, stating with a hint of sarcasm that ''Title VII [of the Civil Rights Act of 1964] comes into play before the harassing conduct leads to a nervous breakdown.'' Justice Sandra Day O' Conner, writing for the majority, continued:

A discriminatorily abusive work environment, even one that does not seriously affect employees' psychological well-being, can and often will detract from employees' job performance, discourage employees from remaining on the job, or keep them from advancing in their careers. Moreover, even without regard to these tangible effects, the very fact that the discriminatory conduct was so severe or pervasive that it created a work environment abusive to employees because of their race, gender, religion, or national origin offends Title VII's broad rule of workplace equality.

It is one thing to do what is right with the rising tide, and it is quite another to have the courage to rise to the defense of a just cause in the face of the odds. Yet these superior qualities distinguished Judge Keith's character from other jurists, and he applied these traits in every area of the law he interpreted. He saw as inevitable the expansion of constitutional protections afforded women, and he employed his formidable knowledge of law and his acute instinct for progressive change in that effort.

Judge Keith knew when to be stalwart in the courtroom as with the Sinclair case or in his numerous dissents, but he also knew that even a committed jurist cannot achieve greatness through tenacity alone. He undertook the task of training new minority law clerks, and at the end of his tenure he had hired 44, more than any other Federal judge in history. He knew that true greatness required not just scholarship but mentorship, not only courage but also grace, and that he would have to exercise these qualities outside the courtroom. He wrote in the Detroit Free Press in 1988 in an op-ed entitled ''A Responsibility to Serve Black Community,'' that Achievement in one's occupation or profession is one mark of success. But we are not truly successful unless we use our training, knowledge, and dollars to serve the community to which we owe so much. His commitment to social activism in his personal life was tremendous, including work with the YMCA, the Boy Scouts, the United Negro College Fund, and many other organizations. His community leadership extended to many cultural institutions including the Detroit Symphony Orchestra, the Detroit Arts Commission, and the Interlochen Arts Academy for whom he served on the Board of Trustees.

Judge Keith stands today as testimony to the power of determined hope when it refuses to fade, and strength drawn from moral effort that will not yield. He wrote in his ''Dream Deferred'' law article that:

As a black man and American citizen, I have not yet given up on the American idea of equality and justice for all Americans. This nation stands before the world as perhaps the last expression of the possibility that a people can devise a social order where justice is the supreme ruler, and law but its instrument; where freedom is the dominant creed, and order but is principle; and where equality is common practice and fraternity the common human condition.

This is the dream he worked for in his career, and this is the vision which he continues to live for today. Our city and our Nation are grateful for his many years of service and leadership. I hope that life in retirement is as generous to him as he has been in fulfilling

the duties of the court and the responsibilities of citizenship.

TO DIRECT THE SECRETARY OF THE INTERIOR TO MAKE CERTAIN MODIFICATIONS WITH RESPECT TO A WATER CONTRACT FOR THE CITY OF KINGMAN, AZ

HON. BOB STUMP

OF ARIZONA

IN THE HOUSE OF REPRESENTATIVES

Friday, August 4, 1995

Mr. STUMP. Mr. Speaker, on behalf of my House colleagues from Arizona, I am today introducing a bill to provide for a timely resolution to a water problem in the third congressional district which affects more than 120,000 people in Mohave County, AZ.

For some time, the city of Kingman, AZ, has worked diligently to address the present and future water needs of its citizens. The city's hard work and tenacity has brought together their neighbors in Mohave County, the Arizona Department of Water Resources, and the Department of the Interior's Bureau of Reclamation, among others, to craft a regional response to the region's continued growth and its management and conservation of Colorado River water and groundwater, all along meeting State and Federal technical and substantive concerns. Their work was based on a comprehensive needs assessment and has resulted in an innovative and responsible plan, regarded as a unique achievement for Mohave County and a major step forward in water management in Arizona, and is supported by the local governments, Mohave County, the State of Arizona, the congressional delegation and, we believed, the Bureau of Reclamation and the Department of the Interior.

Unfortunately, as the final steps were being taken to make the plan a reality and confirm years of hard work, the Bureau of Reclamation was instructed by the Department in March of this year to temporarily suspend any further discussions. After most 2 months of no explanation for the cancellation of the discussions, we learned that the Department was assessing the water needs of Mohave County and attempting to determine how much water may be needed to settle remaining Indian water claims in Arizona. The action by the Department is contrary to all previous representations and commitments regarding the Kingman water, and without a reasonable solution in sight and facing a December 31, 1995 deadline, legislation is unfortunately needed to resolve this matter.

By way of background, the city of Kingman has had a valid water contract since 1968 with the United States for the delivery of 18,500 acre feet of Colorado River water annually. Under Kingman's contract, the United States reserved the right to terminate the contract if Kingman did not ''order, divert, transport and apply water for use by the city'' by November 13, 1993. The water to be delivered under the contract was intended to be used directly by Kingman in providing municipal and industrial water service to its customers.

Beginning in the 1970's, the city studied various alternatives for directly delivering Colorado River water to the Kingman area. Although Kingman diligently attempted to develop a plan that would facilitate the city's direct use of its entitlement, the studies indicated that the capital expenditures required for water transportation and treatment made direct use of the water prohibitively expensive.

In May 1993, the city adopted a water adequacy study, which developed a long-term water resource management plan for Kingman. While the study confirmed that direct use of the city's Colorado River allocation was simply not feasible, it also represented several alternatives for use of the city's Colorado River entitlement. Most notably, the study recommended that the city's entitlement be exchanged for the funding of other water resource development, effluent reuse, and water conservation projects. In addition, the study included a hydrological analysis of the Hualupai basin, which is Kingman's primary groundwater source. The hydrological analysis concluded that 4.2 million acre-feet of groundwater in the basin were available to the city, an amount which exceeds the city's needs for the next century. Based on the study's findings and recommendations, Kingman officials sought the development of a plan which would enable the city to transfer its Colorado River entitlement in exchange for either water from other sources or for resources which could be used to develop available groundwater supplies, conserve water, or reuse effluent.

After the completion of the study, Kingman solicited statements of interest from various organizations in an effort to identify entities which would be interested in an exchange of the city's Colorado River entitlement. As a result of the solicitation process, seven entities expressed an interest in obtaining more than 45,000 acre-feet per year of Colorado River water.

During the time that Kingman solicited interest regarding an exchange of the city's Colorado River entitlement, the city realized that it would be unable to finalize a plan which would put its entitlement to beneficial use by the November, 1993, deadline required in its water delivery contract. In August, 1993, the entire Arizona congressional delegation worked with the city to obtain an extension of time from the Bureau of Reclamation to enable Kingman to formulate a plan to put its entitlement to beneficial use. The request was also supported by the Arizona Department of Water Resources.

In September 1993, the Bureau of Reclamation agreed that it was in the best interests of all parties for the contract to be extended. The Bureau deferred the termination date of the contract to December 31, 1994, requiring that the city submit a plan for the beneficial use of water outside Kingman on or before October 31, 1994. The Bureau further indicated that it would give any Kingman proposal full consideration, but would look to the Arizona Department of Water Resources to provide a recommendation before any final decision would be made.

Once Kingman received the necessary extension, Kingman and other Mohave County communities and organizations began serious discussions which focused on the development of a regional approach for putting Kingman's entitlement to beneficial use. The Colorado River Ad Hoc Water Users Group/Mohave Ad Hoc Committee was formed, and among other included Kingman, Bullhead City, Lake Havasu City, Golden Shores Water Conservation District, the Mohave Valley Irrigation and Drainage District, and the Mohave Water Conservation District. Through a series of public meetings and discussions, the concept of creating a county water authority was adopted.

In late January, 1994, the six Arizona legislators who represent the two State legislative districts in Mohave County introduced the county water authority bill in the Arizona Legislature. Throughout the legislative process, the prospective authority members, the Mohave Ad Hoc Committee, sought comments on the bill's technical and substantive elements from Reclamation, the Arizona Department of Water Resources, the Central Arizona Water Conservation District, the Arizona Municipal Water Users Association, and numerous other organizations. In an effort to build consensus for the formation of a county water authority, the bill was amended to meet the needs and concerns of all entities who commented on it.

The bill was signed into law by Governor Fife Symington on April 8, 1994, and the Arizona Department of Water Resources favorably recommended Kingman's plan to the Bureau of Reclamation and recommended that the Bureau initiate the process to effect the transfer of Kingman's water to the authority. To provide the time needed to review and complete the plan, the Bureau again extended the contract to December 31, 1995.

The creation of the Mohave County Water Authority reflects not only the ability of a diverse group of water users in one of the country's fastest growing areas to work together to formulate a plan to meet the water needs of a region, but it also favorably accomplishes an expressed interest of the Bureau of Reclamation that they have a single entity to work with in the coordination of the needs of water contractors in Mohave County.

We will continue to attempt to resolve this matter by signing those documents which were to have been finalized in March. However, lacking any real assurance that this matter can be resolved in a timely manner to meet the December 31, 1995, deadline and having been unsuccessful in obtaining an extension of time for meaningful negotiations, at this time we have no alternative but to seek a legislative direction to the Secretary of the Interior that the Department maintain its agreement and finalize the creation of the Mohave County Water Authority through the transfer of Kingman's water contract.

Those who have committed their time and energy to this endeavor are to be highly commended, and I urge my colleagues favorable consideration for Military History. These transcripts become key resource documents for future researchers. Additionally, LTC McCallum just recently completed a Senior Officer Oral History Interview with retired Maj. Gen. Charles M. Kiefner. This interview documents General Kiefner's 16 years as the adjutant general of Missouri and 45 years as a soldier.

This spring, LTC McCallum helped design and teach a pilot class on Critical Thinking for Senior Military Leaders. This is a new course within the War College's curriculum. Additionally, LTC McCallum served as an active member on the planning committee for the 1995 Jim Thorpe sports days. This is a 2-day athletic contest, sponsored by the U.S. Army War College, which brings teams from six of our Nation's senior service schools together for athletic competition in 12 different events. As a member of this planning committee, he also served as the chairman of the subcommittee