

Supreme Court of the United States

OCTOBER TERM, 1970

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APR 15 1971

In the Matter of:

Docket No. 712

----- X
TRIANGLE IMPROVEMENT COUNCIL,
ET AL.,

Petitioners

vs.

WILLIAM S. RITCHIE, COMMISSIONER,
STATE ROAD COMMISSION OF WEST
VIRGINIA, ET AL.,

Respondents
----- X

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Place Washington, D. C.

Date March 22, 1971

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OCTOBER TERM 1970

TRIANGLE IMPROVEMENT COUNCIL,
ET AL.,

Petitioners

vs

No. 712

WILLIAM S. RITCHIE, COMMISSIONER
STATE ROAD COMMISSION OF WEST
VIRGINIA, ET AL.,

Respondents

The above-entitled matter came on for argument
at 2:00 o'clock p.m. on Monday, March 22, 1971.

BEFORE:

WARREN E. BURGER, Chief Justice
HUGO L. BLACK, Associate Justice
WILLIAM O. DOUGLAS, Associate Justice
JOHN M. HARLAN, Associate Justice
WILLIAM J. BRENNAN, JR., Associate Justice
POTTER STEWART, Associate Justice
BYRON R. WHITE, Associate Justice
THURGOOD MARSHALL, Associate Justice
HARRY A. BLACKMUN, Associate Justice

APPEARANCES:

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Office of the Solicitor General
Department of Justice
Washington, D. C.
On behalf of Federal Respondents (pro hac vice)

1 P R O C E E D I N G S

2 MR. CHIEF JUSTICE BURGER: We will hear arguments
3 next in Number 712: Triangle Improvement Council against
4 Ritchie and others.

5 Mr. Greenberg you may proceed whenever you are
6 ready.

7 ORAL ARGUMENT BY JACK GREENBERG, ESQ.

8 ON BEHALF OF PETITIONERS

9 MR. GREENBERG: Mr. Chief Justice and may it
10 please the Court:

11 This case is here on writ of certiorari from the
12 United States Court of Appeals for the Fourth Circuit, which
13 affirmed the judgment for the United States District Court for
14 the Southern District of West Virginia without an opinion.
15 But, I might add, there was a dissenting opinion by Judges
16 Sobeloff and Winter, which at some length set forth what, in
17 their view, was the reasoning of the position of the majority
18 who did not write an opinion.

19 There have been a number of changes in the law and
20 the circumstances of petitioners since this case was filed.
21 And the Federal Respondent suggest in their brief that while
22 "The case is technically not moot" it would be inappropriate
23 for this Court to adjudicate the complex issues originally
24 raised by this case. That is the position of the United States.

25 Q How many do not --

1 A There are perhaps just a handful there.

2 Q A handful being what?

3 A Half dozen. Our position is --

4 Q What was it at the time the case got here?

5 A How many were there at the time the case
6 was filed? Approximately 300.

7 Q Three-hundred.

8 A Our position is that the changes in the
9 facts and the changes in the law determine only the form of the
10 remedy and that a court of equity has the historic flexibility
11 that equity has demonstrated to adapt relief to the circum-
12 stances. But the changes have no bearing whatsoever on
13 whether rights were violated and whether petitioners were en-
14 titled to any remedy at all.

15 The decision may have a practical effect on the
16 rights of the 300 former residents of the Triangle, whom I
17 just referred to in answer to Mr. Justice Brennan's question,
18 and as the brief of amicus National Housing and Economic
19 Development Law Project states: perhaps 100,000 others through-
20 out the nation who are similarly situated.

21 Now, I would like to describe the principal
22 changes that have taken place since the case was filed. The
23 case involves an interstate highway being built through an
24 area known as the Triangle, a poor, mostly Black section of
25 Charleston, West Virginia.

1 In 1968 when the case was filed there existed,
2 but since then has recently been repealed, the 1968 Relocation
3 Amendments of the Federal Aid Highway Act. And that statute
4 is set forth completely in our brief but Section 502, which is
5 one of the key sections of the statute, says that: "The
6 Secretary shall not approve any project which will cause dis-
7 placement unless he receives satisfactory assurances from the
8 State Highway Department that relocation, meaning certain
9 standards with regard to safety, sanitation and decency will
10 be furnished persons being displaced. And elsewhere in the
11 statute relocation is provided for.

12 Q Did you say that had been repealed?

13 A That has just been repealed by the Uniform
14 Relocation Act which is set forth at length in our supplemental
15 brief and is discussed in that brief, Mr. Justice Brennan.

16 Also in effect in 1968 was IM 8168, IM standing
17 for Instructional Memorandum, which is set forth in the
18 appendix of our brief, which was a regulation of the Depart-
19 ment of Transportation which elaborated on the requirements
20 of the statute, particularly with regard to fact-gathering and
21 formulating a relocation plan. And at the time of suit when
22 this statute and these regulations were in effect, there were
23 approximately 300 persons in the path of the Triangle.

24 Now, the position of the Federal Respondents at
25 that time and now is that the 1968 Relocation Amendments and

1 the regulation 8168 did not apply because they say that these
2 do not apply to areas where right-of-way acquisition was
3 approved prior to 1968 and right-of-way acquisition in this
4 case had been approved prior to 1968.

5 And that is their position, even though other
6 approvals, that is approvals for clearance and construction
7 had not yet been given.

8 Now, the facts of exactly how many people were
9 there are not entirely precise, because discovery was denied
10 before trial in the court below. But perhaps no one had moved
11 from the Triangle as of the time of the adoption of the 1968
12 statute. And only a few had moved -- and we know this -- by
13 the time of the suit.

14 Now, there have been several other changes in the
15 law which I would like to refer to only briefly and they are
16 set forth at length in our brief and that in 1970 before a
17 decision in the Court of Appeals there was something called
18 a circular memorandum adopted on April 10th, which in Judge
19 Sobeloff's view, and as he elaborates in his decision,
20 essentially repealed the interpretation of the statute and
21 the interpretation of IM 68 which limited it to authorizations
22 to require right-of-ways which were approved after the passage
23 of the statute. And, as I say, that's elaborated in the brief
24 and perhaps I will come to it -- in the argument.

25 And nonetheless, people kept moving out and in

1 May 1970 when the case was in the Court of Appeals the number
2 in the Triangle was down to 262. In July 1970 when the case
3 was under rehearing the number was down to 150. In December
4 1970 it was down to 65. In January of this year it was down
5 to 35 and now it's down to approximately a half dozen.

6 And now, as of January 2, 1971 there has been
7 enacted the Uniform Relocation Act, which is set forth in our
8 supplemental brief and which also repeals the 1968 Relocation
9 provisions. The Uniform Relocation Act caused the relocation
10 from all sorts of displacements, a variety of displacements
11 not really displacements, not merely displacements for
12 highways.

13 Q Well, anyway that expressly saves all
14 rights under the old statute.

15 A That is right and that is where --

16 Q So the new statute has no relevance here?

17 A Well --

18 No relevancy as to the persons who are not
19 yet moved, I mean as of the time of its adoption.

20 Q Oh, I see. You mean the half dozen.

21 A Well, it would have relevancy; they would
22 be protected by the '68 statute --

23 Q No, but I suppose there are some difference
24 between the Uniform Act and the '68 Act are there?

25 A Well, I think, as a matter of fact, as we

1 would argue it there are not very many material differences.
2 Certainly, if you view the '68 Act along with the IM 8168 the
3 regulation of the Uniform RElocation Act --

4 Q Well, what I'm getting at, Mr. Greenberg:
5 we don't have to be concerned in deciding this case with the
6 provisions of the Uniform Act, do we?

7 A No; I would say you would not, because I
8 would say this case is determined by the '68 Act and I would
9 like to argue to the Court why I believe that's the case.

10 Now, insurances were applied by the 1968 statute,
11 and that is the opinion of the Department of Transportation
12 under the United States and _____. Any claim was required
13 by IM 8168, because their cutoff date which rested on their
14 interpretation that the statute was invalid, then Petitioner's
15 rights were violated. The violation of those rights would
16 give rise to a remedy. The question then would be: what is
17 that remedy?

18 Now, at this time obviously the remedy in the
19 statute and in the regulations do not make much sense. Assur-
20 ances that this Court, now that almost everybody has been
21 moved out and a plan now that everybody has moved out, would
22 not be the appropriate thing to do. But that doesn't mean
23 that a Court of Equity couldn't devise what would be the
24 appropriate thing to do. We have suggested in our brief that
25 if the rights were violated then the Respondents would have an

1 obligation to go and find the people who had been dislocated;
2 find out whether they had been located in housing which met
3 the standards required by statute and if not, relocate them.

4 And the State Respondents in their brief, seem
5 to concede that this would be an appropriate form of relief
6 if we can find that there was a substantive legal wrong done
7 at the time. And there

8 And therefore, the question is: were the rights
9 violated by the 1968 statute? Since perhaps everyone was at
10 the site, on the site at the time the statute was passed, that
11 it would be decisive of this case if it were applicable. And
12 we submit that there is no doubt of its applicability and that
13 if we are correct the Department of Transportation and the
14 courts below were not.

15 First I would like to point out that there was no
16 question that no assurances were given as required by the 1968
17 statute. That's the Government's position as set forth in
18 their brief and it's their position no assurances were given
19 because no assurances were required.

20 And secondly, the recent decision in this Court
21 of the Overton Park case comes into play because the assurances
22 that should have been given if, indeed, they should have been
23 given and we would like to argue that they should have been,
24 would have constituted the administrative record upon which
25 the court below, the trial court and the Court of Appeals

1 should have made its appraisal, not in a de novo hearing of
2 calling in witnesses who had been involved in the transactions
3 but a hearing on the administrative record. And then it is
4 also I gather the Government's position, because in their
5 brief, I believe on page 42 or 46 they say that those assur-
6 ances -- page 46 -- would have constituted the administrative
7 record but there were no such assurances because they were not
8 required.

9 Q The findings with respect to discrimination
10 right at the outset here, Mr. Greenberg, discrimination in the
11 sale or rental of the property; isn't that an arguing point
12 from which you have got to build a case?

13 A Well, I would say no, Mr. Chief Justice,
14 because the trial court should have had an administrative
15 record before and it should have appraised that administrative
16 record. It did not have an administrative record before it
17 because the assurances which would have constituted that
18 record were not given because it is the position of the
19 Government, under its interpretation of the statute that they
20 were not required.

21 We submit that that interpretation of the statute
22 is incorrect and we would like to demonstrate to the Court
23 why, quite clearly that interpretation is incorrect.

24 Q Well, am I to understand then that you do
25 not make the claim that this record shows a pattern of

1 discrimination in housing?

2 A Yes; we do make such a claim and we could
3 sustain that if it were necessary to do that upon a de novo
4 record, and indeed, there is considerable argument in our brief
5 as to how the facts --

6 Q The findings are to the contrary; are they
7 not?

8 A The findings of the trial judge are to the
9 contrary, but those findings, we think, are first of all
10 clearly erroneous if this were an ordinary kind of trial, but
11 clearly irrelevant and improper because they were not made
12 upon administrative records such as this Court has indicated
13 would be required in the Overton Park case.

14 I would like to demonstrate that the 1968
15 Amendments were applicable and we find this in just about all
16 the sources one can find of statutory interpretations. The
17 language of the statute, the legislative history of the
18 statute and the purpose of the 1968 Relocation Amendments.

19 Now, we must remember it's the Government's
20 argument that the statute is not applicable because it does
21 not apply to rights-of-way which were authorized prior to the
22 adoption of the statute and the first thing we must note is
23 this is manufactured out of nothing. One reads the statute
24 in vain to find such a limitation. Such a limitation appears
25 nowhere and it is not even suggested anywhere in the statute.

1 If one looks at the language of the statute now,
2 Section 501 is the declaration of policy, it says: "Congress
3 hereby" --- it's on page 4 of the appendix of our brief --
4 "Congress hereby declares that the prompt and equitable reloca-
5 tion and reestablishment of persons, business and so forth
6 is necessary." It speaks about relocation. There is nowhere
7 any cutoff date as to when the rights were authorized because
8 as the briefs of all parties indicate: the time between the
9 authorization of right-of-way and construction and relocation
10 sometimes is a period of very many years.

11 If we look at Sections 511 and 1(d)(3) of the
12 statute, which defines a displaced person -- we find a dis-
13 placed person defined as: "Any person who moved from real
14 property on or after the effective date of this chapter, as a
15 result of the acquisition or reasonable expectation of acquisi-
16 tion of such real property."

17 So, again that not only makes no reference to
18 projects who, where rights of way were approved or acquired
19 after the enactment of the statute. It refers to persons
20 being removed after the enactment of the statute.

21 Now, the statute also has relocation payment
22 provisions. It requires not only relocation assistance,
23 but relocation payments. The time factors in the statute, to
24 the extent that there are any, refer to relocation payment
25 and new location assistance, without any discrimination or

1 differentiation between the two and it has been the position
2 of the Respondents in this case that relocation payments may
3 be made to the Petitioners here and, indeed, more money to
4 the Petitioners here, yet there was no reason and nothing
5 anyone could find in the statute to differentiate between
6 them.

7 Now, let's go back to the genesis of this
8 statute. This statute came out of a 1967 study which was
9 ordered by a 1966 statute passed by Congress, and on pages 2
10 and 3 of our brief the Relocation Assistance Study Statute
11 appears -- 2 and 3 of the appendix in the brief -- and that
12 calls for a full and complete study and investigation for the
13 purpose of determining what action can and should be taken to
14 provide additional assistance for the relocation and reestab-
15 lishment of persons and so forth to be placed by construction
16 of projects on the Federal Aid Highway System.

17 Again, it looks forward to dealing with people
18 who are going to be relocated and then if you look back to the
19 1962 statute which the 1968 statute replaced, we find, and
20 this is Section 133(e) which is on page 2 of the appendix to
21 our brief, a limitation such as is not found in the 1968
22 statute and Section (e) says: "This section shall apply only
23 with respect to projects approved by Section 106 of this Title
24 after date of enactment of the section. No such provision is
25 found in the 1968 statute.

1 And the new statute, the 1968 statute, came out
2 of a crisis caused by the need to relocate large numbers of
3 persons who were being displaced because highways were being
4 built through their homes.

5 Now, the National Highway System, which gave rise
6 to this problem was to be 41,000 miles away. At the time the
7 1968 statutes were adopted, 32,000 miles had been built; 9,000
8 miles remained to be built. Of the 9,000 miles that remained
9 to be built 8500 miles had already had their rights-of-way
10 authorized.

11 Now, that would mean Congress went to all the
12 trouble and passed this enormous apparatus and this statute
13 and made all these requirements with regard to only 500 miles
14 and it just doesn't make any sense. It would mean that
15 Congress engaged in a futile act.

16 We would think that the government has fairly
17 well described the reason for the position which was taken
18 on page 424 of the record. They are willing to pay relocation
19 payments because after all, the payment of money is a fairly
20 simple and uncomplicated, unmessy act. Mr. Carpenter, the
21 Division Right-of-Way Officer testified from page 424 about
22 what it would mean to have to actually provide the relocation.
23 And he says: "Certainly it would have been putting another
24 hair shirt on the state to ask them to give us a formal sub-
25 mission on the record of what they are already doing. They

1 would have had to stop work, put several people on this to
2 formalize it, submit it to me; have my people review it and
3 give them approval back. It would have served no practical
4 purpose."

5 But on the contrary, Congress ordered that that's
6 just what had to be done. Congress didn't want anybody to
7 wear a hair shirt, but Congress wanted that the State and
8 the Federal authorities concerned should actually attempt the
9 difficult and perhaps unpleasant, but necessary job of re-
10 location.

11 Now, the courts below accepted the cutoff date,
12 that is the cutoff date as to right-of-way acquisition which
13 had been approved prior to the enactment of the 1968 statute
14 and they accepted that as an authoritative administrative
15 interpretation of the statute. Well, everyone knows that
16 administrative agencies make interpretations of statutes and
17 those interpretations are entitled to considerable and often
18 conclusive weight.

19 But that is only so when those interpretations
20 come out of the practicalities of the situation, some special
21 experience, some involvement with the operation of the statute
22 and the program, which would lend a special authority to that
23 kind of interpretation.

24 So far as the interpretation of the plain language
25 of the statute and its legislative history and its purpose,

1 courts and lawyers do that as well as administrators. And we
2 submit that the language and the legislative history and the
3 purpose of the statute call to the fact that Congress has
4 intended to protect people who were going to be relocated and
5 not just a miniscule small amount of people who are going to
6 be in the way of the national highway system.

7 Now, if the 1968 statute is applicable and we
8 submit that it is, there is no need to go into the 1970
9 regulations, though we argued that in our brief and Judge
10 Sobeloff sets forth the reason why they protect the rights of
11 at least those who were on the site as of the time of the
12 adoption of the regulations under the doctrine of the Fort(?)
13 case or the '71 statute which would protect the rights of those
14 who, that handful who remained on the site after the adoption
15 of the '71 statute. Or the constitutional question that in-
16 deed the constitutional question provides an additional reason
17 why the interpretation of the statute which we have argued is,
18 we believe, correct, and that is the statutory interpretation
19 which we urge would avoid the decision of the constitutional
20 question and it is the _____ statutory construction
21 that that is something which courts strive to do.

22 And so, for the reasons given we submit that
23 the Petitioners who were in the way of the highway in 1968
24 are entitled to protection of the 1968 statute; are entitled
25 to the protections of the instructional memorandum. The case

1 is not moot; it involves these petitioners as well as many
2 others situated throughout the country and the only issue in
3 the case is what form of relief shall be granted and that a
4 court of equity can figure that out.

5 MR. CHIEF JUSTICE BURGER: Thank you Mr.
6 Greenberg.

7 Mr. Reynolds.

8 ORAL ARGUMENT BY WILLIAM BRADFORD REYNOLDS, ESQ.

9 ON BEHALF OF FEDERAL RESPONDENTS

10 MR. REYNOLDS: Mr. Chief Justice and may it please
11 the Court:

12 At the outset let me say that Respondents do not
13 contend that the 1968 Amendments to the Federal Aid Highway Act
14 are wholly inapplicable to highway projects already under way
15 on the date of enactment. The relocation payment provisions
16 are clearly applicable to such projects.

17 The provision requiring the state to provide a
18 relocation program is clearly applicable to such projects. And
19 the statutory requirement that all housing meet the decent,
20 safe and sanitary housing standard as defined by the Secretary,
21 is clearly applicable to such projects.

22 What, in our view, and in the opinion of the court
23 below is not applicable to projects which by August 23, 1968
24 had advanced as far as the two here in question, is the single
25 statutory provision of Section 502 requiring that states submit

1 to the Secretary certain formal assurances before they can
2 obtain his approval to proceed with that phase of the project
3 "which will cause the displacement of any person" family or
4 business.

5 And, insofar as the statute is here involved, it
6 is the applicability of that provision and that provision
7 alone that is at issue in this case.

8 Now, let me turn briefly, if I may, to the facts.

9 Q Would you agree that the new statute is
10 basically relevant to this case or inapplicable?

11 A Your Honor, I would --

12 Q The '71 statute.

13 A I would except with respect to our
14 argumen- as to mootness I would. The substantive provisions
15 themselves, I would say that is correct, but I do think it is
16 a statute which bears on the question of whether or not this
17 Court should decline to decide these issues.

18 Q Mr. Reynolds, are there other projects
19 under which the interpretation of the section you mentioned
20 becomes important?

21 In other words, other projects of people not yet
22 relocated?

23 A Your Honor, I believe there are other
24 projects. Of the 9,000 miles of interstate highway that were
25 not fully constructed, that were under construction on the

1 date of enactment the 8500 miles which counsel for Petitioners
2 referred to, had not commenced right-of-way acquisition for
3 relocation as of that date. So as to that 8500 miles the
4 provisions of Section 502, calling for formal assurances that
5 the regulation as to former relocation would be applicable.
6 As to 8500 of the 9,000 --

7 Q Have you any idea how many people were
8 involved?

9 A I don't have that information with
10 regard to people --

11 Q It would be quite a few?

12 A I assume that it would be quite a few
13 and they --

14 Q So that the fact that we've got only
15 seven involved on this particular project --

16 A I'm sorry; I thought you meant how many
17 people in the 8500 miles.

18 Q No; how many people whose relocation may
19 be determined by our resolution of the interpretation of --
20 what did you call it -- 502 something?

21 A Section 502. It would be the number of
22 people, I assume, in that 500 miles that are not, or at least
23 at that time --

24 Q Well, more people whose relocation turns
25 on the answer to this question than just the seven we have

1 involved here.

2 A Well, that might turn on it. I don't
3 know as to that, again as to that number of how many -- what
4 the statute is of projects in that class applies.

5 Q Within the 500 miles are there projects
6 which haven't gone so far as the two hearings?

7 A Which have not gone so far as --

8 Q As the two hearings, or have they gone
9 so far that the project would not be covered by the '68 Act?

10 A I would -- I think that is correct. It
11 is veryhard to get a bearing on each project in the 500 -- we
12 know that there are 500 miles which at the time the 1968
13 statute was passed, had commenced their right-of-way acquisi-
14 tions and relocation programs, but had not concluded them.
15 And I believe the argument as to those projects would be the
16 same as are argued here.

17 Q Well, it wouldn't do us any good, then,
18 to say well: "What's the use of our deciding this question
19 here; with only five or six or seven people involved because
20 the issue will only be back again in some other case; wouldn't
21 it?

22 A Well, Your Honor, it might be back in
23 some other cases.

24 Q Well, then we might just as well go ahead
25 and decide it, hadn't we?

1 A Well, I don't believe that it is any
2 longer an issue in this case, and I also don't know whether
3 on the same basis as this case whether there is any need to
4 decide that issue on the basis of our argument in this case.
5 I don't --

6 Q I don't suppose you have any objection to
7 our reaching an issue as long as we decided here what you
8 want us to?

9 A No, Your Honor; none at all.

10 Q And what does that do for you in terms
11 of projects still to be completed? Would it mean that there
12 just isn't going to be any requirement in any of these pro-
13 jects for a prior submission of a plan?

14 A Your Honor, that's correct. In projects
15 in a status similar to this one there would be no requirement
16 for a formal plan.

17 Q And I take it there aren't any projects
18 that are any less far along?

19 A Well, as of the date of enactment there
20 were projects within 8500 of the 9,000 miles that were less
21 far along. Its only projects within the 500 miles which were
22 within the --

23 Q Well, within that 8500 miles have there
24 been projects, or are there still projects for which plans
25 will be submitted?

1 A That is correct. All plans in that
2 8500 miles will be submitted. It's the additional 500 miles
3 that are in a similar status --

4 Q Now they will be submitted what -- under
5 the regulations or under the new statute or under the old
6 statute or under the '68 Act?

7 A Under the '68 Act they would be required
8 to be submitted --

9 Q But according to the new regulations.

10 A And the regulations would, by the same
11 token, require the formal relocation plans.

12 Q But not the 1971 statute; that would not
13 be involved?

14 A I don't believe that that statute would
15 be involved --

16 Q Because the '71 statute says that any-
17 thing not determined under the '68 statute the '68 statute
18 stays, doesn't it?

19 A That's correct, Your Honor, in that
20 respect. Anybody who had rights under the '68 statute would
21 still have them.

22 I do think on the Uniform Relocation Act the
23 language in the provision, Section 210 which would be the
24 similar provisions of the one we are dealing with here, is
25 dissimilar and an interpretation of this statute would not be

1 controlling on the new statute and that is another reason
2 that we would submit that the Court should decline to reach
3 the issue.

4 Now, if I may just state a few facts. We are
5 concerned here with two state highway projects --

6 Q Were these highway projects put down to
7 any kind of a hearing, other hearing?

8 A They had the public hearing required by
9 statute in connection with the routing; yes, Your Honor.

10 Q Well, what kind of hearing was that?

11 A That was the hearing required in Section
12 128.

13 Q I know, but what kind was it? A hearing
14 just for the bureaucracies?

15 A It was a hearing held for the people who
16 lived in the community to come in and discuss the routing with
17 the Federal and State officials and that was discussed and
18 there is no challenge in this case at this point to the
19 routing decision. There was a hearing held.

20 Q This was a hearing prior to the formula-
21 tion of the plan by the Secretary?

22 A Well, there was no plan. This was a
23 hearing prior to approval by the Secretary of the route; yes,
24 Your Honor.

25 Q Of the route?

1 A Yes, Your Honor; and that was held.

2 Q Is there anyplace I can find a copy of
3 that hearing?

4 A Yes, Your Honor; it's in the record.

5 Q It's in the record?

6 A The hearing is in the record.

7 Now, as I say, we are concerned here with two
8 highway projects. Over two-thirds of each project is outside
9 the so-called Triangle area. But each penetrates that area:
10 Project A from the north and Project B from the southeast,
11 and they meet within it.

12 Now, the portion within the so-called Triangle
13 area covers several city blocks. Of the 284 persons living
14 there at the time this suit was commenced, approximately two-
15 thirds were Negro and the rest were white. The average
16 monthly income was \$170 and a substantial portion of the
17 houses were substandard.

18 After Federal authorities had authorized the
19 State to acquire all the right-of-ways in the two project
20 corridors, the State Road Commission set up a relocation
21 office for the benefit of those to be relocated in the two
22 project corridors. It was located within this so-called
23 Triangle area; it was staffed with nine to ten people full
24 time; it conducted a survey of those living within the two
25 project corridors, determining the family needs, the family

1 size, where they worked; where they went to church and what
2 their preference was with respect to new relocation housing;
3 what type of housing they desired.

4 They compiled a list of available housing within
5 the Charleston area, posted it in the relocation office and
6 kept it updated on a daily basis. And they provided special
7 services to those who were to be displaced. For example: it
8 they would drive the elderly to available rentals that they
9 wished to inspect. They would help those who had located
10 relocation housing to move and to obtain furniture.

11 They would help make arrangements for initial
12 rent deposits where necessary and they would help obtain
13 priority certificates for public housing.

14 Now, on enactment of the 1968 Amendments to the
15 Federal Aid Highway Act the State Road Commission assigned
16 three persons full time to doing nothing but inspect available
17 rentals in the Charleston area to ensure that they complied
18 with the new "decent, safe and sanitary" housing standards.

19 On August 23, '68 the state had successfully
20 relocated a substantial number of the original 2,184 persons
21 who were originally to be displaced from the two highway
22 projects. Over one-half, or 1,314 had been relocated at the
23 time of the trial. And the State had acquired over 60 percent
24 of the land in each of the two corridors.

25 Now, it is true that the relocations of those

1 persons within this so-called Triangle area have not pro-
2 gressed that far. Forty-two of the 326 originally there had
3 been relocated.

4 Similarly, relocations within other isolated
5 areas on these two projects had not progressed that far. But
6 the entire statutory scheme we are dealing with here speaks
7 in terms of projects. It does not speak in terms of segments
8 of projects or city blocks within projects or the 6th Ward or
9 any other such subdivisions that may be created for the pur-
10 poses of bringins a lawsuit.

11 And the Chief Justice suggested that Petitioner's
12 argument turns in large part on their contention that
13 Charleston was a racially-closed housing market. I would like
14 to address just a few comments to that argument.

15 The only evidence in this record to support the
16 proposition is two studies: one by petitioner's principal
17 witness, and one, an early draft of the study prepared for
18 the Charleston Urban Renewal Program which is just now getting
19 under way. Both studies draw primarily on 1960 Census data
20 and neither study talks about the housing situation in
21 Charleston after 1966.

22 Now, we do not understand the issue before this
23 Court to be whether at one time discrimination in housing did
24 exist in the Charleston area which resulted in early geo-
25 graphical divisions in the city along racial lines.

1 The question is whether, at the time this action
2 was commenced, in December 1968 and thereafter, Charleston
3 had a racially-closed housing market. The court below, both
4 courts, found that it did not. And there is no evidence on
5 this record to contradict that finding.

6 In November of 1967 the City of Charleston passed
7 the open housing ordinance. Congress passed a similar law in
8 April of '68. There is nothing in this record even suggesting
9 that the people in Charleston are not complying with those
10 statutory provisions. Nor is there any indication that city
11 and state officials were having difficulty with their enforce-
12 ment or that they were turning their backs and not enforcing
13 the provisions.

14 In the public housing sector it is undisputed
15 that there are three public housing projects all within the
16 Charleston city limits, and all of them rent 1, 2, 3 and 4-
17 bedroom units on a nondiscriminatory basis. This housing
18 meets the decent, safe and sanitary housing standard and is
19 substantially better than the housing which existed within the
20 so-called Triangle area. It is available at 20 percent of a
21 family's average net income per month and it is available to
22 all families earning less than \$5,000 per year, which would
23 include virtually all of those within this so-called Triangle
24 area.

25 In the private housing sector the evidence shows

1 that approximately 80 dwelling units were available for rent
2 in the Charleston area on any given day. In determining the
3 availability of private housing the State Road Commission
4 eliminated for consideration the two, three and four-family
5 dwelling units in which the owner resided; therefore, all 80
6 were under the open housing ordinance and were rented on a
7 nondiscriminatory basis.

8 The average rental was \$90 per month, which with
9 the statutory rental supplement could be afforded by all those
10 within this triangle area.

11 And while I'm discussing private housing, I'd
12 like to allude just briefly to Petitioners' telephone survey
13 which they discuss in their briefs and which is Plaintiff's
14 Exhibit 25. They contend that this survey showed that out of
15 50 private dwellings telephoned only eight would rent to
16 Black families.

17 That survey did not show that 42 of the dwelling
18 units would not rent to Black families. Twenty-eight of the
19 homes within that survey were not even asked the question
20 because they didn't have any vacancy when they were called.
21 In fact, only four owners gave any indication that they would
22 not rent to Negroes. One of those owners said that she would
23 not rent to a Negro male but she would rent to a Negro female.
24 And another one said that she could not answer the question
25 until she talked it over with her husband, and she was never

1 called back.

2 With respect to the other two there is no
3 indication on this record of whether they were within the
4 exclusion of the Charleston open housing ordinance. In
5 short, there is simply no evidence to support the assertion
6 that the Charleston housing market was, in December 1968, a
7 racially-closed market.

8 The Court below specifically so found. Nor is
9 there any evidence of state action which would deprive these
10 Petitioner of equal protection of the law. No one has been
11 forced out into the streets. In fact, the State has moved
12 very deliberately and carefully in relocating the people
13 within this so-called Triangle area and has taken over three
14 years to accomplish that task.

15 On the statutory interpretation question I will
16 just make three points: first, the two projects here under
17 discussion and I think that it is agreed, all agree, were
18 well into their relocation program by August 23, 1968.
19 Approximately 913 persons had been relocated from project A
20 and there remained in that corridor 380 persons.

21 Approximately 409 persons had been relocated
22 from Project B and there remained approximately 401 -- sorry;
23 that is reversed. 401 had been relocated and there remained
24 409.

25 The language of both the statutes and the

1 regulations thereunder, called for formal assurances and formal
2 relocation planning prior to any such displacement. The statute,
3 which is Section 502, speaks in terms of the Secretary's
4 approval, "Which will cause the displacement of any person."

5 Now, we cannot agree with Petitioners' contention
6 that this language contemplates the Secretary's approval to
7 proceed with construction. The April 10, 1970 circular memo-
8 randum which they rely on so heavily, makes it very clear that
9 construction approval, the approval to proceed with construction
10 cannot be given until everybody has been displaced and relocated
11 who needs to be displaced and relocated. There can be no
12 approval of construction until that is completed.

13 Second, with respect to the statutory interpreta-
14 tion question, I want to make the point that notwithstanding the
15 absence of a formal relocation plan in this case, the State Road
16 Commission was providing a relocation assistance program which
17 complied in all respects with the substantive provisions of the
18 1968 statute. And this was the primary concern of Congress.

19 Q Well, who approved it other than the State?

20 A Who approved?

21 Q The relocation plan.

22 A There was no relocation plan submitted.

23 Q Who approved all of this nine men in the
24 office; he spent six days and got five times as much as you
25 needed and all?

1 A That was the State Road Commission that
2 did provide a relocation program.

3 Q Well, what did the Federal Government do
4 as to that?

5 A If I may just get to that in point seven.

6 Q Sure, sure.

7 A I just want to wind up my point here that
8 there was compliance of the substantive provisions and that
9 there was a relocation program.

10 Q Go right ahead; I'll be here until 3:00.

11 A Well, it will only take a second.

12 The only additional point is that -- the formal
13 assurances and the formal relocation plan in the regulations
14 were a procedure which Congress deemed appropriate to ensure
15 that the states complied with the substantive requirement that a
16 relocation assistance program was afforded by the state. That
17 was the intent; the purpose of Congress was to have the program
18 provided. Now, here the proceeding was neither required by the
19 statute nor essential to the implementation of an adequate
20 relocation assistance program.

21 Now, Justice Marshall, on your question: the
22 Federal authorities here reviewed the State relocation assistance
23 program; they reviewed specifically with respect to the two
24 projects here in question over 125 of the relocations and found
25 that they were --

1 Q How was this review done?

2 A Well, that is what I am explaining. They
3 had a day-to-day audit of the Federal authorities in West
4 Virginia, the Division of Engineer had a day-to-day audit of
5 the State Road Commission operation. It reviewed over 125 of
6 these specific relocations what are involved in these two pro-
7 ject areas and found them to be satisfactory in all respects.
8 And it had a review, it continually reviewed the state operations
9 throughout the state as well as on these two projects.

10 Q Where is the plan?

11 A Well, there was --

12 Q There was no plan.

13 A There was no plan as such.

14 Q Right.

15 A That's correct. There was a study of the
16 relocation of the available housing and there was a -- in the
17 record a half of a relocation plan submitted in 1966, but there
18 was no written plan as such.

19 Q My whole point was: did the Federal
20 Government "review" this or "approve" this?

21 A They "reviewed" this.

22 Q And where is that in the record?

23 A That is in the record in a number of places,
24 most of which are referred to in our brief as appendix refer-
25 ences, where the Federal authorities went in and scrutinized

1 what was going on in these two projects; what the state was
2 doing to relocate the people and how they were providing
3 assistance. And there is testimony, an abundance of testimony
4 that they were in there looking at this on a day-to-day basis.
5 And that, Your Honor, is why I think this case is not within
6 the Citizens to Preserve Overton Park decision. This was not a
7 review of a Secretary's approval: "approval," under Section 502,
8 because he did not give that approval.

9 What it was was a review of agency action under
10 the statute, based on the experience of the Federal-State
11 officials --

12 Q In order to agree with you do I have to
13 assume that this was reported to the Secretary?

14 A No, Your Honor.

15 Q Day-by-day?

16 A No, Your Honor, you do not because, as we
17 argue the case the Secretary was not required in this case to
18 give the approval. What was required in this case is that the
19 State provide an adequate relocation program and that is what
20 was being reviewed by the Federal authorities and they deter-
21 mined that this program was adequate. And this was not a review
22 of the administrative record and I believe in Overton Park this
23 case stated that where there is no such administrative record
24 it is entirely appropriate to call the officials involved in the
25 action and have them testify and determine, make a judicial

1 determination on the basis of that testimony.

2 Q Did he approve within the meaning of
3 Section 504 the availability of Federal funds?

4 A Your Honor, the Federal funds were approved.
5 There was full payment of Federal funds and the reason that that
6 was required in this case was 504(b).

7 Q I understand that. You have approved part
8 but not all, you say?

9 A He did not need an approval under 502.

10 Q But that _____ is whether he
11 should have.

12 A Correct, but he did approve --

13 Q But he didn't approve under 504? That's
14 where the money was.

15 A Yes, Your Honor, and that is one of the
16 provisions that we concede is applicable to this case; the only
17 one not is 502.

18 MR. CHIEF JUSTICE BURGER: Mr. Preiser.

19 ORAL ARGUMENT BY STANLEY E. PREISER, ESQ.

20 ON BEHALF OF STATE RESPONDENTS

21 MR. PREISER: Mr. Chief Justice and may it please
22 the Court:

23 I wanted to point out just a few things in addition
24 to the Solicitor General, and that is that during the trial of
25 the case, and I think it would appear the thrust of the

1 Petitioners' argument was that there was no formal plan.

2 Now, the evidence conclusively establishes there
3 was a relocation program, that Congressional intent was being
4 carried out. Everything that would have been required by the
5 plan was done, even before the 1968 act and was continued
6 beyond the 1968 act.

7 The case was tried on that theory on the
8 technicality: was there a plan, a formal plan. We concede that
9 there was not.

10 Secondly, on the evidence of Mr. Abels(?), the
11 major witness, the theory was that because the Charleston urban
12 renewal would be displacing people at about the same time there
13 would not be adequate housing. Well, the fact of the matter is
14 that the task of urban renewal did not in '68, '69, '70 and have
15 not yet started, almost three years later, displacing no one.
16 So, there was no competition for the adequate housing.

17 The facts conclusively established that on any
18 given day there were 80 houses available. From the Triangle
19 district some 30 persons lived in the Orlando Hotel, which was
20 substandard. There were, at that time, 250 available hotel
21 rooms within that _____.

22 So, it is our position at the trial, and still is:
23 there was no discrimination; there was adequate housing; we
24 comply with every requirement of the act except the technicality
25 of -- and we feel that that should be -- sir?

1 Q If you complied with that in accordance
2 with your view of the statute, why not file it?

3 A We say --

4 Q There was no requirement to file it?

5 A Yes, sir; there wasn't, in our view.
6 We say that we complied with every other requirement of the
7 statute and with _____ and with we feel that the matter was
8 disposed of. Whatever they complained about below never
9 happened.

10 So, we think that the matter has, in fact, become
11 moot if their position was correct _____ in the beginning.

12 That's the only thing I have to say.

13 MR. CHIEF JUSTICE BURGER: Thank you, Mr. Preiser.
14 Mr. Greenberg, you have a few minutes left, about
15 ten minutes.

16 REBUTTAL ARGUMENT BY JACK GREENBERG, ESQ.

17 ON BEHALF OF PETITIONERS

18 MR. GREENBERG: Mr. Chief Justice and may it please
19 the Court:

20 The fact is: the statute was not complied with.
21 The assurances that are required by statute were not given; the
22 plan as required according to the interpretation of the statute
23 was not filed, and the fact that there wasn't even a claim
24 filed, it appears that this litigation is very much like the
25 litigation affidavits in Overton Park. And that was dismissed

1 by the Federal authorities as "half a plan" and really not
2 adequate.

3 The reason that the Congress enacted a statute and
4 the Department adopted regulations was because precisely the
5 kinds of practices that were going on here, and that is: informal
6 relocation, taking the word of the various departments, acting
7 in a nonstructured, nonreviewable way, not on any record which
8 had been reviewed, was deemed inadequate, and that withdrawn and th
9 statute was adopted and the regulations implemented properly.

10 And that isn't what happened here. The Court
11 made a de novo review of the basis of ad hoc, post hac ration-
12 alizations, testimony put on by witnesses -- after the event and
13 not on the administrative record, which is exactly what this
14 statute was designed to provide. And we submit --

15 Q Supposing you prevail in this case.
16 Exactly what do you visualize the relief will be?

17 A The relief as to the 326 persons who
18 originally resided on the site of the Triangle, would be some-
19 thing in the general nature of what the State respondents agree
20 would be appropriate. And they agree that if they lose the
21 case this would be appropriate, and that is that the State
22 authorities would have to find where these people have been
23 relocated to and in fact, they said they were somewhat in the
24 process of doing that now; and find out whether or not the
25 housing which they now live in meets the statutory standards.

1 If it does not meet the statutory standards then
2 they would have to take such steps as are necessary to relocate
3 these people in statutory housing. Now, that's not the relief
4 provided for in the statute, but that was an adaptation of it
5 which is appropriate in the circumstances of this case.

6 And, of course, there would be a rule of law
7 coming out of this case which would protect legally any other
8 persons who were in the way of a highway. I'm not saying there
9 aren't some differences of opinion --

10 Q May I inquire, Mr. Greenberg as to how
11 many were ordered out?

12 A Three-hundred-twenty-six people --

13 Q Pending when the action was brought. There
14 has been others who were located on the site before that time,
15 were there not?

16 A Yes, I believe there are other members of
17 this class who are not in this case.

18 Q These are only those not relocated when
19 this action was filed?

20 A That's right; that's right. They are that
21 326.

22 Now, there is some difference between us on the
23 provision of the 8500 and 500 out of the 9,000 miles. We have
24 cited in our brief on page 29, the Senate Committee Report and
25 I believe, or at least I hope we will find in that report that

1 approximately 8500 miles had already been authorized and
2 therefore if their interpretation of the statute prevails,
3 only persons in the remaining 500 miles would be covered.

4 But, even those 500 miles through cities involved
5 a very considerable number of people.

6 MR. CHIEF JUSTICE BURGER: Thank you, Mr.
7 Greenberg, Mr. Reynolds, Mr. Preiser.

8 The case is submitted.

9 (Whereupon, at 3:00 o'clock p.m. the argument in
10 the above-entitled matter was concluded)