

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 pass-through 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 relocated 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