

EXECUTIVE SESSION

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TUESDAY, MARCH 21, 1978

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United States Senate,  
Committee on Finance,  
Washington, D.C.

The Committee met, pursuant to notice, at 11:30 a.m. in room 2221, Dirksen Senate Office Building, Hon. Russell B. Long (Chairman of the Committee) presiding.

Present: Senators Long, Nelson, Bentsen, Moynihan, Roth and Danforth.

The Chairman. The Committee will be in order.

Let me read this memorandum from the Office of Legislative Council. I will put the whole thing into the record, but I will just read certain sections.

It says: "Section 402(a) of the Social Security Act provides that 'A State plan for aid and services to needy families with children must -- (26) provide that, as a condition of eligibility for aid, each applicant or recipient will be required' -- and then it drops down to (B) -- "to cooperate with the State" ~~(4)~~ that is a condition of eligibility -- "to cooperate with the State in establishing the paternity of a child born out of wedlock with respect to whom aid is claimed, and in obtaining support payments for

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1 such applicant and for a child with respect to whom such aid  
 2 is claimed, or in obtaining any other payments or property  
 3 due such applicant or such child, unless (in either case)  
 4 such applicant or recipient is found to have good cause for  
 5 refusing to cooperate as determined by the State agency in  
 6 accordance with standards prescribed by the Secretary, which  
 7 standards shall take into consideration the best interests of  
 8 the child on whose behalf aid is claimed."

9 Now, Section 454 of the Social Security Act provides  
 10 that "A State plan for child support must -- provide that  
 11 such State will undertake -- in the case of a child born out  
 12 of wedlock with respect to whom an assignment under Section  
 13 402(a)(26) of this title is effective, to establish the  
 14 paternity of such child unless the agency administering the  
 15 plan of the State under part A of this title determines in  
 16 accordance with the standards prescribed by the Secretary  
 17 pursuant to section 402(a)(26)(B) that it is against the  
 18 best interests of the child to do so, and in the case of any  
 19 child with respect to whom such assignment is effective, to  
 20 secure support for such child from his parent (or from any  
 21 other person legally liable for such support) utilizing any  
 22 reciprocal arrangements adopted with other states (unless  
 23 the agency administering the plan of the state under part A  
 24 of this title determines in accordance with the standards  
 25 prescribed by the Secretary pursuant to section 402(a)(26)(B)



1 that it is against the best interests of the child to do  
2 so),"

3 In promulgating proposed regulations to establish the  
4 standards referred to in section 402(a)(26)(B) of the Social  
5 Security Act, the Secretary would include in section 232.13  
6 of the Code of Federal Regulations a subsection (j) which  
7 reads as follows:

8 "(j) Granting or continuation of assistance. The plan  
9 shall provide that the State or local agency will not deny,  
10 delay, or discontinue assistance pending a determination of  
11 good cause for refusal to cooperate if the applicant or  
12 recipient has complied with the requirements of paragraph  
13 (C) of this section to furnish evidence or information."

14 Also in promulgating such proposed regulations, the  
15 Secretary would include in section 302.31 of the Code of  
16 Federal Regulations a subsection (b)(2) which reads as  
17 follows: "(2) Upon receiving notice from the IV-A agency that  
18 an applicant or recipient has claimed good cause, the IV-D  
19 agency will suspend all activities to establish paternity or  
20 secure child support until notified of a final determination  
21 by the IV-A agency."

22 Subsection (j) of the proposed regulation 232.13 is incon-  
23 sistent with the provisions of Section 402(a)(26) of the  
24 Social Security Act in that it provides that assistance  
25 shall not, when the applicant or recipient has complied with



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certain other requirements, be denied, delayed, or discontinued pending a determination of good cause for refusal to cooperate; whereas such section 402(a)(26) provides that as a condition of eligibility the applicant or recipient will be required to cooperate unless such applicant or recipient is found to have good cause for refusing to cooperate.

Subsection (b)(2) of the proposed regulation 302.31 is inconsistent with the provisions of section 454(5) of the Social Security Act in that it provides that the title IV-D agency, upon receiving notice from the title IV-A agency that an applicant or recipient has claimed good cause for refusing to cooperate, shall suspend all activities to establish paternity or secure child support, whereas section 454(4) of the Social Security Act provides that such activities shall be discontinued only if the title IV-A agency determines that the same is in the best interests of the child.

It is axiomatic that an administrative regulation may not override or amend a provision of law it is designed to implement.

Further, it is a general rule of statutory construction that a provision of law, which is unambiguous on its face, is to be read literally. In other words, where the language of the statute is plain, the statute is to be construed as meaning what it says, the words of the statute being given their ordinary and customary meaning. Accordingly, in such a

1 case, legislative history may not be resorted to as support  
2 for administrative authority to promulgate regulations  
3 in derogation of the clear meaning of a statute.

4 Therefore, it is the opinion of this Office that the  
5 above cited provisions in the proposed regulations of the  
6 Secretary are inconsistent with applicable provisions of  
7 law, and for that reason would be invalid.

8 On the merits of it, some of us, and I in particular,  
9 have extreme cause for concern about these regulations  
10 because it looks to me as though, if these regulations, if  
11 they were permitted to stand, that any state that did not  
12 want to do anything about child support could completely  
13 negate the intent of Congress and do absolutely nothing  
14 about it, and if any state does want to do something about  
15 child support it would be a great deal more difficult to  
16 do it.

17 Mr. Stern, you have had a chance to look at this and  
18 hear both sides of the argument. What does that situation  
19 look like to you?

20 Mr. Stern. Mr. Chairman, I would agree that there are  
21 provisions in the regulation that tend to be somewhat open-  
22 ended and could be used as an abuse to subvert the intent of  
23 the program if the program administrators wanted to do so.

24 I will give you some specific examples. One is referred  
25 to by Mr. Hester that the child support agency is to suspend

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1 its activities on the basis of the applicant's filing a claim  
2 that she has good cause for refusing to cooperate.

3 The regulations really do not state anything about that  
4 occurring within a reasonable time period. Apparently, if  
5 an agency simply wanted to be very lax in determining good  
6 cause, that could go on for some period of time.

7 Another example, the regulations list the kinds of  
8 specific documents that are acceptable as evidence, but  
9 then they have a kind of catch clause that says if the  
10 state agency or local agency investigates the circumstances  
11 of the good cause claim, they can determine that good cause  
12 exists based on any verifying information that is acceptable  
13 to them.

14 While I can see where it would be desirable to have some  
15 flexibility, again, this could be based on pure hearsay or  
16 simply something a neighbor says. There does not seem to be  
17 a limitation on that.

18 Another example, the regulations require that an applicant  
19 for assistance, or a recipient, be given notice of a right  
20 to claim good cause for refusing to cooperate and this notice,  
21 having that right, has to meet requirements. And I could see  
22 where it could happen that if all nine requirements were not  
23 met, an applicant who does not have good cause, but could  
24 win an appeal just on the basis that the notice requirement  
25 has not been met completely.

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1 For example, the state, at their insistence, the  
2 state must require evidence. It is reasonable in some cases,  
3 not in every case.

4 I would think that there ought to be some limitation on  
5 that, or else that, too, could be a source of some abuse.

6 And finally, I would say that the reasons why it might  
7 be in a child's best interest not to require the mother to  
8 cooperate are stated quite broadly in the regulations in  
9 terms of physical harm and emotional harm which, I think,  
10 could really be found in virtually every single case, if a  
11 state agency were so minded to do so.

12 There again, as with the other things I have said, I  
13 think the problem is not that there is no reason at all for  
14 the item in the regulations, but there does not seem to be  
15 much of a limitation on a reasonable limitation, so it could  
16 be used by an agency that was not very interested in helping  
17 administer this program, it could be used as a way of  
18 subverting the program.

19 The Chairman. I find it a good cause for concern about  
20 something to me that gets pretty ridiculous. I am looking  
21 at this paragraph (e), "circumstances under which cooperation  
22 may be against the best interests of the child. The plan  
23 should provide that a state or local agency would determine  
24 the cooperation in establishing paternity and security  
25 support is against the best interests of the child."



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1 Let me drop down to the one that really concerns me,  
2 the one that I think is just ridiculous, absolutely silly.  
3 "The applicants or recipient's cooperation in establishing  
4 paternity or support is reasonably anticipated to result in  
5 emotional harm to the child for whom support is to be  
6 sought."

7 That language could mean any emotional harm. Every  
8 child in any family where they have financial problems or  
9 any sort of difficulty of mama and papa are not getting along  
10 are going to see some quarrels between mama and daddy and  
11 that does have an emotional burden to a child. Just the  
12 ordinary kind of rubric that occurs, especially if a no-  
13 account brother-in-law comes to live with the family for  
14 awhile or some such thing happens, the ordinary kind of  
15 quarrel that occurs within a family can do some, perhaps  
16 small, but some emotional harm to a child.

17 One would think that long before mama has to come in and  
18 ask for the welfare help that there would have been many  
19 quarrels between mama and daddy and the child, perhaps, has  
20 witnesses a lot of them.

21 Children live with that. They overcome it. Some of  
22 them may not. If they do not have the physical make-up one  
23 would normally expect, that sort of thing could happen.

24 All it could take is any situation for a person who  
25 comes in, I am afraid that if I tell you who the papa is

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1 that man will come in and beat me up. If the state does  
2 not want to do anything about it, that is all it takes.

3 It seems to me at a minimum, they ought to say if you  
4 want us to support you, you can do one of two things. You  
5 can sign an affidavit here that you do not know who the  
6 father of that child is or, in the alternative, if you do  
7 that, that can be used as evidence in court if, at some  
8 future point, you want to sue for child support from that  
9 man, or sue for inheritance rights for the child, anything  
10 of that sort.

11 I would think that would be in the best interests of  
12 the child. If papa should be successful later on in life  
13 and have something to leave the children -- in Louisiana,  
14 for example, we have a law that you have to leave something  
15 to your child unless you have grounds for disinheritance.  
16 That is something that a mother should think about.

17 In this case, all that a person would have to do is  
18 just say, I am afraid he might come back and beat me up.  
19 Or, we might have a quarrel and make the little child cry.  
20 That being the case, I am not going to tell you who he is.

21 It seems to me, if they do not want to do anything  
22 about it, that is all it takes, and I suspect that based on  
23 that, if they do want to do something about it, any poverty  
24 lawyer worth his salt, defending the father, would have all  
25 it would take to say there have been quarrels before and there



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1 will be quarrels again in a situation like this and it looks  
 2 to me, in some respects, it would be a standing invitation  
 3 for a man to go home and beat the woman up on the basis that  
 4 the one sure way he will not have to do anything to support  
 5 his own child is just beat the woman up, beat her to a  
 6 bloody pulp and, that being the case, nobody is going to make  
 7 him do anything about it.

8 I am most disappointed in this. It seems to me as  
 9 though this thing completely frustrates the whole purpose of  
 10 it and those of us who want do do something about child  
 11 support.

12 An additional problem it raises is that when we had  
 13 child support and the state started to do something about it,  
 14 it tends to reduce the number of claims that are not proper  
 15 at all, such as the case where a man is regularly living in the  
 16 home with the mother. She goes down to apply for the welfare  
 17 grant. Then she identifies the father, then they go trying  
 18 to find papa and they find him. He is there all of the time.

19 In which event, he has a decent job, plenty of income,  
 20 and so the family is not eligible to go on the welfare rolls.

21 It looks as though we have, by requiring to identify  
 22 the father and one seeks to locate the father and requiring  
 23 that the Internal Revenue Service cooperate -- and they did  
 24 not want to cooperate -- and requiring the Social Security  
 25 to cooperate, to give us a number -- they did not want to



1 cooperate. It took us a year to get that. We passed a law  
2 with HEW screaming and kicking against it and finally put  
3 it on the President's desk to get it signed into law and  
4 just to the point where the President of the nation who, for  
5 awhile, went along with those people in HEW who did not want  
6 to have a child support program, he finally admitted the  
7 thing is working, it is good, and we see this, and it seems  
8 to me that this would just mean that the program would be  
9 negated. We might as well forget about it.

10 Mr. Libassi, you are here to speak for the Department.  
11 I would be glad to hear your statement on it, unless somebody  
12 else wants to comment.

13 Mr. Libassi?

14 Mr. Libassi. Thank you, Mr. Chairman. I am accompanied  
15 today by Mr. Lou Hays, Deputy Director of the Child Support  
16 Program on my left.

17 Mr. Chairman, the Secretary has asked that I be sure  
18 and emphasize for the Committee his very strong commitment to  
19 this program and his very strong desire that nothing be done  
20 administratively in handling this program that would, in any  
21 way, slow up the momentum that has been building up over the  
22 past fourteen months in an effort to get the program moving,  
23 to give it the energy and drive that you sought for this  
24 program when you enacted it.

25 And, during these last several months, there have been

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many changes that we have made in the last several months that we have made in the program. We have expanded the number of staff that are working on the program. We have expanded the aid and assistance we are providing to the states. We have now collected over \$1 billion and we have set as our goal that we think we can double that so that we will collect \$2 billion in child support as a result of this program.

Senator Nelson. Is that \$1 billion in excess of what was being collected before?

Mr. Libassi. Yes, I believe that is correct, Senator. It is \$1 billion, half of which is related to AFDC recipients and half of it related to non-AFDC recipients. These are people who have come through this program and have sought the assistance of the program in collecting support for their children.

Senator Nelson. I am still not clear what you have said. By the operation of the provisions of this law, you are collecting support payments from fathers in excess of \$1 billion over what was due to this provision, over and above what you otherwise would have collected?

Mr. Hays. We have, in fact, collected as of this date approximately \$2 billion since the program went into operation August 1, 1975.

As of this moment, we are collecting approximately twice



1 as much on a nationwide basis in comparison to what was  
2 being collected by the states prior to the enactment of  
3 this program.

4 The actual amount that has been collected over and above  
5 what was collected prior to the enactment of this program  
6 varies substantially from state to state. The fact of the  
7 matter is, prior to the enactment of the child support  
8 program, the vast majority of states did not have any sort  
9 of active, statewide child support program.

10 We attribute the bulk of the collections that are being  
11 made today to the Federal legislation.

12 Mr. Libassi. The evidence is clear that the program  
13 does work and it can be made to work and we want to work  
14 with this Committee to assure its continued effectiveness.

15 Now, I think Senator, on the question you last raised,  
16 it was not the intent of the regulation to provide that a  
17 trivial and inconsequential emotional disturbance, either  
18 for the mother or the child, would constitute grounds for  
19 allowing or excusing the mother to refuse to cooperate with  
20 the effort to collect support.

21 The feeling was that we should provide, and recognize,  
22 that there may be instances, although few in number, where  
23 the disclosure of the child's true parent might cause  
24 severe problems for that child of a lasting nature that  
25 would adversely affect the child's ability to function and

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1 become a productive member of society.

2 The Chairman. Why do we not get to the point that is  
3 axiomatic in this. How can you make the decision? Suppose  
4 you wanted to say, all right, this is one of the unusual  
5 cases where this fellow is a criminal, he is dangerous, he  
6 has been known to kill. Let us say your best case.

7 This is the case, if we pursue this man and try to make  
8 him support those children, we put their lives in danger.  
9 Let us take the best case you can imagine.

10 How could you make that decision unless you knew the  
11 man's identity? How could you make an intelligent decision  
12 on whether this was an ordinary situation where the guy ought  
13 to be made to support the children, or this guy was a dangerous  
14 criminal, and if you pursue this particular case, it would  
15 put the Mama's life in danger?

16 How could you make the decision if you did not know who  
17 he was?

18 Mr. Libassi. Senator, the burden is on the applicant  
19 or recipient to come in and, at the time that good cause is  
20 claimed for not cooperating, the burden is on the recipient  
21 or the applicant to produce the documentary evidence that  
22 would sustain that claim or provide sufficient information  
23 that would allow the state agency, through an investigation,  
24 to verify those claims.

25 It is not merely that an assertion is made, well, I am

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1 worried about my husband, he may beat me up. There must  
2 be some documentary evidence that either there have been  
3 some court proceedings, that the father has been arrested,  
4 that the police have been called, that witnesses have been  
5 questioned.

6 So it is not simply taken on the basis of an assertion.  
7 The burden is on the applicant and recipient to make that  
8 case.

9 The Chairman. Here in your evidence you say the state  
10 can take any evidence that it wants. It seems to me, any  
11 evidence means the word of the mother, anything.

12 You state your intent to exclude only those extreme  
13 cases and frankly I think I can go along with you if that  
14 is what we are doing, if we have a reasonably simple  
15 regulation that excludes only the extreme cases. I do not  
16 see how you can contend that when you have a regulation that  
17 says emotional harm to the child for whom support is sought  
18 and it does not describe that emotional harm any further.

19 That could mean any emotional harm.

20 Mr. Libassi. Senator, we have, in the regulations,  
21 spelled out considerations related to emotional harm that  
22 should be taken into consideration, that is, issues of the  
23 degree of severity of that emotional harm, the duration,  
24 the historical evidence, the medical records that would estab-  
25 lish that there, in fact, is an emotional problem in the

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family. When it comes to the issue of emotional harm, the regulation tries to make very clear it is not simply, I get nervous about this, or I am disturbed about it, but there must be some evidence as to the current state of the individual, the health history of the individual, the intensity and probable duration of the emotional disturbance.

So we are going to try to make sure, in making that judgment, that the state is not simply relying on the word of the applicant but is, in fact, corroborating that with documentary evidence or corroborating that with an additional investigation.

It is not our intention that where an individual comes in and merely makes the assertion that that assertion alone will be sustained.

The Chairman. How could anybody possibly provide that kind of evidence without, in the course of providing that evidence, revealing who the man was?

Mr. Libassi. They would reveal the identity of the husband during the course of providing that kind of information to the state. The state would have that information available.

The Chairman. All right. It seems to me that that is not in your regulations. At a minimum, if this is a man who had been known to brutalize that woman and to do severe





1 emotion and physical damage to those children, he could  
2 not do all that and she could not establish that that had  
3 been the case without identifying the man.

4 Mr. Libassi. We do require, in the regulation, that  
5 where the information is available that they must provide  
6 sufficient information, including the name and address of the  
7 father, to permit the investigation to go forward to determine  
8 whether or not there is good cause.

9 The Chairman. Where is that?

10 Mr. Libassi. Section (c), paragraph 2. The plan shall  
11 provide that an applicant or recipient who claims to have  
12 good cause for refusing to cooperate will be required to  
13 provide sufficient information, then it goes on.

14 Senator Moynihan. Help us find this.

15 Mr. Libassi. 2177 of the Federal Register.

16 The Chairman. Show me the section.

17 Mr. Stern. Page 13 of your copy.

18 The Chairman. Where on page 13?

19 Mr. Stern. On the bottom of the first column.

20 Mr. Libassi. Paragraph (c) which is close to the  
21 bottom of the page.

22 Senator Moynihan. Mr. Chairman, may I suggest that  
23 the staff locate for members of the Committee where this  
24 passage is? We have two different xeroxes, three perhaps.

25 Let us all find this paragraph. Is that possible?

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1 Mr. Stern. Mr. Chairman, it seems to me in a case like  
2 the one that Mr. Libassi is referring to, that the woman  
3 can either meet the requirements of (c)(1) or (c)(2).

4 (c)(2) does say you do have to provide such information as  
5 the name of the father, but (c)(1) says all that she has  
6 to do as an alternative is provide evidence, as defined in  
7 these regulations, of the circumstances and that evidence  
8 under the section on evidence, says anything that the  
9 state agency is willing to accept as evidence.

10 If the agency wanted to get around this kind of thing,  
11 they would simply say to us, it is satisfactory evidence that  
12 we talked to the neighbors who live on both sides of the  
13 apartment. He says this is a mean fellow and therefore it  
14 is not necessary.

15 Mr. Libassi. Mr. Chairman, it does always lead back  
16 to the paragraph you had read earlier, the question as to  
17 whether or not we would accept any information which the  
18 state or local agency found acceptable, and I would like to  
19 speak to that in just a moment.

20 I did want to make the point that the information with  
21 respect to the father's name and address or documents related  
22 to court or medical or criminal records, which would also  
23 reveal the identity of the father would be evidence presented  
24 to the state agency.

25 To speak to the point that Mr. Stern has raised, it was

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1 not our intention in paragraph (f)(3) to suggest any  
2 evidence of any kind, regardless of its probitive value,  
3 would be accepted as sufficient.

4 This language could be interpreted to allow the word  
5 of the applicant alone, and nothing else. That was not our  
6 intention and, on that point, I believe some clarification  
7 by the Department would be in order to make clear to the  
8 agencies that what is expected here is some corroborative  
9 evidence, that, in fact, the claim is valid.

10 The Chairman. You and I are familiar with that rule of  
11 statutory interpretation. If something is clear on the face  
12 of it, it goes back to that old man -- what is that case  
13 before the Supreme Court? -- where they held that the statute  
14 was to prevent white slavery, but this fellow took this  
15 girl across the state boundaries, on a lark you might say,  
16 and the court said, the language of the statute is clear  
17 and the court has no business trying to construe it. If  
18 you cross the state boundary for immoral purposes, it is  
19 against the law.

20 So that it is very clear, if language is clear on the  
21 face of it, you do not go to some sort of explanatory legisla-  
22 tive history or anything like that. You have to follow --  
23 it says, the client shall provide the state or local agency  
24 investigate the circumstances of the good cause claim in  
25 a determination that good cause exists and may be based on

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1 any verified information acceptable to the state and local  
2 agency.

3 If they want to say, we want to take the mother's word  
4 for it, that is evidence. Any evidence.

5 They do not say -- it sets no standard. It says any  
6 verifying information acceptable and they could take their  
7 own word, if you want to so construe it.

8 Mr. Libassi. That language could be construed as you  
9 have described, Mr. Chairman, and it either needs to be  
10 clarified, modified or corrected in order to avoid allowing  
11 agencies to use that as a way of undermining the integrity  
12 of the program.

13 It is not intended that any excuses will be accepted  
14 and it is not intended to allow unverified information to  
15 be used. That section does need to be strengthened.

16 The Chairman. It seems to me, Mr. Libassi, you see,  
17 previously you had a proposed set of regulations which our  
18 staff looked at and thought they looked pretty good. They  
19 did not really get upset about it, and I think a lot of  
20 welfare agencies that were anxious to do something about  
21 child support looked at that and said it looks pretty good.  
22 They thought they could live with that and carry out perhaps  
23 what the intent was.

24 Then, having conducted some hearings and the welfare  
25 rights people complained about it, then most of the agencies

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1 thought that that was the right approach, you had the  
2 responsibility to look after these cases, then all of a  
3 sudden you come out without any further hearing, the Secretary  
4 comes out with this stuff here, which really causes those  
5 who are really concerned in making the best effort to do  
6 something about child support, like the Michigan people, to  
7 say, it puts all sorts of impediments in our way, and that  
8 is going to make it very difficult. Why did you not let  
9 these regulations be the subject of the same type hearing  
10 and the same type comment that those proposed regulations  
11 that were previously set down here were subject to?

12 Mr. Libassi. Mr. Chairman, we are in a situation where  
13 it is perhaps possible for us to meet the concerns of the  
14 Committee and the issues that were raised by Mr. Stern as  
15 we proceed. I would like to suggest that perhaps the  
16 regulation is now in its final form, but over the next 90  
17 days, the Department is prepared to receive comments from  
18 the state agencies and from other groups with respect to  
19 these regulations, the Secretary would be prepared to have a  
20 public hearing during this 90-day phase and, of course,  
21 we would be pleased to cooperate with this Committee which  
22 you or any of its members wish to convene as an oversight  
23 committee hearing. We would be prepared to cooperate in that  
24 effort during these 90 days.

25 At the end of the 90 days, we would be prepared to



1 incorporate changes such as the one you pointed to in a  
2 revised regulation which would be transmitted to the Congress  
3 for its review and information, so the Committee would have  
4 an opportunity to see that regulation.

5 We would want, during the course of these 90 days, in  
6 hearing these comments to be sure that the Committee and  
7 members of the staff were familiar with whatever issues  
8 were under consideration by the Department so we would not  
9 be caught in this last minute situation which I know is not  
10 your Committee's pleasure at all, in trying to correct  
11 situations at the very last moment.

12 So that I think, and the way that the regulation that  
13 is now out is in effect out for 90 days, at the end of that  
14 90-day period, the Secretary is prepared to revise and  
15 correct the regulation and to hold whatever public hearings  
16 prior to that, and to be sure to elicit comments from the  
17 state agencies.

18 Senator Roth. Let me ask this question. If, at the  
19 end of 90 days, you submit the modified regulations, let  
20 us assume they are not satisfactory, they are vetoed.

21 Does that mean that the current regulations under  
22 consideration will continue in effect?

23 Mr. Libassi. I would like a little time to think about  
24 that. I suspect that the original regulations, these, would  
25 not be superseded until the new regulations took effect.

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1 I would like to think that we would not be in a situation  
2 of having to face a legislative veto of Executive regulations.

3 I would like to think, in connection with the hearing,  
4 if this Committee chose to hold an oversight hearing in the  
5 90 days in connection with our own public hearing, we would  
6 have so thoroughly aired the issues that we would have  
7 devised a set of regulations that would not lead this Com-  
8 mittee to feel the necessity of exercising a legislative  
9 veto.

10 Senator Roth. I would share that hope. At the same  
11 time, I think that it is an important difference as to where  
12 we are. Let us assume that there is an honest difference  
13 of opinion. If these regulations -- which I might say that  
14 I have gotten negative comments on from the state of Delaware,  
15 as well. I would hate to find us in the bind of an either/or  
16 situation. That bothers me.

17 It seems to me that our ability, the ability of Congress  
18 to do something is considerably weakened.

19 The Chairman. You are also subject to this point, the  
20 point that the legislative counsel spells out in the memoran-  
21 dum here. His contention is -- and also the Michigan people  
22 contend -- that this regulation puts the cart before the  
23 horse, that the regulation actually is in conflict with the  
24 statute.

25 Mr. Moynihan?

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1 Senator Moynihan. Mr. Chairman, I would like to make  
2 a brief statement here, if I can, and I would begin by saying  
3 that a nice phrase came out of the women's movement, was  
4 the term "consciousness raising" and I would like to see if  
5 I can raise the consciousness of some people in HEW today.  
6 And that is to say something that I do not suppose that they  
7 have heard, and maybe they would listen to it.

8 Five years ago, I wrote a long, interminable book on  
9 welfare matters such that it probably discouraged anybody  
10 from reading the first 23 pages, but I wrote it as a Professor  
11 at the university, no position in government, no expectation  
12 of returning.

13 What I said, what I suggested, I thought was defensible  
14 in its own right. One statement that I made which I would  
15 like to say right now, the welfare system institutionalizes  
16 the exploitation of women.

17 I would like to repeat that. The welfare system insti-  
18 tutionalizes the exploitation of women.

19 There are four quick points. The first, that nothing  
20 distinguishes men from women more than the fact that women  
21 bear children.

22 Secondly, nothing is more distinctive about American  
23 society at this point in time than the extraordinary number  
24 of women who are raising children on their own, children  
25 which they bore to males who are either indigent or incapacitated.

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If anybody would like to know how unprecedented this condition for women is in our time, he should be interested to read the newest volume of the current population reports. The PEAK-23 series, number 66. Characteristics of American Children and Youth, 1976. It is without precedent in our social history, probably the history of the world.

My third point is that nothing is more probable than that the welfare system contributes to the system. As I say, it institutionalizes it, in my judgment. I do not assert this as proof. I say that I think it to be so.

Fourth, nothing is more manifest than that the bureaucracy of the Department of Health, Education and Welfare systematically resists this proposition, impedes inquiry into it, and tries to avoid changing the institutionalized exploitation. This was evident when you came forward with a program to require males to provide support. The resistance from the HEW bureaucracy was overwhelming.

It was resistance on behalf of the exploitation of women, and you have to demystify your views, if you are ever going to be able to understand that, I think.

I say to you, it is so.

Mr. Chairman, it is characteristic of the HEW bureaucracy that they never came near this Committee to talk about these matters. They never came near us. They thought that they could slip it by. They never came near me.

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1 Mr. Chairman, I will be guided in this matter by your  
2 wishes. I thank the Chairman.

3 Senator Danforth. Mr. Chairman, may I ask a question?

4 How does this regulation have anything to do with the  
5 exploitation of women?

6 Senator Moynihan. It has to do with the question of  
7 whether or not males will be required to provide some support  
8 for their children. It has been the institutionalized view  
9 of the welfare system that they should not be, that the woman  
10 should be left wholly dependent on the welfare system.

11 Senator Danforth. I thought it had to do with whether  
12 or not, under certain circumstances, a woman or her child  
13 could be spared, at the woman's own motion, I might say,  
14 spared from having to go through an investigation and a  
15 designation of the husband and going after his assets which  
16 would bring him back into the home from which she has been  
17 blessedly relieved.

18 Senator Moynihan. That is the way in which it will be  
19 presented, but the effective consequence, I expect it is  
20 expected that fewer males will be required. That is why,  
21 as Mr. Libassi said, a few years ago the vast majority of  
22 states had no system of child support at all, and it was  
23 presented as a way of helping, you see?

24 But there is never any arrangement of exploitation which  
25 is not presented by the exploiters as in the interests of.

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1 those who are being exploited.

2 It is a very common condition.

3 Having said that, may I make it perfectly clear that  
4 there are circumstances in which you do not press for support  
5 by a male. It is perfectly clear, and they should be made  
6 easy and straightforward.

7 Senator Danforth. Should there not be a little bit of  
8 flexibility?

9 Senator Moynihan. Yes, and judgment. What the hell is  
10 emotional harm? Who would ever measure it?

11 The judgment of the right of the mother to support.

12 The Chairman. Here is the situation. You have a lot of  
13 good people over there in that Department who feel that  
14 we ought to put people on the rolls and send them a check  
15 and you should not pursue the fathers and frankly, for a  
16 long time, they wanted to think in these terms.

17 He will probably marry again, or he will marry, if he is  
18 not married the first time, and he will have another family  
19 to support. Usually this kind of fellow who does not support  
20 his children does not have much income anyway. There is not  
21 much worth fooling around with anyway.

22 As long as that attitude was being accepted, we were  
23 getting a runaway increase in these rolls and we started to  
24 say, well, if he can contribute, he ought to be required to  
25 do so and we ought to identify the father and track him down



1 down and make him contribute.

2 When we started to do that, that was the number one thing  
3 that stopped the mushrooming of these welfare rolls.

4 Senator Moynihan. If the Chairman would yield, you were  
5 out of the room last week when I took the liberty of reading  
6 some passages from the Washington Post story on this program  
7 by Spencer Rich, who is a distinguished journalist. And he  
8 used to work -- I may be slightly wrong. When this program  
9 was first proposed, I have it right here. I would like to  
10 read and introduce our dear friends and colleagues to this  
11 reality.

12 He said, when the program was first presented, "Four  
13 years ago, when Russell B. Long pushed through a Senate  
14 amendment creating a Federal program to track down runaway  
15 fathers of welfare children, there was lots of snickering  
16 and huffing" and snickering would have been the response, and  
17 that is institutionalized sexism.

18 I am sorry I cannot think of it as any other way. Why  
19 should men have to pay for their children just because they  
20 are fathers? It is institutionalized sexism. You do not  
21 have to agree, of course.

22 Mr. Chairman, I did interrupt you, but I did want that  
23 for the record.

24 The Chairman. Thank you, Senator.

25 Secretary Califano has told us, I assume he is completely

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1 sincere about this, that he very much believes in this child  
2 support program and we had some of the people that were  
3 working in this area the other day and he made a speech the  
4 other day and encouraged them to keep up the good work.

5 He agreed that this program was important and that we  
6 ought to keep forging ahead and make it work more effectively.

7 It seems to me what you ought to do is hold up these  
8 regulations, give us a chance to comment on them, talk about  
9 the details involved and before the regulations go into  
10 effect, that we ought to be in a position of knowing what  
11 you had in mind and going along with it.

12 We were not particularly upset, as I understood it.  
13 Mr. Stern was one of our professionals looking at it. The  
14 people on the staff were not particularly concerned or upset  
15 about the proposed regulations that had been issued prior to  
16 the time these were issued, were you, Mr. Stern?

17 Mr. Stern. That is correct.

18 The Chairman. It seems as though those regulations made  
19 it clear that you were only going to excuse a mother from  
20 cooperating in what you regarded as extreme cases. I thought  
21 that was basically what we were talking about.

22 Mr. Libassi, it is my impression that that is the kind  
23 of thing that you would like to achieve.

24 Mr. Libassi. Yes, Mr. Chairman, that is correct.

25 The Chairman. My concern is that this does not do that.

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1 As I say, what I am especially concerned about is not  
2 only the fact that this can be construed as an invitation  
3 for an errant father to come beat that woman up and abuse  
4 his own children just on the theory that if ne engages in  
5 that kind of conduct he will not have to support them,  
6 that he can be excused from the child support program.

7 I am also concerned about the fact that if we are going  
8 to let a mother say, or encourage people to think that they  
9 can get by without identifying the father, that we will have  
10 a great number of unworthy cases on the rolls of people who  
11 in the normal procedure of complying with the child support  
12 requirement would reveal the fact that the father has, at  
13 all times, be available to support those children and was, in  
14 fact, doing so.

15 I, for one -- and I think I speak for the majority of  
16 the Senate in this respect -- feel that those who are able  
17 to support their children ought to be required to do so before  
18 we undertake to tax people to support someone else's children.

19 Do you think that your people could hold this matter up,  
20 Mr. Libassi, to give us a chance to suggest some changes in  
21 this and consider some changes yourself?

22 Mr. Libassi. Mr. Chairman, I am in the strange position  
23 of going before this Committee and advocating strongly  
24 welfare and the strength of this program. I am deeply con-  
25 cerned that any actions that we may take which in any way

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1 jeopardize the effectiveness of this program would set back  
2 the efforts which you have been engaged in for many years  
3 and which Secretary Califano has been engaged in now for  
4 fourteen months.

5 I would like to underscore the point that Senator  
6 Moynihan just made by noting the extensive cooperation that  
7 this program has received by recipients of welfare who do  
8 not wish to be exploited by the system and are prepared,  
9 voluntarily, to come forward and take advantage of this  
10 opportunity to establish the paternity of the child and assure  
11 that the father does, in fact, meet his fiscal and social  
12 responsibilities to the family.

13 So that I do think that we have gone through a period of  
14 evolution on our attitudes on this issue and clearly welfare  
15 mothers do want to cooperate with this program and do want  
16 to participate in it, and the dollars that are being recovered  
17 are a clear indication of that.

18 The program is in a difficult legal position at this  
19 moment, and I am concerned that any actions that we take which  
20 would have the effect of suspending the mandatory aspects of  
21 this program which would subject to legal challenge and would  
22 result in court decisions directing HEW to suspend the manda-  
23 tory enforcement of this program would severely set back the  
24 efforts that you have been engaged in for so long and  
25 which we have now taken up so seriously.



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I am pleading with the Committee and advocating that in terms of either suspending or withdrawing or invalidating the regulations, that those moves by the Committee, or by the Department on its initiative, would raise serious legal questions.

I believe that we would be -- it is difficult for me to discuss the cases because we are now involved in litigation and I do not want anything I say here now to be used in connection with that litigation. I certainly do not want to advance too strongly the arguments we will be facing in court, but we are involved in the Court of Appeals today and argument has been postponed by the Court on the assumption that we would come forward with these regulations clarifying what is meant by "good cause".

It is likely that motions would be made to put that argument on and then the court would be faced with the issue as to whether or not we could go forward with the mandatory program in the absence of these regulations.

There have been court opinions already in Connecticut, West Virginia and Pennsylvania in which the courts have enjoined the enforcement of the mandatory cooperation aspects of the program because of the absence of regulations.

I am afraid that the situation is simply fraught with legal uncertainties. I do not, in any sense, want to challenge the Committee, but some would argue that these





1 regulations have already taken effect. Some would argue  
2 that the time in which the Committee could invalidate those  
3 regulations has passed, and there are numerous issues which  
4 we could be confronted with if we do not have regulations  
5 in effect.

6 It is for that reason that I was arguing in support  
7 of a program that if the regulations could remain in effect  
8 for 90 days you have the Secretary's commitment that he will  
9 hold public hearing, that he will amend the regulations to  
10 take into account the issues which Mr. Stern has raised  
11 reflecting the concerns of this Committee.

12 We are prepared to amend the regulations, but we are  
13 concerned, if we go into a situation where we have no regula-  
14 tion, the program is thrown into legal limbo and, at that  
15 point, I am afraid that we would be subjected to court  
16 actions across the country which will severely retard the  
17 program and which we think would necessitate months of  
18 effort to put it back on the track again.

19 It is for these reasons that I am pleading for the  
20 program.

21 The Chairman. You have been challenged in court, which  
22 certainly you anticipated that the welfare rights people  
23 would challenge this program, and so far the Supreme Court  
24 has gone along with you. The District Court decided for you  
25 and the Supreme Court refused certiorari and they could think

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1 up some other ideas, and I am sure they will, to challenge  
2 it all over again.

3 But it seems to me that if your case is properly  
4 defended, you take the statute and say this is that the  
5 mother who is applying for welfare must cooperate . Unless  
6 we find a reason why they should not cooperate.

7 I would construe that to mean that if that is part of  
8 the statute is effective even prior to the time you issue  
9 a regulation, that they must cooperate unless you provide  
10 some basis on which they will be excused from cooperating.

11 It seems to me if a case is properly defended as though  
12 you would win that.

13 It does not shock me to find that some states somewhere  
14 would side with the National Welfare Rights group. They  
15 probably have some of their former members on some of these  
16 courts to decide some of these cases for them.

17 It would seem to me that you ought to be able to defend it  
18 adequately, and so far the Supreme Court has gone along with  
19 you. Up to this point, the Supreme Court has upheld you.

20 I do not know why you want to throw in the towel when  
21 you are winning in the court of last resort.

22 Mr. Libassi. Mr. Chairman, an unusual motion was made  
23 by the plaintiffs that went from District Court directly  
24 to the Supreme Court. The Supreme Court declined to hear  
25 argument on that matter and I feel somewhat constrained not

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1 to discuss too much on the merits of this case. But I am  
2 concerned that the Committee fully understand that we are  
3 troubled by the possible action by the Court of Appeals in  
4 the District of Columbia in this matter.

5 I did want to add, Mr. Chairman, we now have a Federal  
6 District Court in West Virginia, a three-judge court in  
7 Connecticut, and we have a state Court in Pennsylvania who  
8 have ruled against the Department. There are other decisions  
9 that go our way.

10 We have a Federal court in West Virginia, a three-judge  
11 court in Connecticut and a state court in Pennsylvania who  
12 have, in fact, said, in the absence of the good cause stan-  
13 dards, the cooperation could not be compelled.

14 My feeling is that, for a matter of the three months,  
15 90 days that we allow these regulations to stand, that we  
16 issue clarifications as to what we mean and intend by these  
17 regulations, in picking up these suggestions that Mr. Stern  
18 has made, that we incorporate those changes in the regulations  
19 at the end of 90 days, and we have preserved the legal  
20 position of the program.

21 But if, during this 90-day period, we have no regulation  
22 in effect, I am troubled about the legal consequences to the  
23 program. It seems to me that the risk is so severe and the  
24 gain is so small, that we should not take it. The gain is  
25 only a matter of 90 days. In 90 days we can correct the

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1 situation and we can correct differences now by policy  
2 directive. In that sense, we are able to correct these  
3 sensitive issues we have touched on.

4 Now, by policy, we can incorporate the changes in  
5 regulation by the end of 90 days and we have preserved the  
6 integrity of the program.

7 To invalidate the regulation or withdraw it raises many  
8 problems, Mr. Chairman, and I do not want to make, before  
9 the Committee, all of the arguments that I believe would be  
10 solid arguments for plaintiffs to raise in challenging our  
11 actions. I would rather not do that in this forum; if I may,  
12 I would like to preserve something.

13 Senator Bentsen. Mr. Chairman, I would like to under-  
14 stand if there is any loss in the prerogatives. Suppose  
15 such changes in the regulations are not to our satisfaction  
16 during those 90 days. If we follow your suggestion, are  
17 we in a lesser position, the Congress's position, than we  
18 are today in taking action?

19 Mr. Libassi. Senator, once the regulation of the  
20 Department is issued at the end of 90 days, it would be  
21 transmitted to the Congress as required by the statute. I  
22 want to add, if I may, with all due respect to the Committee  
23 and with due respect to the Congress, it is the position of  
24 the Department of Justice that that provision of the  
25 statute is unconstitutional and it is our position that we

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1 would transmit the regulation for the review and informa-  
2 tion of the Congress, but I have to report that it is the  
3 position of the government that the Congress does not have  
4 the authority under the Constitution to invalidate a regula-  
5 tion.

6 Nevertheless, having made that point, Senator, I think  
7 that this Committee is in no different position 90 days from  
8 today than it is from today and you do not compromise your  
9 claims in any way, because we will resubmit the regulation  
10 at the end of 90 days. So there is no change in whatever  
11 authority the Senate has with regard to this matter. There  
12 is no change in that.

13 Senator Bentsen. Mr. Stern, did you agree with that?

14 Mr. Stern. Of course, I do not agree that it is illegal  
15 to have a correctional vehicle. I think that if these  
16 regulations go into effect, the difference is that 90 days  
17 from now your choices between these regulations and the  
18 modifications that are proposed where now your choice is  
19 between the existing regulations and these regulations, so  
20 your situation would not be quite the same in 90 days.

21 The Chairman. Frankly, my view on this matter is that  
22 we would be a lot better without regulations that we object  
23 to than even if the whole thing, even if they won the lawsuit.  
24 We would be better off without these regulations that we  
25 object to than to be stuck with regulations we do not want

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1 and try to get loose from them. It would seem for me that  
2 it would be far better to go on ahead as we are now and, at  
3 least, you do not have something that just gives people a  
4 wide open excuse for not cooperating in any respect at all.

5 In other words, let us assume for the sake of argument  
6 that we lost the case in the Supreme Court. Then we would  
7 be under what would amount to an almost compelling situa-  
8 tion that we would have to act. You would have to come down  
9 with new regulations, or Congress would have to act one way  
10 or another and I have no doubt that we will.

11 I do not want to have something in this program that  
12 does not make the program work effectively.

13 Mr. Libassi. Mr. Chairman, I am prepared this morning  
14 to indicate that the Department will issue clarifying instruc-  
15 tions immediately within ten or fifteen days on the issues  
16 which Mr. Stern raised, so I am prepared this morning to  
17 commit the Department to adopt those policies which meet the  
18 objections, which have been raised.

19 I am also prepared to say that, in connection with our  
20 regulations, when they have been revised, at the end of 90  
21 days, these policies will be incorporated in the revised  
22 regulation -- I am prepared to indicate that the point was  
23 very well-made by Mr. Stern that the requirement of notice  
24 is vague and uncertain. We are prepared to issue a form  
25 notice which, if issued, would meet the requirements of the

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1 law. We are prepared to eliminate any uncertainties about  
2 what the notice requirement must contain.

3 We are also prepared to indicate that there ought to  
4 be some limits on how much state assistance is given in  
5 gathering documentary evidence.

6 We realize that the state should not go on a fishing  
7 expedition, so we are prepared to issue clarified statements  
8 today at this Committee hearing on the issues that Mr. Stern  
9 has raised. We are prepared to put those in the regulations  
10 at the end of 90 days and are prepared to participate in any  
11 oversight hearing the Committee may hold during the 90 days  
12 where we will learn in detail any objections that you have  
13 to the regulations.

14 Senator Danforth. Mr. Chairman, suppose that the fears  
15 of the Chairman are accurate and that these regulations turn  
16 out to be the key to the Treasury. How long would it take  
17 HEW to know that?

18 Mr. Libassi. We are asking for reports from the State  
19 agencies to document that.

20 How often will those reports be coming in?

21 Mr. Hays. Every three months.

22 Mr. Libassi. Every three months.

23 Once the program is operational, we will be getting  
24 reports every three months on the number of instances where  
25 individuals have claimed good cause and the number of

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instances in which we have excused recipients from cooperating. We would know in three to six months time. Senator Danforth. We would have factual knowledge as to the number of times that this has been claimed?

Mr. Libassi. That is right.

Senator Danforth. Would we also have knowledge as to the fiscal effect of such claim?

Mr. Libassi. Yes, he would have information on the amount of monies collected and the amount of monies that we would not be collecting as a result of excusing cooperation. Senator Danforth. Suppose that it turned out to be a raid on the Treasury. You would start getting wind of that, you think, in about three months?

Mr. Libassi. I would say certainly that we would have hard data in three to six months and we would have anecdotal data coming in from the state agencies within that three-month time.

Senator Danforth. In three to six months, you think you would have a pretty good idea, based on the facts that come in as to whether or not the concerns of the Chairman are accurate?

Mr. Libassi. That is correct, Senator.

Senator Danforth. Supposing that you make such a determination. Supposing that it is clear in six months that this is a raid on the Treasury. Then how long would it





1 take, procedurally, to undo that?

2 Mr. Libassi. Regulations could be issued within 90  
3 days, allowing for a comment period. Then new regulations  
4 could be done within 90 to 120 days at the longest to issue  
5 to corrective regulations.

6 That is, assuming that the Congress did not choose to  
7 correct those problems on their initiative, we would be able  
8 to correct those within 90 days.

9 Senator Danforth. You could correct them within 90  
10 days, or half a year?

11 Mr. Libassi. I think that we could put regulations out  
12 within 90 days.

13 Senator Danforth. We are talking about HEW's being able  
14 to ascertain the extent of the problem and correct that  
15 problem without any act of Congress in somewhere between a  
16 half a year and a year. Is that right?

17 Mr. Libassi. I would say a year to nine months.

18 Senator Danforth. Nine months to a year?

19 Mr. Libassi. Six to nine months.

20 Senator Danforth. Six to nine months.

21 Mr. Libassi. It would not take us a year to correct  
22 them.

23 Senator Danforth. Six months to nine months. If  
24 Congress were informed as to the data that you collect and  
25 the anecdotes that you collect, Congress would also be able

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to act, would it not?

Mr.Libassi. Yes, sir, that is correct.

Senator Danforth. The Congress sometimes is not exactly the paragon of speed, either, but we could hopefully move with a degree of dispatch, is that not right?

Mr. Libassi. That is right, Senator.

Senator Danforth. With the information and the facts and the studies and the reports and the anecdotes that you gather, will they also be made available to this Committee?

Mr. Libassi. Yes. We will get the reports we gather from the states available to the Committee and we would be prepared to testify before the regulation goes into effect, and afterwards, as to what we are learning as we go along.

I can assure the Committee that the Secretary is so firmly committed to act at any point that he believes this program is faltering, and I am here in an effort to preserve the program from faltering, so that the first evidence that we had that any of the regulations after we have changed them and corrected them to conform with the suggestions that have been made, if we find that even those regulations are not adequate to do the job, the Secretary is prepared again to change those regulations, to see that the program does not falter.

Senator Danforth. How confident are you that the data



1 you collect will give a good idea as to whether or not the  
2 Chairman's fears are justified?

3 Mr. Libassi. I would not want to stand behind the  
4 accuracy of all of the state data that we collect through  
5 our system. It is subject to some question.

6 Senator Danforth. If it has a significant effect on  
7 the Treasury, you know that?

8 Mr. Libassi. We would know that quickly, also our  
9 conversations with the state agency officials, particularly  
10 those responsible for enforcing this program, would quickly  
11 reveal whether or not there was a raid on the Treasury.

12 Senator Danforth. Would you be able to project the  
13 amount of the raid to the nearest \$50 million to \$100 million  
14 within three months' time, six months' time?

15 Mr. Libassi. I think that we would be able to learn  
16 very quickly whether there are a substantial number of welfare  
17 recipients that have been excused from cooperating, and that  
18 would be the group that we would know very quickly the amount  
19 of dollars involved.

20 We would be able to tell by multiplying the number of  
21 individuals excused from cooperating how much we are losing  
22 by way of child support under those circumstances.

23 Senator Danforth. I know you are in litigation. Could  
24 you give us your best judgment as to the odds if these  
25 regulations were rejected by the Congress, could you give us

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1 your best assessment as to the odds that the mandatory  
2 aspects of the program would be enjoined?

3 Mr. Libassi. It is our view on the basis of reviewing  
4 the record in connection with the Court of Appeals in the  
5 District of Columbia that there is a very strong likelihood  
6 that the injunction would be issued.

7 Senator Danforth. Better than 50 percent?

8 Mr. Libassi. Yes, Senator.

9 Senator Danforth. That would run nationally?

10 Mr. Libassi. Yes. It would enjoin the Secretary from  
11 carrying out the program.

12 Senator Danforth. Do you know the degree of revenue  
13 effect that such an injunction would have?

14 Mr. Libassi. The major concern about invalidating the  
15 mandatory cooperation is that the voluntary cooperation part  
16 of the program then is also put into jeopardy. The point I  
17 want to make, to some extent, and I do not know how much, to  
18 some extent the fact that the program ultimately is mandatory  
19 is what makes and keeps the voluntary level of cooperation  
20 high, and it is my concern that not only would we lose the  
21 mandatory aspects of the program, but there would be some  
22 erosion of the extent of the voluntary cooperation.

23 I have no way of estimating at all what that would run.

24 Senator Danforth. The mandatory aspect of the program  
25 collects what rate per year?

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1 Mr. Libassi. I do not know the correct answer to that.  
2 Senator Danforth. Did you not say that you said that  
3 you hoped for a \$2 billion annual production?

4 Mr. Libassi. We are now experiencing \$1 billion a year  
5 collection, half of which comes from recipients of welfare.  
6 We are now getting in from the total program, mandatory and  
7 voluntary, about \$500 million in the AFDC side of the pro-  
8 gram and another \$500 million from non-AFDC families.

9 Senator Danforth. What is the total amount that would  
10 be jeopardized?

11 Mr. Libassi. I am just not able to answer that ques-  
12 tion. I would like to try to get, if time allows, a better  
13 estimate from the program people. I am not prepared to give  
14 that at this moment; I just do not know.

15 Senator Danforth. Could you estimate it?

16 Mr. Libassi. Let me say this. The state of Michigan  
17 estimates that 30 percent of the cases would involve mandatory.  
18 I believe that is high, but we estimate that perhaps 10  
19 percent of the cases would involve individuals who claim that  
20 they had good cause for exception. Somewhere between 10 and  
21 30 percent of the recipients would be claiming good cause.

22 Senator Danforth. I am not talking about good cause.  
23 I am talking about the effect in dollars on the Treasury  
24 of an injunction on the mandatory aspects of the programs.

25 Mr. Libassi. I just do not have that, sir.

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Senator Danforth. Could you guess?

Mr. Hays. In my view, it would be extremely difficult at best to make such an estimate. As Mr. Libassi indicated, it is very difficult to measure what amount of the voluntary cooperation we are currently --

Senator Danforth. Just give me the mandatory part.

Mr. Hays. It would be taken away.

Senator Danforth. If you had no mandatory program, what would be the effect?

Mr. Hays. Taking it to its logical conclusion, 100 percent.

Senator Danforth. Not the voluntary, the mandatory part in dollars, what does that amount to?

Mr. Libassi. I just do not believe we are able to answer that. I would hate to pull a number out of the hat. I am afraid there is no basis, other than pure speculation on our part.

The Department has been so criticized by Senator Moynihan in coping with deficient data.

Senator Danforth. We heard from the Michigan report last week. We were given some piece of paper from Michigan on the basis of five counties. There was an extrapolation of the effects nationally and we were told that was \$220 million a year, or \$240 million a year on the basis of Michigan.

If you take those figures, what would be the loss of the



1 whole mandatory program?

2 Mr. Libassi. I want to note that we disagree with  
3 those estimates, as you can imagine. We do not believe the  
4 program in any way would cost \$220 million.

5 As the state of Michigan has indicated, if we take  
6 their figures --

7 Senator Moynihan. Mr. Libassi, if you would let me  
8 interrupt. As a courtesy to Senator Riegel who has asked  
9 me to state that he disputes those figures also and he has  
10 a letter that he would like incorporated in our record.

11 Mr. Hays. If the assumption in the estimate provided  
12 by the state of Michigan were to be assumed to be correct,  
13 that 30 percent of the program involves essentially mandatory  
14 cooperation, then 30 percent of our current \$500 million  
15 AFDC collections would be lost if the mandatory collection  
16 requirement were invalidated. That would be \$150 million.

17 Senator Danforth. Roughly \$150 million would be lost  
18 plus any additional losses as a result of the voluntary part  
19 of it being weakened as a result.

20 Mr. Hays. Correct.

21 Mr. Libassi. I would add, Senator, aside from the  
22 dollars, it is so hard to get an organization and operation  
23 functioning with some momentum. It takes such tremendous  
24 energy and drive, which has been brought to bear on this  
25 program, that the administrative consequences of an injunction

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1 will be far more costly than what would be, in fact, costly  
2 to the Treasury.

3 I think that an injunction would have that kind of an  
4 effect on the agencies around the country. That is why we  
5 are pleading, in complete agreement with the Chairman, as  
6 to the objectives and goals, we are pleading for an opportu-  
7 nity to run the program, do the job, without being under court  
8 orders constantly directing us how to run this program, and  
9 that is what is most troublesome.

10 Some of the court decisions, Mr. Chairman, are allowing  
11 states to develop their own regulations on what would consti-  
12 tute good cause for not cooperating. If we start ending up  
13 with 30 or 40 states adopting their own standards, we will  
14 have no uniform, national standards for this program.

15 That is the kind of consequence that is no speculation  
16 but that I believe is the reality in light of the court  
17 decisions, the kind of reality that we are trying to avoid  
18 over the next 90 days.

19 Senator Nelson. Mr. Chairman, I know everybody else  
20 has schedules. I have a pretty full schedule of meetings  
21 in my office starting in about 40 minutes.

22 One, if we are going to continue, I would like to leave  
23 my proxy and Senator Haskell's proxy.

24 Two, I asked my staff to call the state of Wisconsin.  
25 They have been following the procedures, the good cause rule,

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1 as their own administrative practice. They say they rarely  
2 have a good cause request. It is a tiny percentage and no  
3 problem in terms of administering it themselves.

4 I think that, Mr. Chairman, HEW will deal with us in  
5 good faith. It seems to me that we have a good opportunity  
6 to have an adequate input to see that the regulation does  
7 not compromise what the Chairman's proposals seek to  
8 accomplish and it seems to me that I see no legal impediment  
9 or rather, I do not see that that in any way might compromise  
10 our legal posture by delaying. As suggested by the counsel,  
11 our situation constitutionally, it is precisely the same  
12 three months from now as it is today.

13 It seems to me that we should see that we cannot work  
14 it out.

15 In any event, I do have to go and I would want to leave  
16 my proxy.

17 The Chairman. Mr. Swoap?

18 Mr. Swoap. I just wanted to observe, Mr. Chairman,  
19 first, if I might respond to one point just raised by Senator  
20 Nelson, that those figures, of course, Senator Nelson, are  
21 in the context of present law and present practice and not  
22 in the context of the new regulations. It is anticipated  
23 by many of the people expressing their concern that the  
24 number of objections for good cause would substantially rise  
25 in the presence of the new regulations, not in the presence

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1 of existing law.

2 We have to be clear that we are comparing the same  
3 kinds of apples in that situation.

4 Senator Nelson. It was their conclusion at the grass  
5 roots level where they worked upon this procedure that it  
6 would not, and they were perfectly happy with the regulations  
7 suggested by HEW. That was their conclusion.

8 Mr. Swoap. The other two points that I think the  
9 Committee should be aware of, first of all, of course, the  
10 statute on which any injunction might be issued, the basis  
11 for such an injunction is the very statute that gives the  
12 Congress, the Senate, the right to veto the regulations so  
13 to argue an injunctions threat, it seems to me, would always  
14 impair the ability of the Senate to veto these, or any other  
15 regulations.

16 So that reasoning, it seems to me, while very real and  
17 a real concern in the minds of HEW, it seems to me to be  
18 somewhat circular, because it would always, then, impair  
19 the ability of the Senate to veto any regulations that would  
20 be issued.

21 The other concern that I have about some of the informa-  
22 tion given by Mr. Libassi in regards to your question,  
23 Senator Danforth, on the speed with which we could discern  
24 a trend or discern a raid on the Treasury, I think that it  
25 would be much longer than that, which it was described by

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1 Mr. Libassi as a formal welfare administrator. I have  
2 found that by you go through the filing of good cause  
3 affirmations, the investigation of those affirmations,  
4 the determination of the ultimate effect of those affirma-  
5 tions on the grant itself, the paying out of the grant, the  
6 claiming of the grant through the HEW grant process, I  
7 would believe that would be much more like 18 months to  
8 two years before such a trend could be determined.

9 The Chairman. Senator Moynihan?

10 Senator Moynihan. Mr. Chairman, I would like to say  
11 two things, briefly. First, in response to the question of  
12 my colleague, Senator Danforth, about whether this is a key  
13 to the Treasury, I would simply like to repeat a judgment  
14 that I know almost nobody shares. I do not express it.  
15 Three people, ten people in this room who heard me and  
16 three who agree, at most.

17 I have heard, over and over during 15 years in this  
18 business, that the issue of welfare is not what it costs  
19 the people who pay for it, but what it does to the people  
20 who depend on it. But my concern here has always been  
21 welfare is institutionalized sexism. It is a system whereby  
22 the government creates an institutional setting that makes  
23 women dependant on the state.

24 I repeat that I would spend a lot of money to get out  
25 of that.

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1 Second, Mr. Chairman, I would like to say that it  
2 seems to me that Mr. Libassi is a man of transparent candor  
3 and manifest good faith and I am much impressed by his  
4 proposal, but I would repeat what I said earlier. This is  
5 your program. It was enacted over the great resistance of  
6 the bureaucracy and I will support whatever you think is  
7 the best thing to do.

8 The Chairman. Mr. Libassi, it looks to me that what  
9 you have here is likely to be stricken down anyway. It will  
10 do nothing but create confusion.

11 If you recognize, as you seem to do, that these regula-  
12 tions would have to be changed, I do not know why you cannot  
13 hold this matter up with the understanding that we will have  
14 new regulations. It seems to me as though that is the best  
15 approach.

16 Perhaps with the new regulations, we can agree on it.

17 Senator Moynihan. Mr. Chairman, will it take 90 days  
18 to produce new regulations?

19 Mr. Libassi. Senator, we, in issuing the current  
20 regulation, we offered a 90-day comment period to allow the  
21 states and others to comment on this draft, so we are  
22 committed to the 90 days. We certainly could have an over-  
23 sight hearing of this committee during that 90 days, as well  
24 as a public hearing, and I think most of these issues could  
25 be ironed out well in advance of the 90 days.



1 The Chairman. Mr. Libassi, you held all of these  
2 hearings that led to this regulation and, after you had  
3 them, you submitted a proposed set of regulations that did  
4 not look too bad. Then you came up with this one.

5 Since this one was issued -- how long has it been since  
6 this one was issued, the one we are talking about now?

7 Mr. Libassi. It was issued December 30th, Mr. Chairman.

8 The Chairman. December 30th.

9 Mr. Libassi. December 30th it was signed, yes, sir.

10 The Chairman. The Secretary could issue another one  
11 in short order, could he not?

12 Mr. Libassi. Senator, I am deeply troubled about discuss-  
13 sing some of these legal issues because they will be the  
14 subject of litigation, but let me make this one point. It  
15 could be argued that the Secretary does not, in fact, have  
16 the power to withdraw this regulation at this time, and I  
17 am trying to avoid making a lot of work for the lawyers and  
18 keeping them all processed during the next 90 days, but some  
19 would argue that we do not have that authority of recognizing  
20 that. I want to keep our flexibility on this point.

21 I am afraid that what will happen is that the lawyers  
22 will have a field day with this regulation and we will all  
23 be set back. I think the safest thing for the program, in  
24 light of our willingness to make the changes that Mr. Stern  
25 has highlighted today now, that we could not do any more to

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1 indicate the Secretary's good faith intention of being  
2 responsive to the issues that are of concern to this  
3 Committee, and he has indicated, and instructed me to say,  
4 that he will issue new regulations at the end of 90 days and  
5 he is prepared to participate a hearing if you wish and  
6 prepared to hold a public hearing at the Department so that  
7 everyone's views get heard.

8 We would simply ask that, on the basis of that, while  
9 we may be in error, we may, in fact, win all of these  
10 cases, but it would be that litigation question and the risk  
11 that we do believe is substantial, that we may lose, and  
12 I think that would be most unfortunate for your objective,  
13 Mr. Chairman.

14 The Chairman. We cannot vote today, so I am going to  
15 call a meeting at 9:00 o'clock tomorrow. I hope that you  
16 can be here, Mr. Libassi. Maybe the Secretary will make  
17 himself available to us. To me, it would be a tragedy.

18 Senator Nunn has not been mentioned, but he did some  
19 work on this. He is not a member of the Committee, but a  
20 member of the Senate in this area. It would be a sad thing,  
21 as hard as we have worked to make this thing succeed, that  
22 the thing should fail.

23 I think that you have shared the objective that I have  
24 that you want this law to work. I want it to work. It is  
25 my judgment that it is in the best interests of these children

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1 that they ought to know who their father is and they should  
2 be pressed to comply, to make payments to the children.

3 Perhaps we can talk about it later on today, or some-  
4 time tomorrow and hopefully --

5 Senator Moynihan. May I say how pleasant it has been  
6 to have Mr. Libassi? It has been a greatly reassuring  
7 testimony.

8 The Chairman. The Committee is recessed.

9 (Thereupon, at 12:55 p.m., the Committee recessed, to  
10 reconvene at the call of the Chair.)

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