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HEARINGS
Before The

COMMITTEE ON FINANCE

UNITED STATES SENATE

S. 2673 - TUITION TAX CREDIT ACT OF 1982

WEDNESDAY, SEPTEMBER 15, 1982

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WEDNESDAY, SEPTEMBER 15, 1982

U.S. Senate
Committee on Finance
Washington, D.C.

The committee met, pursuant to notice, at 10:11 a.m., in room 2221, Dirksen Senate Office Building, Hon. Bob Dole [chairman of the committee] presiding.

Present: Senators Dole, Roth, Danforth, Symms, Grassley, Long, Byrd, Bentsen, Matsunaga, Moynihan, Boren, Bradley, and Mitchell.

Staff present: Robert E. Lighthizer, chief counsel; Roderick DeArment, deputy chief counsel; Claud Gingrich, professional staff member; Philip Morrison, professional staff member; Michael Stern, minority staff director; and Jeffrey Lang, minority professional staff member.

Also present: David H. Brockway, Joint Committee on Taxation; John B. Chapeton, Assistant Secretary for Tax Policy, Department of the Treasury; Brad Reynolds, Assistant Attorney General, Department of Justice; and Gary Jones, Under Secretary Designate, Department of Education.

1 The Chairman. Today we resume the markup
2 of a bill that is high on President Reagan's list of
3 priorities, and I can say that even since this has been
4 typed. I just left the White House, and President again
5 made that statement to those present for the Republican
6 leadership meeting, so it is very high on the President's
7 list of priorities and important to educators who insist
8 that the Federal Government support diversity in education.
9 The bill S. 2673, the Tuition Tax Credit bill, is also --
10 as I have often stated -- important to me.

11 Alternatives to public education contribute
12 to the pluralism that helps make our society strong.
13 Alternatives to public education can also help stimulate
14 improvements in our public schools through the competition
15 those alternatives present. A strong system of private
16 schools available to all income classes should contribute
17 to better education for all of our children, and an educated,
18 skilled populace is an essential ingredient in maintaining
19 and improving this Nation's technological and industrial
20 prominence.

21 Some of the proponents of tuition tax credits
22 think we are moving too fast and at the wrong time.
23 They point to the burgeoning deficit, the recent tax
24 reform bill, and wonder aloud how we can enact another
25 tax expenditure. While I sympathize with their concerns,

1 I do not fully share them.

2 The cost of this bill is relatively small
3 and can, in a responsible fashion, be made smaller.

4 I will be discussing an amendment to do that in a few moments.
5 The administration has wisely pared the cost of this
6 initiative down by phasing the credit in over 3 years, and by
7 phasing the credit out for taxpayers with income between
8 \$50,000 and \$75,000 per year. They have also limited the
9 cost by limiting the credit to elementary and secondary school
10 students. This has made the 3-year, Fiscal Years 1983, 1984,
11 and 1985, cost only \$1.2 billion.

12 By slowing the phase-in even more -- for example,
13 \$100 in the first year, \$200 in the second, and \$300 in the
14 third -- by delaying the effective date, and by lowering
15 the phase-out to the wealthy to \$40,000 to \$60,000, we can
16 reduce the cost even more, to less than \$800 million in that
17 same 3-year period.

18 The provisions in this bill forbidding schools
19 that discriminate on the basis of race from benefiting from
20 tuition tax credits have also been controversial. I know
21 that Senator Packwood has a special concern in this area,
22 and I share his concern. Also, Senator Moynihan, Senator
23 Bradley, and others have concerns which I assume we will
24 discuss later.

25 We have tried during the Labor Day recess to come

1 up with changes in the bill to answer these questions. I
2 think the administration has made a responsible effort, and
3 I am certain those matters will be discussed later on this
4 morning.

5 Another area of concern is the refundability issue.
6 While I generally shy away from refundable tax credits as
7 bad policy, it seems to me to be sensible social policy in
8 this case. Why should a poor family with little or no tax
9 liability be denied the opportunity to choose between public
10 and private schools. The 3-year cost of the refundability
11 provision would be only about \$51 million. This seems the
12 least we can do for those in the lowest brackets who wish
13 to sacrifice to send their sons and daughters to alternative
14 schools. What I would suggest there is that we might adopt
15 a committee amendment which can be offered on the Senate
16 floor to achieve this goal.

17 I have prepared an amendment which I have alluded
18 to briefly in the opening statement. It would reduce the
19 overall cost of the program in the out years as well as the
20 immediate future by lowering the credit and slowing the phase-
21 in. It would remove any revenue effect from Fiscal Year
22 1983, so that there is no budget resolution objection to
23 the bill by delaying the effective date. It would make
24 certain that higher income taxpayers do not benefit from
25 the program by reducing the high-income phase-out to the

1 \$40,000 to \$60,000 range rather than the present \$50,000
2 to \$75,000 phase-out.

3 At the appropriate time, when we have a quorum
4 here, I would offer that amendment which in effect would
5 limit the maximum credit that a taxpayer could claim for
6 each qualified dependent. The maximums are \$100 in 1983,
7 \$300 in 1984, and \$500 in 1985 and thereafter. The amendment
8 would reduce these amounts and, consistent with the delayed
9 effective date, phase them in more slowly.

10 Under the amendment, the maximum credit would be
11 limited to \$100 for the first half of 1983, \$200 for 1984,
12 and \$300 thereafter. As indicated, the amendment also would
13 adjust and lower the threshold at which this phase-out begins.
14 It would start at \$40,000 and would adjust the percentage
15 cutback so that the credit is completely eliminated for
16 taxpayers with annual adjusted gross income in excess of
17 \$60,000. It would also delay the effective date. It would
18 be made available only for payments made after July 1 of
19 1983, and that would substantially reduce the cost of the
20 program and eliminate any cost in Fiscal Year 1983.

21 I am not certain of the administration's position
22 on that particular series of amendments. Both Mr. Chapeton
23 and Mr. Reynolds are here. Mr. Chapeton?

24 Mr. Chapeton. You have not discussed the
25 refundability point but just the --

1 The Chairman. I know the administration's position
2 on refundability.

3 Mr. Chapeton. I think, Mr. Chairman, we preferred
4 our original bill but we recognize the problem that it is
5 more expensive, and we certainly concede the committee's
6 discretion for those amendments.

7 Senator Grassley. Mr. Chairman, when you get to the
8 point of your amendment on the \$40,000 and \$60,000, I would
9 like to offer a substitute for \$30,000 and \$50,000.

10 The Chairman. Okay. We should have a quorum here
11 fairly soon. As I understand, we can proceed with the
12 amendments when seven members are present?

13 Mr. Lighthizer. That is correct, Mr. Chairman.

14 Senator Bradley. Mr. Chairman, we do have seven
15 present. We do have a quorum present. Is it possible we
16 could proceed?

17 The Chairman. I was just checking to see what
18 other members might be here.

19 Yes, I would certainly be willing to proceed, and
20 I would suggest that we amend the proposal as I have just
21 outlined by reducing the maximum credit, by delaying the
22 effective date, and by changing the income phase-out. I
23 would ask Phil Morrison just to very briefly make certain
24 I described it correctly, the fiscal impact reduction amendment.
25 Everybody has a description of the amendment.

1 Mr. Morrison. There are three basic changes. Under
2 the administration bill, S. 2673, the amounts of the credit
3 would be \$100 in 1983, \$300 in 1984, and \$500 in 1985. That
4 would be changed to \$100 for the last half of 1983, \$200
5 for calendar year 1984, and \$300 for calendar year 1985 and
6 thereafter.

7 The second point is the high-income phase-out.
8 Under the administration bill it starts to phase out with
9 a family's adjusted gross income of \$50,000 and would be
10 completely phased out at \$75,000. Under this amendment,
11 the phase-out would begin for families with adjusted gross
12 incomes of \$40,000 and would be completely phased out for
13 families with adjusted gross incomes of \$60,000 and above.

14 The third change is a change that would eliminate
15 any Fiscal Year 1983 impact. It would delay the effective
16 date to payments made after July 31, 1983, so the payments
17 for the fall semester of 1983 would still be eligible, but
18 would make a technical change so that no withholding or
19 estimated tax payment adjustments could be made to completely
20 eliminate any fiscal 1983 impact. At the bottom of the page
21 that has been handed out you will see the difference in the
22 3-year fiscal impact between S. 2673 and S. 2673 as amended.

23 Senator Moynihan. Mr. Chairman?

24 The Chairman. Senator Moynihan.

25 Senator Moynihan. Mr. Chairman, I think you are

1 very much to be congratulated, if that is the term, for these
2 amendments which make it possible for us to establish a
3 principle here without running against the fiscal realities
4 that there are just limited amounts of money available in
5 the next few budgets. I would like to second the proposal
6 when the time comes.

7 I wonder if I could ask what your present thinking
8 is about refundability, which has been important to the
9 Senators on the committee who have been interested in this
10 subject?

11 The Chairman. Well, I know the administration's
12 position of refundability but notwithstanding their opposition,
13 I would hope that we might adopt a committee amendment which
14 we would then offer on the Senate floor on refundability.
15 I know the Senator from New York is concerned, the Senator
16 from New Jersey, the Senator from Oregon, Senator Packwood,
17 and others. As I have indicated, that can be done at a rather
18 minimal cost -- less than what? -- about \$100 million in
19 the 3-year period?

20 Mr. Morrison. Much less. If it is adopted, if
21 the Dole amendment just described was adopted and then
22 refundability were adopted, I believe the cost would be nothing
23 in fiscal 1983, an additional \$8 million in fiscal 1984.

24 The Chairman. Eight?

25 Mr. Morrison, Eight, and \$22 million in fiscal

1 1985.

2 The Chairman. Therefore, we talking about \$30
3 million --

4 Senator Moynihan. If I could say, Mr. Chairman,
5 in just the sense that there is a principle involved in getting
6 some tax credit agreed to, I think there is a principle
7 involved in making it available to everybody who would want
8 to use it.

9 The Chairman. Right. Well, I know there are some
10 present, and some on the committee who are not present, who
11 are just opposed to tuition tax credits as a matter of
12 principle. I do not want to shut out anyone who opposes
13 tuition tax credits. On the other hand, I hope we might
14 move --

15 Senator Bentsen. Mr. Chairman?

16 The Chairman. Yes?

17 Senator Bentsen. If I might comment on that, I
18 am one of those who opposes the tuition tax credit as a matter
19 of principle, and I will vote with your amendment not to
20 substantiate the principle, as my friend from New York says,
21 but trying to recognize the fiscal realities.

22 The Chairman. I would suggest we vote on the
23 package of amendments, and then when they are adopted or
24 even now, I understand the Senator from Iowa would like to
25 offer an amendment to the amendment. Is that correct?

1 Senator Grassley. I think it would take that form,
2 yes. Do you want me to do that now?

3 The Chairman. Fine.

4 Senator Grassley. Okay.

5 Mr. Chairman and members of the committee, my
6 amendment would change that part of the bill that originally
7 started out with a phase-out at \$50,000 and a complete phase-
8 out at \$75,000. Now the committee amendment or Senator Dole's
9 approach would change those figures from \$40,000 to \$60,000,
10 with the assumption, I would assume, with the same phase-
11 out as was in the original bill.

12 Therefore, within that same concept -- and my
13 thinking prior to hearing what Senator Dole considered a
14 reasonable compromise -- was to offer an amendment that would
15 start the phase-out at \$30,000 and have the upper limit
16 of the phase-out be \$50,000. I still feel strongly about
17 that approach, and offer it now as an amendment.

18 My purpose in doing it is to concentrate the usage
19 of tuition tax credits in low- and middle-income groups.
20 Last year during the debate on the tax bill, as alternatives
21 were offered to the tax bill to help "middle-income" taxpayers,
22 we talked in terms of the \$20,000 to \$50,000 income tax bracket
23 as being middle-income taxpayers, so I adopted the upper
24 level of that as the upper level of middle income. In an
25 effort to concentrate this for the benefit of middle-income

1 people, then, it will have the phase-out end at \$50,000.

2 Obviously there is a savings to the Treasury, but
3 that is not my primary motive for offering this amendment,
4 and obviously there are going to be only about 80 percent
5 of the people who would otherwise qualify for the tax credit
6 under the administration's approach who would be able to
7 use it. On the other hand, the 20 percent that will not
8 be able to use it -- now that is not 20 percent of all the
9 people in the country, that is 20 percent of the people who
10 would normally send people to a private school, and I want
11 to emphasize that -- they are in a tax bracket, or an income
12 bracket, I should say, where obviously they can afford to
13 do it and a tax credit is not any consideration whatsoever.

14 I offer this for those reasons, and ask for your
15 consideration and your support because I think we ought to
16 be helping and concentrating on helping low- and middle-
17 income people with this bill.

18 The Chairman. Mr. Chapeton, as you know the
19 administration provision was \$50,000 to \$75,000. I think
20 there was a consideration, there was a concern by members
21 of the committee that perhaps that was tilted too much in
22 the direction of upper income. Certainly Senator Grassley
23 recognized that, as did others on both sides.

24 Therefore, in trying to find what I thought would
25 be a reasonable area, I suggested \$40,000 to \$60,000. That

1 is probably an arbitrary judgment on my part but it seems
2 to me that we probably should not go much lower. I mean,
3 I do not disparage the efforts of Senator Grassley, who makes
4 a very good point, but I would like to hear from the
5 administration.

6 Mr. Chapeton. Well, Mr. Chairman, we would certainly
7 agree that, as you point out, we had opposed beginning the
8 phase-out -- and I think we ought to focus on where the phase-
9 out begins as really the magic point -- we had focused on
10 beginning the phase-out at \$50,000. Your proposal would
11 drop that to \$40,000 and Senator Grassley's would drop that
12 to \$30,000. A family making \$30,000, \$35,000, or even
13 \$40,000 with more than one child in school, for example,
14 I would disagree with Senator Grassley that there is no
15 hardship whatsoever.

16 This is designed as a relief from a burden where
17 these parents are already paying taxes to the public schools.
18 It certainly would seem appropriate at those income levels,
19 and we would strongly oppose dropping it any further.

20 Senator Long. Might I suggest, just as one, that
21 I do not like to see it dropped below what the administration
22 recommended to begin with. You started out by phasing it
23 out between \$50,000 and \$70,000?

24 Mr. Chapeton. That is correct, Senator Long.

25 Senator Long. Well, what bothers me about all

1 this, you know, at some point you would like to be able to
2 go before some audience and say, "Look what I did for you.
3 You know, I voted for something that you people might have
4 benefited from." Now you go before a civic club, even if
5 you go along with Chairman Dole's amendment, you go before
6 a civic club and say, "Let me tell you what I did, I voted
7 to give you this tax credit," and after you get through about
8 half the crowd you talked to would say, "You didn't do anything
9 for me. I'm making \$60,000 a year."

10 Sixty thousand dollars is not that much money
11 nowadays. It looks to me like if I go along with these
12 suggestions, we are going to be getting it down to where
13 our administrative assistants, for example, and the staff
14 assistants right here on the Hill could not benefit from
15 it.

16 The Chairman. Well, that is adjusted gross income.

17 Mr. Chapeton. Adjusted gross income, and of course
18 it would take into account two-earner families, so the
19 family's income, you would kick it up into those levels in
20 a hurry.

21 Senator Long. That helps a little, but please
22 understand, I am concerned about getting something where
23 if you go out and try to tell somebody, "My friends, I want
24 you to know that I voted for you," and about 80 percent of
25 them say, "You didn't vote for me."

1 Mr. Jones. Mr. Chairman?

2 The Chairman. Yes, Mr. Jones?

3 Mr. Jones. I would also like to add to Senator
4 Long's comment that one reason the administration thought
5 that \$75,000 level was reasonable was because is the student
6 financial aid program, students may still qualify for a
7 guaranteed student loan up to \$75,000, so there is
8 correlation between what is available in guaranteed student
9 loans and what would be available through the tuition tax
10 credit proposal.

11 Senator Bradley. May I ask Mr. Chapeton a
12 question?

13 What percent of the American taxpayers make more
14 than \$50,000.

15 Mr. Chapeton. Senator Bradley, I do not have that
16 figure at my fingertips.

17 Senator Bradley. Senator Grassley, I think, has
18 it.

19 Senator Grassley. Well, it is off the top of my
20 head but it would not be more than 5 percent, I know, but
21 probably even less than 5 percent.

22 Senator Bradley. Thank you.

23 Senator Bentsen. If I might ask a question --

24 The Chairman. Sure.

25 Senator Bentsen. -- I am not sure there was a

1 meeting of the minds on what Secretary Chapeton was saying
2 and Senator Long was saying when you were talking about
3 adjusted gross income. Your voice dropped and I could not
4 hear the end of your statement, when you were making your
5 statement.

6 Mr. Chapeton. The phase-out is based on adjusted
7 gross income.

8 Senator Bentsen. Did you say something about joint
9 incomes?

10 Mr. Chapeton. Yes. It is all on the tax return,
11 so if there were two earners in the family you would count
12 the adjusted gross income of both earners. Therefore, my
13 point was that families would be likely to reach these income
14 levels much more quickly.

15 Senator Long. Well, let's get that straight.

16 Senator Bentsen. You see, I think you two did
17 not have a meeting of the minds.

18 Senator Long. I want to see if I understand you.
19 You have a husband and wife, and let's say they have \$80,000
20 adjusted gross income between the two of them. Would they
21 be eligible for the full benefit?

22 Mr. Chapeton. If they have how much between the
23 two of them? Eighty?

24 Senator Long. Eighty thousand.

25 Mr. Chapeton. No, they would not be eligible

1 for the benefit.

2 Senator Long. Therefore, if there is a couple,
3 do I understand it correctly that that limitation applies
4 to the couple, man and wife, if the two of them put together
5 are making -- well, let's say by your figures, you wanted
6 to phase out at \$50,000 to \$70,000 -- let's say if the two
7 of them together are making --

8 Mr. Chapeton. We proposed \$50,000 to \$75,000,
9 sir.

10 Senator Long. What?

11 Mr. Chapeton. Fifty to seventy-five thousand.

12 Senator Long. All right. Well, let's say that
13 by your proposal, two of them together have a joint income
14 on a joint return of \$75,000. That works out to about
15 \$37,500 apiece. Now do I understand it, based on your
16 recommendation, they would not get any benefit out of it?

17 Mr. Chapeton. That is correct. Yes, sir.

18 Senator Long. Well, that is the way I understood
19 it.

20 The Chairman. I wonder if we might first act on
21 the amendment of the Senator from Iowa, Senator Grassley.

22 Senator Grassley. When we vote, I would at least
23 like to have a vote by a show of hands if you do not want
24 to call the roll, and you do not have to call the roll.

25 The Chairman. I would ask for a roll call.

1 Senator Grassley. Okay.

2 Senator Chafee. This is to reduce the amount from
3 \$50,000 to \$30,000?

4 The Chairman. Thirty thousand to \$50,000. It
5 would be phased out at \$50,000. I have suggested \$40,000
6 to \$60,000. The administration asked \$50,000 to \$75,000.

7 Senator Bradley. How much additional revenue would
8 that generate?

9 The Chairman. Do you know how much?

10 Senator Bradley. How much less of a loss that
11 we could apply to a refundable tax credit, for example?

12 Mr. Chapeton. We do not have that amendment
13 superimposed on the committee's amendment or the chairman's
14 amendment.

15 Senator Grassley. I do not have any figures either.
16 I am sorry.

17 Mr. Chapeton. The Joint Committee staff is saying
18 about 10 percent, and looking at the earlier figures, I think
19 it would be in that neighborhood, about a 10 percent reduction
20 in the revenue.

21 The Chairman. About \$80 million?

22 The clerk will call the roll on the Grassley
23 amendment.

24 The Clerk. Mr. Packwood?

25 [No response.]

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The Clerk. Mr. Roth?
[No response.]
The Clerk. Mr. Danforth?
Senator Danforth. No.
The Clerk. Mr. Chafee?
Senator Chafee. Aye.
The Clerk. Mr. Heinz?
[No response.]
The Clerk. Mr. Wallop?
The Chairman. No.
The Clerk. Mr. Durenberger?
[No response.]
The Clerk. Mr. Armstrong?
[No response.]
The Clerk. Mr. Symms?
[No response.]
The Clerk. Mr. Grassley?
Senator Grassley. Aye.
The Clerk. Mr. Long?
Senator Long. No.
The Clerk. Mr. Byrd?
Senator Byrd. Aye.
The Clerk. Mr. Bentsen?
Senator Bentsen. No.
The Clerk. Mr. Matsunaga?

1 [No response.]

2 The Clerk. Mr. Moynihan?

3 Senator Moynihan. Aye.

4 The Clerk. Mr. Baucus?

5 [No response.]

6 The Clerk. Mr. Boren?

7 [No response.]

8 The Clerk. Mr. Bradley?

9 Senator Bradley. Aye.

10 The Clerk. Mr. Mitchell?

11 Senator Mitchell. Aye.

12 The Clerk. Mr. Chairman?

13 The Chairman. No.

14 On this vote, the yeas are 6, the nays are 5, and

15 I would suggest that the absent members can be permitted

16 to record their votes unless there is some objection.

17 Senator Chafee. To record their vote if it changes

18 the result?

19 The Chairman. That is how we have always done

20 it.

21 Senator Chafee. Well, why bother coming to the

22 gathering, then?

23 Mr. Lighthizer. Well, they change the vote until

24 the bill is reported out.

25 The Chairman. That is right.

1 Mr. Lighthizer. It is the procedure that the
2 committee has followed.

3 The Chairman. I think I have a number of proxies,
4 but I am not certain of that and I do not want to vote those
5 proxies until I have --

6 Senator Long. Well, Mr. Chairman, I might point
7 out, you know you can call those people by telephone before
8 this session is over with, in all probability, or before
9 the day is out. I just think it would be a mistake for us
10 to report out by a one-vote margin a decision that is not
11 the majority view of the committee.

12 The Chairman. Well, the vote is now 6 to 6.

13 Senator Long. You will have to wait.

14 Senator Grassley. What is the vote?

15 The Chairman. Six to six is the vote now.

16 Senator Grassley. Six to six? Has the chairman
17 broken the tie?

18 The Chairman. No, another member has been recorded.

19 Senator Grassley. Well, Mr. Chairman, I accept
20 the results of that but I do have one last amendment on this
21 subject. I have failed on the first attempt. I would like
22 to try one other attempt.

23 Senator Bradley. Well, could we clarify what just
24 happened?

25 [Laughter.]

1 Senator Bradley. Is the vote open? Is the vote
2 open or not until the remainder of this session?

3 The Chairman. Yes.

4 Senator Bradley. I mean, you won and then you
5 lost, and you conceded.

6 [Laughter.]

7 Senator Grassley. Well, I assume I lost according
8 to the rules.

9 The Chairman. It was according to the rules, yes,
10 and you may not lose. There are other members who have not
11 been recorded.

12 Senator Grassley. Well, so what are we doing?
13 We are leaving the vote open?

14 The Chairman. Yes.

15 Senator Grassley. Okay. Well, I do not want to
16 get away from here, if this one loses, without offering another
17 amendment in this area because I think I have another --

18 Senator Moynihan. Well, Mr. Chairman, surely we
19 can allow our colleague that opportunity, a cascade, if we
20 should have a vote on your second proposal, and if it turns
21 out your first has lost and the second wins, why, then, that
22 would take effect.

23 Senator Grassley. Then please give me an opportunity
24 to suggest what my second attempt was going to be. My second
25 attempt would leave the \$40,000 of the Dole amendment in

1 place and reduce the \$60,000 down to \$50,000, so that we
2 would have the upper limit being \$50,000. The phase-out
3 would start at \$40,000, and then this would still be within
4 the middle-income bracket, \$50,000 being the upper level
5 of middle income.

6 The Chairman. All right. We will certainly protect
7 the rights of the Senator from Iowa. I am wondering, is
8 there any objection to adopting the three-part amendment,
9 then, that I proposed.

10 Senator Moynihan. I would like to second it.

11 The Chairman. Is there a request for a roll call
12 vote on that?

13 Senator Grassley. Now is this the amendment that
14 includes the \$100, \$200, and \$300?

15 The Chairman. Yes.

16 Senator Grassley. I would like to make a comment
17 on the \$100, \$200, and \$300 amendment. I am in support of
18 the amendment.

19 Mr. Chairman and members of the committee, I would
20 at this point like to express, not only for this meeting
21 but a philosophical view I have on tuition tax credits. I
22 am in support of tuition tax credits. I feel that the level
23 of the tuition tax credit should be at a level -- and I
24 do not have an exact dollar figure in mind, because it would
25 naturally vary, maybe, from region of the country to region

1 of the country -- but whatever level of tuition tax credit
2 this Congress eventually decides upon, it is my view that
3 the tuition tax credit should never become an incentive for
4 people to send their kids to a private school as opposed
5 to a public school, or that it would be so high that there
6 would be an incentive to leave a public school to go to a
7 private school.

8 My reason for saying this is that I do not want
9 it to be an economic reason. I want the tuition tax credit
10 to be a recognition of the fact that the cost of public
11 education is the one mandated service that everybody must
12 participate in , and that the tuition tax credit is a
13 recognition of that dual cost of education. However, the
14 final analysis is that the reason that the tuition tax credit
15 should not detract from, as a reason for going to a private
16 school, the traditional reasons why people have put their
17 kids in private schools. I think they have basically been
18 geared towards the fact that the public school has not
19 satisfied the interests that they had for their children,
20 or else a religious interest for sending their children for
21 a private school. Those traditional reasons should still
22 be the major determinant of why children go to, or why parents
23 put their children into a private school.

24 Therefore, I am arguing that there should be a
25 magic limit somewhere, and I think the \$100-\$200-\$300 addresses

1 that obviously better than the \$100-\$300-\$500, in that the
2 tuition tax credit itself is not so high that there is an
3 economic determination for kids to go to a private school.

4 Senator Bentsen. If I might comment, Mr. Chairman --
5 The Chairman. Yes.

6 Senator Bentsen. -- although I philosophically
7 oppose the tuition tax credit, disagree very strongly with
8 it, I am not one of those that thinks that the way you do
9 these things legislative-wise is to make an option as onerous
10 as you can in hopes that you can thereby defeat it. I want
11 to be on the other side of that situation, that in the event
12 that my side does not prevail, that we have something as
13 feasible as we can for the people of this country and as
14 realistic as we can.

15 The Chairman. Is there any objection to the
16 amendment, the impact reduction amendment, which would be
17 the maximum credit just discussed by Senator Grassley, the
18 high-income phase-out, delayed effective date?

19 Senator Byrd. Mr. Chairman?

20 The Chairman. Senator Byrd.

21 Senator Byrd. As I understand it, if this amendment
22 is adopted then there will be a vote on the bill as amended
23 by this amendment? Is that it?

24 The Chairman. Yes. Well, I understand there to
25 be additional amendments, too. Yes.

1 Senator Long. Well, I just want to be on record,
2 I just want to be on record that I am opposed to reducing
3 the benefit of the bill. I think it ought to stay the way
4 the administration was asking for it, the way it was proposed
5 to begin with.

6 The Chairman. Does anybody want a record vote?
7 I mean, I am perfectly willing to have a record vote on it.

8 Senator Long. Well, I am on record. I just got
9 through saying it.

10 The Chairman. Okay, then, with that objection
11 being -- yes?

12 Senator Symms. Mr. Chairman, I am opposed to the
13 Grassley amendment, too.

14 The Chairman. Well, that makes it 7 to 6. Right.

15 Then I have offered a package of amendments. Why
16 don't we just call the roll on these?

17 Senator Byrd. Mr. Chairman, I would like to be
18 clear as to what we are voting on, now.

19 The Chairman. Right.

20 Senator Byrd. We are voting on the amendments
21 which will reduce the limits previously recommended by the
22 administration. Is that it?

23 The Chairman. That is correct.

24 Senator Long. We are voting to reduce the benefits.

25 Senator Byrd. Not on the bill itself.

R _____ O _____

1' Senator Long. That is right.

2 The Clerk. Mr. Packwood?

3 [No response.]

4 The Clerk. Mr. Roth?

5 [No response.]

6 The Clerk. Mr. Danforth?

7 Senator Danforth. Aye.

8 The Clerk. Mr. Chafee?

9 Senator Chafee. Aye.

10 The Clerk. Mr. Heinz?

11 [No response.]

12 The Clerk. Mr. Wallop?

13 The Chairman. Aye.

14 The Clerk. Mr. Durenberger?

15 [No response.]

16 The Clerk. Mr. Armstrong?

17 [No response.]

18 The Clerk. Mr. Symms?

19 [No response.]

20 The Clerk. Mr. Grassley?

21 Senator Grassley. Aye.

22 The Clerk. Mr. Long?

23 Senator Long. No.

24 The Clerk. Mr. Byrd?

25 Senator Byrd. Aye.

1 The Clerk. Mr. Bentsen?

2 Senator Bentsen. Aye.

3 The Clerk. Mr. Matsunaga?

4 [No response.]

5 The Clerk. Mr. Moynihan?

6 Senator Moynihan. Aye.

7 The Clerk. Mr. Baucus?

8 [No response.]

9 The Clerk. Mr. Boren?

10 [No response.]

11 The Clerk. Mr. Bradley?

12 Senator Bradley. Aye.

13 The Clerk. Mr. Mitchell?

14 Senator Mitchell. Aye.

15 The Clerk. Mr. Chairman?

16 The Chairman. Aye.

17 Senator Roth. Mr. Chairman?

18 The Chairman. Senator Roth.

19 Senator Roth. No.

20 Senator Symms. Mr. Chairman, no.

21 The Chairman. Symms, no.

22 On this vote the yeas are 11, the nays are 3. The
23 amendment is agreed to.

24 Now if we might then proceed to the question of
25 refundability, the reason I have suggested that we offer

1 it as a committee amendment, it must be presented as a
2 committee amendment to be offered on the floor, to avoid
3 a 2-week delay of referral to the Appropriations Committee.
4 Otherwise, I would be perfectly happy if somebody wanted
5 to offer it, but is that satisfactory, Senator Moynihan?

6 Senator Moynihan. It certainly is to me. I think
7 it is the way to proceed.

8 The Chairman. Now as I understand, does the
9 administration want to be heard on refundability?

10 Mr. Chapeton. Well, I do not know that we have
11 much to add to what we have already said, Mr. Chairman. We
12 do oppose refundability. There is only one example in the
13 Internal Revenue Code now where a credit is refundable. We
14 object to this on the precedent ground, and we object also
15 because it changes the nature of this benefit. It is designed
16 as a tax relief benefit. It would add to it the element
17 of a welfare program, and we think that is better administered
18 through the Department of Education and other programs.

19 Senator Bradley. Mr. Chairman?

20 The Chairman. Senator Bradley.

21 Senator Bradley. I would hope we would adopt
22 this amendment. I think that refundability is one of the
23 key parts of this legislation, and that if we do not have
24 it in there we are essentially denying the same access to
25 education to lower-income individuals and families, and I

1 think that this is absolutely essential, that we have it
2 in there.

3 The Chairman. Senator Moynihan?

4 Senator Moynihan. Mr. Chairman, if I can speak,
5 Senator Packwood evidently cannot be here today and so I
6 will speak for the two of us if I can. In the original
7 legislation that we proposed in 1977, refundability was
8 essential to the idea of giving this option to families that
9 would choose one form of education over another, and make
10 it as independent of income considerations as is the option
11 of attending the normal public schools.

12 We have not, and I would very gently suggest to
13 Secretary Chapeton that we would not think of this as a welfare
14 aspect of the legislation, saving that the general welfare
15 or the public welfare is associated with any kind of
16 education, but it is simply to equalize opportunity all across
17 the income range. That is all.

18 Senator Long. Let me just add a word to that,
19 if I may, Mr. Chairman. What we are dealing with here is
20 a tax subsidy. Now there are a lot of low-income people,
21 and I particularly am concerned about the working poor who
22 are paying us no income tax but who are absorbing just a
23 lot of taxes as consumers. Even if they do not pay the
24 social security tax -- and many do -- that is not counted
25 as being part of their income tax. They are absorbing it

1 as consumers. You may be paying 7 or 7.6 percent as a worker
2 but as a consumer you are paying the whole thing, so you
3 are paying the other 7.6. You are paying roughly 15 percent
4 rather than 7.6, and then they are paying excise taxes that
5 are being passed through. In many cases those corporation
6 income taxes are being passed right on through to these people
7 in the price of the product.

8 Therefore, to say that the low-income person or
9 working poor is not a taxpayer is not really correct, because
10 he is absorbing a great number of taxes that are being passed
11 through to him and his family in the price of products. Now
12 when we pass a tax subsidy and we then say that all those
13 who are fortunate enough to be in a position to pay us an
14 income tax get the benefit, this is a program to subsidize
15 people and we are leaving out those who need it the most.
16 It seems to me that it is simple enough just to draw your
17 law so they can enjoy the benefit of it. They get it the
18 same way everybody else does, by filing a tax return, rather
19 than by going down to some Federal office and putting in
20 for a grant. I just think it is a better way to meet the
21 problem.

22 There is no doubt in my mind, time will prove that
23 we are right about that. When you file an income tax return
24 you can settle up with Uncle Sam: "Here is what we owe you,
25 Mr. Uncle Sam, and here is what you owe us." Whatever the

1 figure is, whether it is minus or plus, we'll settle on that
2 basis. I just think that that is the way of the future,
3 and to turn our back on that I think is just to stand in
4 the way of progress.

5 Senator Roth. Mr. Chairman?

6 The Chairman. Senator Roth.

7 Senator Roth. I would like to express my strong
8 support for refundability. I think the point that Senator
9 Long made is persuasive. I would point out that the
10 legislation that we have adopted in the past and proposed
11 contained such refundability, but I think the most important
12 factor to keep in mind is, we are trying to give people a
13 choice and because of inflation and many other reasons, it
14 has become very difficult for many people to have the choice
15 of going to a private school.

16 I believe firmly, as apparently Senator Long and
17 others do, that the poor should also have this choice. They
18 should have that election, and for that reason I would
19 recommend that the committee amendment on refundability is
20 adopted.

21 The Chairman. I would just say, we have just
22 discussed the upper limits of this bill and now we are
23 discussing the lower limits of this legislation. It seems
24 to me that I might say, as a Republican, that there should
25 be no perception that we are somehow passing legislation

1 that will favor middle- and upper-income families with
2 students and not allow those benefits to be available to
3 low-income families. Even at that, the cost in the first
4 3 years is a grand total of \$30 million, so it is not a
5 substantial sum of money.

6 Is there anything else we should know about the
7 amendment, Phil?

8 Mr. Morrison. Just the fact that, as you mentioned
9 earlier, Mr. Chairman, this would be a committee amendment
10 to be offered on the floor.

11 The Chairman. Would that be the same time in the --

12 Mr. Morrison. Offered at the same time as the
13 bill is offered.

14 The Chairman. Right.

15 Mr. Morrison. This would not amend the bill as
16 reported.

17 The Chairman. Is there any objection to the
18 amendment?

19 Senator Chafee. Yes.

20 Senator Symms. Mr. Chairman, I object to it. Mr.
21 Chairman, don't you think this amendment would be just about
22 all it would take to sink tuition tax credits? Put this
23 on the bill, and it will be sure that it will not become
24 law, then?

25 The Chairman. No, I think there are other amendments

1 that could sink it but this one is not in that category.

2 [Laughter.]

3 Senator Symms. I would think this would raise
4 a lot of opposition because I know it sounds good, what
5 Senator Long said, but that is not the way it is going to
6 be viewed. They are going to be saying you are subsidizing,
7 writing checks to people.

8 Does the administration favor this amendment?

9 The Chairman. They have indicated their mild
10 opposition.

11 Mr. Chapeton. Well, Senator Symms, we have opposed
12 -- for the reason I stated earlier -- we oppose refundability
13 of credits generally but we oppose it here. This measure
14 is designed as a tax relief measure, and this changes the
15 nature of it. The arguments made in support of refundability
16 are sound. They are probably equally applicable to all other
17 credits in the Internal Revenue Code. This is a constant
18 problem this committee has to deal with. In this context
19 it is probably more sympathetic than it is in other contexts
20 but it still does change the nature of a tax credit if it
21 becomes refundable. We must recognize that.

22 Senator Chafee. Mr. Chairman, I came in late,
23 and I apologize. Have conditions changes? I understood
24 that there was a deficit in this year in the Federal
25 Government. Is that correct?

1 Mr. Chapeton. That is correct, Senator Chafee.
2 Senator Chafee. For the next year?

3 Mr. Chapeton. For the next several years, yes,
4 sir.

5 Senator Chafee. That is what I understood, and
6 I was not sure whether things had changed.

7 [Laughter.]

8 Senator Chafee. Therefore, what you are planning
9 here, what is this bill going to cost? Add in the
10 refundability.

11 Senator Bradley. Another \$30 million, Senator,
12 that is what it will cost.

13 Senator Chafee. I see.

14 Senator Bradley. If we drop the eligibility from
15 \$60,000 to \$50,000, you pick up more than \$30 million and
16 you would not have an increase in the budget deficit.

17 Senator Chafee. You are not really serious that
18 this only costs \$30 million.

19 The Chairman. No, he meant the refundability
20 amendment.

21 Senator Chafee. Pardon?

22 Senator Bradley. The refundability portion.

23 Mr. Chapeton. The bill as already amended by the
24 committee, before this amendment, would cost \$32 million
25 in 1983, \$128 million in 1984, and \$328 million in 1985.

1 This would add nothing in 1983, it would add \$8 million in
2 1984, and \$22 million in 1985.

3 Senator Symms. Could I ask another question, if
4 the Senator --

5 Senator Chafee. You will stake your well-earned
6 reputation for accuracy in predictions on this?

7 Mr. Chapeton. That is our best estimate at this
8 time.

9 [Laughter.]

10 Senator Chafee. Thank you.

11 Senator Symms. Mr. Chairman?

12 The Chairman. Senator Symms.

13 Senator Symms. If we accept refundability in
14 tuition tax credits, why limit it to tuition tax credits?
15 Why don't we do it to the whole income tax code and just
16 go ahead and have a negative income tax? What is Treasury's
17 point of view on that?

18 Mr. Chapeton. Senator Symms, before we get into
19 that, I read the wrong figure to Senator Chafee. On the
20 bill as amended by the committee before refundability, there
21 is no cost in 1983 because the effective date is deferred.
22 The cost in 1984 is \$245 million and the cost in 1985 is
23 \$526 million.

24 Senator Chafee. Half a billion.

25 Mr. Chapeton. Half a billion, and the changes

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1 of refundability were accurate that I read. It would be
2 \$8 million in 1984 and \$22 million in 1985.

3 Senator Symms. What about the precedent we set
4 with refundability? I mean, if it is okay in tuition tax
5 credits, refundability, why isn't it okay for the whole income
6 tax code. You take the same argument that Senator Long made,
7 and many people agree with that argument, and just use the
8 income tax code for a negative income tax. It would be a
9 tremendous way to expand the public relief dollars that we
10 spend, since we only spend a few hundred billion a year.
11 We could probably expend even more.

12 Mr. Chapeton. That is part of our concern, Senator
13 Symms, the precedent of putting a refundable credit, another
14 refundable credit in the Code. We have resisted that in
15 the past. I think this committee has resisted it and this
16 would be a change.

17 Senator Symms. I feel, Mr. Chairman, like that
18 is a reason concern to me, anyway, not that there is not
19 some merit to the argument to be sure that everybody can
20 have the choice. There may be merit to that argument but
21 if you start it on tuition tax credits, I do not see where
22 it would stop. I cannot see why we could not use the same
23 argument and apply it to everything that comes along in the
24 tax code. I just think it is rather risky to do that, and
25 maybe that is the reason we have a public school system.

1 Maybe some of those people that are not able to send their
2 children to private schools, at least they can send them
3 to the public schools. That is one of the arguments about
4 the public school system. They are not being deprived of
5 the opportunity for an education. We cannot quite make that
6 case, so I think it would be a mistake to have this on this
7 bill.

8 Senator Danforth. Mr. Chairman?

9 The Chairman. Senator Danforth.

10 Senator Danforth. Mr. Chairman, I am for
11 refundability. However, let me ask the basis for the figure.
12 Twenty-two million dollars seems to me to be a very, very
13 low figure for a \$300 -- it would be a \$300 refundable tax
14 credit after 1985?

15 Mr. Chapeton. It would be a 50 percent credit
16 with a cap of \$300.

17 Senator Danforth. Therefore, it would be a \$300,
18 you have to assume it would be a \$300 credit.

19 Mr. Chapeton. Well, that is true except in some
20 cases. That would assume a \$600 tuition payment. That would
21 not be true in all cases so in many cases the credit would
22 be lower.

23 Senator Danforth. Well, let's say it would not
24 be far from \$300 per kid, would it?

25 Mr. Chapeton. We looked at this figure pretty

1 closely because it seemed sort of low to us, too.

2 Senator Danforth. Let me just say, if it is \$300,
3 just assuming that, if it is \$300 -- now that might be high --
4 but if it is \$300 per child, that would mean that there would
5 be only 70,000 kids throughout the country for whom the
6 refundable tax credit would apply, or only about roughly,
7 say, 1,400 per State. That just seems unimaginably low,
8 that there would only be, say, in the State of Missouri,
9 1,400 kids, would be about the average.

10 Mr. Brockway. Senator, I think it might be spread
11 out a bit more than that. One thing is, quite a number of
12 the families that would receive a refundable credit would
13 not receive the full \$300 refundable. They may be paying,
14 let's say, \$250 of tax liabilities and you only have \$50
15 refundable. Another thing I think that affects the revenues
16 is that --

17 Senator Danforth. However, it would seem to me
18 that even if you were just to take the kids from families
19 that do not pay any taxes at all, there would have to be
20 more than 1,400 children in private schools in the State
21 of Missouri.

22 Mr. Brockway. Well, I think that one of the things
23 that would have been taken into account is that people who
24 do not have any tax liability at all, obviously many fewer
25 of them would send their children to private schools, but

1 they might be more likely to send their children to schools
2 with low tuition, lower than the \$600. I would think that
3 someone that did not have tax liability, who had an AGI of
4 less than \$10,000, let's say, in the family, would typically
5 send the child to a very low tuition school, and so the credit
6 involved --

7 Senator Danforth. Well, \$600 is a very low tuition
8 school.

9 Mr. Brockway. I think that there are a number
10 of schools, parochial schools, that would have an even lower
11 tuition than that, too. Obviously there are many schools
12 that have much more than that or that would have scholarship
13 assistance or whatever. I mean, I think a great number --

14 Senator Danforth. It is your figure, and I cannot
15 do any better than your figure but I would just say that
16 it is an amazing figure to me.

17 Senator Long. Might I just put one point in here
18 that I would hope might be persuasive with some of my
19 colleagues, that might cause them to reconsider? . . .

20 Is it not true that most of these people who would
21 benefit from a refundable tax credit are already entitled
22 to the earned income credit?

23 Mr. Chapeton. Off the top of my head, I would
24 think that would be likely.

25 Senator Long. Well, in other words, for example,

1 if a person, if a family had a child and the family is making,
2 let's say, about \$10,000 a year, my impression is that they
3 would be entitled to an earned income credit of almost
4 \$1,000, about a 10 percent credit or a 10 percent earned
5 income credit. They would be entitled to about a \$1,000
6 earned income credit against \$10,000 of income, let's say,
7 for a family of four. Is that correct or not?

8 My impression is that the people we are talking
9 about, they would only be claiming refundability if they
10 are paying less than \$100 income tax or, when it is fully
11 effective, less than \$300 income tax. That is the only time
12 that they would be claiming it.

13 All right. Therefore, it stands to reason that
14 most of these people we are talking about are going to be
15 filing for the earned income tax credit, and that will be
16 a much larger figure in most cases, for these working families,
17 the working poor, that will be a much larger figure than
18 would be the figure for this education credit we are talking
19 about here.

20 Now it just seems to me that between the two
21 approaches, the approach being advocated right now by the
22 administration, saying, "Well, tell those people to go down
23 and apply for a grant of \$100," and saying, "Well, just put
24 it on your tax return that you are entitled to a negative
25 tax credit," in view of the fact that those people will

1 probably already be getting the earned income credit, when
 2 they fill out the form to claim their earned income credit
 3 they could just as well claim their education credit along
 4 with it. Why do you want them to go down to some separate
 5 Federal office and file some form and go through a separate
 6 bureaucracy to get there, when if they are entitled to it
 7 they would just claim it on the same form where they claim
 8 their earned income credit. That is logically the way it
 9 ought to be done administratively.

10 Mr. Chapeton. Well, I think where they were claiming
 11 their earned income credit you would not have -- one problem
 12 that troubles us is requiring people that otherwise would
 13 not have to file returns to go through the trouble of filing
 14 a return, but other than that I am not sure the two would
 15 be related administratively. Other than that, I am not sure
 16 you can assume that most of them would be or would not be.
 17 It seems logical to say that but they are not really related,
 18 other than that.

19 Senator Long. Well, you see, we put the earned
 20 income credit in before you came here, and it was based on
 21 this theory: When low-income people are working, they are
 22 doing us a great big favor to work. A lot of them could
 23 make almost as much by just living on welfare, so when these
 24 low-income people turn to and go to work, if they are not
 25 making enough money to pay us an income tax, we started out

1 saying, "Let's give them back the social security tax money
2 that is being generated on their work effort." Therefore,
3 exceeding the 6 percent social security tax, we thought that
4 they were generating 12 percent for the fund when it was
5 a 6 percent tax. Actually it has moved up so it is 14,
6 almost 15 percent, more than 15 percent that they are generating
7 by their work effort.

8 Therefore, we say, "All right, now, if you are
9 out there working trying to do something, you are doing us
10 a great big favor by doing that. Otherwise we would have
11 to be supporting you on welfare and on Medicaid, so we are
12 going to give you back some of that social security tax money
13 you are generating."

14 Now if you add this to it, you are still not giving
15 them back the full amount they are generating for the
16 Treasury by the social security taxes that they are paying.

17 Mr. Chapeton. That is some cases would certainly
18 be true. It depends on the number of children and the income
19 level.

20 Senator Long. In no case are you giving them back
21 more, because the earned income credit is measured, 10 percent
22 measured against their earnings. All right, now, they are
23 generating 7.6 percent, if I recall correctly. Is that
24 right, Mr. Stern? What is the current -- is 7.6 the present
25 social security tax rate?

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1 Mr. Stern. I believe it is about 6.5 percent.

2 Senator Long. Is it 6.5? All right, let's make
3 it 6.5. No, I believe it is 6.7, to be exact. I had it
4 backwards. I believe it is 6.7, isn't it? I believe it
5 is 6.7 but we will stand corrected later.

6 All right, that works out to 13.4. Now you add
7 these two together, and you are still not giving them back
8 the full amount of taxes that their work effort is generating
9 to you by way of the Social Security tax.

10 Mr. Chapeton. That is correct, except in an unusual
11 case where there were a lot of children, because the credit
12 is per child.

13 Senator Long. However, here is the point I think
14 has escaped you down there Mr. Chapeton, and your people
15 ought to reconsider this: If I am correct that the overwhelming
16 majority of these people we are trying to help with this
17 refundable credit are going to be entitled to and should
18 be claiming the earned income credit, which is a refundable
19 tax credit already and which will exceed very substantially,
20 exceed about 3 to 1 what they have a right to claim on this
21 education credit, it makes sense that they ought to put the
22 whole thing down at one time, file it all on one form and
23 be done with it, rather than go to one and claim one against
24 the Treasury, and go claim the other one through the Department
25 of Education.

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1 Mr. Chapeton. Well, Senator, I know that
2 administratively I would certainly agree. You are making
3 the further point that they would otherwise be entitled to
4 a benefit outside of the tax system. That would not
5 necessarily be the case. You are deciding to give them the
6 benefit and you --

7 Senator Long. Oh, now, that is the one point,
8 Mr. Chapeton, that you and I cannot argue about. Starting
9 with Ronald Reagan and going on down, there is nobody in
10 your administration to my knowledge who would take the view
11 that on at least some basis, either as a grant or some basis,
12 that these low-income people should not be permitted to share
13 in this, nobody from the President on down. I have not heard
14 a person in your administration from the President on down
15 to say that if these low-income people are not going to get
16 the benefit of the refundable tax credit, you ought to have
17 a grant program through the Department of Education to give
18 it to them that way.

19 Mr. Chapeton. There are programs in the Department
20 of Education. Their representative can speak to that, but
21 there is no grant program connected with this policy. That
22 does point up the fact that that is what this is, and I
23 recognize that is what you want it to be, but it does involve
24 the question of need and that type of question.

25 Senator Long. Well, now, is there anybody on behalf

1 of this administration who is taking the view that these
2 low-income people should not be permitted to participate
3 in this program on any basis at all?

4 Mr. Chapeton. I do not think we have faced up
5 to that question, Senator. The question is --

6 Senator Long. The point is, you have faced up
7 to it. I sat right there in that fish room, they call it,
8 or the Roosevelt room, where the big fish is, with the
9 President of the United States there --

10 The Chairman. That is the Oval Office.

11 Senator Long. No, it is not the Oval Office.

12 [Laughter.]

13 Senator Long. Maybe they moved the fish around,
14 but I was down there with the President sitting right across
15 the table, and the Secretary of Education was there, and
16 we talked about this refundable tax credit. The Secretary
17 of Education said that he thought that they could handle
18 this thing by making a grant, a grant of the same amount
19 of money through the bureaucracy of the Department of
20 Education, and that was the basis upon which the President
21 was willing to go along with something that would appear
22 to leave the low-income people out, that they were going
23 to be taken care of by way of a grant program.

24 However, the best I can make out from everybody
25 I have talked to in your administration, there is nobody

1 in the administration contending that these low-income people
2 should not be permitted to share on any basis. I will ask
3 on this committee, is there anybody here who wants to take
4 the position that these low-income people should not be
5 permitted to participate on any basis whatever?

6 Senator Grassley. Well, he left.

7 [Laughter.]

8 Mr. Chapeton. Senator, I do not want to argue
9 that point. I was making the point that we oppose
10 refundability on the usual ground. Your point is well taken.
11 I appreciate that fact.

12 The Chairman. Right. I do recall that meeting.
13 I recall what Mr. Bell said, but to date I know of no plan
14 that would do that. I think in the meantime, let's just
15 vote on this committee amendment. The clerk will call the
16 roll.

17 The Clerk. Mr. Packwood?

18 [No response.]

19 The Clerk. Mr. Roth?

20 Senator Roth. Aye.

21 The Clerk. Mr. Danforth?

22 Senator Danforth. Aye.

23 The Clerk. Mr. Chafee?

24 Senator Chafee. Aye.

25 The Clerk. Mr. Heinz?

1 [No response.]

2 The Clerk. Mr. Wallop?

3 [No response.]

4 The Clerk. Mr. Durenberger?

5 [No response.]

6 The Clerk. Mr. Armstrong?

7 [No response.]

8 The Clerk. Mr. Symms?

9 [No response.]

10 The Clerk. Mr. Grassley?

11 Senator Grassley. Aye.

12 The Clerk. Mr. Long?

13 Senator Long. Aye.

14 The Clerk. Mr. Byrd?

15 Senator Byrd. Aye.

16 The Clerk. Mr. Bentsen?

17 Senator Bentsen. Aye.

18 The Clerk. Mr. Matsunaga?

19 [No response.]

20 The Clerk. Mr. Moynihan?

21 Senator Moynihan. Aye.

22 The Clerk. Mr. Baucus?

23 [No response.]

24 The Clerk. Mr. Boren?

25 Senator Boren. Aye.

1 The Clerk. Mr. Bradley?

2 Senator Bradley. Aye.

3 The Clerk. Mr. Mitchell?

4 Senator Mitchell. Aye.

5 The Clerk. Mr. Chairman?

6 The Chairman. Aye.

7 Senator Byrd. Mr. Chairman, is this -- you said
8 vote on the committee amendment. Are you speaking now of
9 the refundability?

10 The Chairman. Refundability, yes.

11 Senator Byrd. No. You confused me, the way you
12 expressed the question.

13 The Chairman. I said that because we will offer
14 it as a committee amendment. Otherwise it would take a couple
15 of weeks to go through the Appropriations Committee.

16 On this vote the yeas are 11, the nays are 1. The
17 record will be kept open because others may want to be
18 recorded.

19 What is the vote now on the Grassley amendment?
20 Has that changed? Any late returns?

21 The Clerk. Seven yeas and nine nays, Mr. Chairman.

22 The Chairman. Now as I understand it, the one
23 other area -- there may be other areas that I am not aware
24 of -- there is one area that we still need to address, and
25 that is the area of discrimination or nondiscrimination,

1 to make it positive. I know Senator Bradley has expressed
2 some concerns about this. There have been a number of meetings
3 during the recess on a staff level. I know the administration
4 has made what I consider to be completely good faith efforts
5 to satisfy many of those concerns, and I think they have
6 satisfied many of the concerns.

7 I am wondering, Mr. Reynolds, if you or Mr.
8 Chapeton might indicate what provisions the administration
9 would make, what changes they would make to strengthen those
10 areas, to see if it satisfies the concerns of the majority
11 of the members of this committee?

12 Mr. Chapeton. Mr. Chairman, I will go through
13 them very briefly, and then we would be happy to respond
14 to any questions. Concern was expressed on several aspects
15 of the antidiscrimination provisions in the administration's
16 bill. Basically, we thought the provisions were strong.
17 They are. I want to emphasize, in addition to the general
18 requirement of the law that an institution must be tax-exempt
19 under section 501(c)(3) to qualify for credits, that question
20 of the application of the Internal Revenue Code in that area
21 is now a matter pending before the Supreme Court in the Bob
22 Jones case which will be argued this fall.

23 However, quite apart from those requirements, this
24 bill, as the administration sent it up, would contain its
25 own antidiscrimination provisions. As the chairman indicated,

1 we have made changes in the bill, in our proposal, from those
2 originally sent up. Let me go through those briefly.

3 The amended bill would contain a provision requiring
4 the eligible school to publish annually a statement of its
5 nondiscriminatory policy in any published materials, any
6 of its bylaws, any brochures or admission materials, or
7 anything it publishes. There was in the original bill sent
8 forward a requirement that the school state under oath, file
9 a statement with the IRS annually under oath, stating that
10 it does not engage in discriminatory practices or have a
11 discriminatory policy. That requirement is retained.

12 There are changes in the declaratory judgment
13 procedure from the original bill. In the original bill the
14 Justice Department would file a declaratory judgment action
15 against a school, asking for a finding that the school had
16 discriminated. If the Justice Department had received a
17 complaint from a person who alleged that he had been
18 discriminated against and, in the discretion of the Justice
19 Department, that complaint were justified, then the Justice
20 Department would file a declaratory judgment action.

21 Under the amended provision, any person may file
22 this petition with the Justice Department alleging that an
23 act of discrimination has occurred by a particular school
24 or that the school has released a communication expressing
25 a discriminatory policy, so once that has been filed with

1 the Justice Department, the Justice Department is authorized,
2 as under the prior bill and under this bill, would be directed
3 to file suit under such circumstances within one year of
4 receiving the petition if the Attorney General decides that
5 the complaint is based on correct facts.

6 Once the Attorney General files a suit, he is not
7 bound by the allegations contained in the petition that
8 triggered the suit. He must show actual evidence of the
9 racial discrimination occurring within a 2-year period
10 preceding the filing of his complaint, not a mere failure
11 to meet a quota or a numerical standard. Under the original
12 bill that we sent forward, the Attorney General was required
13 to show that an act of discrimination against a student had
14 occurred, and under the amended bill the Attorney General
15 could prevail upon a showing that a statement had been made
16 communicating a discriminatory policy or some other showing
17 of a patter of conduct evidencing an intent to maintain a
18 discriminatory policy.

19 The provision in the original bill that settlement
20 of the complaint could be entered into by the Attorney General
21 would be retained because we think this is desirable result.
22 If a discriminatory policy is or has been followed by a school
23 or may be followed by a school, a settlement where that policy
24 is terminated is certainly the desirable result.

25 The amended bill would also require regular reports

1 by the Attorney General to Congress concerning the
2 disposition of petitions the Attorney General had received
3 alleging discriminatory policies or acts and the action the
4 Attorney General had taken with respect to such petitions.

5 The reinstatement of the credits -- once a
6 discriminatory school has been found, pursuant to a Justice
7 Department petition and a declaratory judgment of a court,
8 to have engaged in discriminatory practice -- the reinstatement
9 of the credits has been altered from the original bill we
10 sent forward. Under the original bill eligibility for credits
11 would be reinstated automatically after a 3-year period of
12 disallowance. Under the amended bill credits would be denied
13 in the case of such a school for an indefinite period, until
14 the school returns to court and shows that it no longer
15 discriminates, and the bill would provide that the school
16 may not move to reinstate its eligibility for credits until
17 it has maintained a nondiscriminatory record for at least
18 one year following the adverse declaratory judgment against
19 it. Then it could come in and show a prima facie case that
20 it has ceased its discriminatory policy and communicated its
21 change in policy to the community and complied with the
22 publication requirements that I have already mentioned.

23 Under the original bill, the disallowance of
24 tuition tax credits would not occur until all appeals from
25 a declaratory judgment have been exhausted. Under the amended

1 bill, disallowance of credits would occur in the calendar
2 year in which the judgment by the district court was entered
3 against the school, so it would occur from the first day
4 of that calendar year when the district court judgment is
5 entered.

6 Then I think finally -- well, the statute of
7 limitations, in the event the district court's adverse
8 determination were later overturned on appeal, then the parents
9 who had claimed tuition tax credits but had been denied
10 tuition tax credits, the statute of limitations would be
11 open so they could then go back and claim tuition tax credits.

12 Then, finally, there would be a provision allowing
13 the award of reasonable attorneys' fees for schools prevailing
14 in a declaratory judgment action brought by the Attorney
15 General where it was determined that the school had not
16 engaged in discrimination.

17 Senator Moynihan. Mr. Chairman?

18 The Chairman. Senator Moynihan.

19 Senator Moynihan. Mr. Chairman, may I say that,
20 unaccustomed as I am to expressing appreciation to the
21 Treasury Department and the Justice Department, it seems
22 to me even though there may be a case for going somewhat
23 further, that this has been a good faith response to the
24 questions which were raised at our previous hearing, more
25 than a good faith response, a complex and varied effort to

1 make sure that the purposes of this legislation are not
2 defeated. I want to thank you all, and you in particular,
3 Mr. Chapeton, and of course Mr. Reynolds.

4 The two matters which we raised last time just
5 seemed troubling to us. The first was that in order to have
6 standing, as you attorneys say, in a case you had to be a
7 student. It was not clear, if you were a student being
8 discriminated against, it was not clear how you could get
9 into the place in order to have been discriminated against
10 if they would not let you in, as it were. Now it says anybody,
11 any third party who can point to an action or a policy.

12 Secondly, there was the provision in section 4
13 of the original legislation that said, should the Attorney
14 General find racial discrimination, he was authorized upon
15 finding good cause to bring an action. That does not seem
16 to be the spirit of our laws in these matters, and you now
17 say he is directed.

18 On the reinstatement of credits, I think the
19 provisions are better, and in terms of the original
20 disallowance provision which let appeals go on endlessly,
21 that is now amended in a way which seems to be altogether
22 reasonable and manageable.

23 I would like to thank the administrations officials
24 for what they did.

25 The Chairman. Are these amendments prepared in

1 draft form? I know there is a summary. Every member has
2 a summary of the amendments.

3 Mr. Chapeton. There is a draft, Mr. Chairman.
4 I think we would like an opportunity to review it closely
5 with the committee.

6 The Chairman. Now these amendments have also been
7 reviewed by the Justice Department. Is that correct, Mr.
8 Reynolds?

9 Mr. Reynolds. That is correct, Mr. Chairman.

10 The Chairman. It is my understanding that the
11 administration's support is across the board.

12 Mr. Reynolds. That is correct. The administration
13 supports these amendments.

14 The Chairman. I am not certain how to proceed.
15 I do not want to shut anyone's rights off, but should we
16 adopt these amendments and then -- Senator Bradley, do you
17 want to offer amendments before we consider these amendments?

18 Senator Bradley. Mr. Chairman, I will have an
19 amendment that will deal with the Internal Revenue Service
20 oversight but on this particular issue I will also have an
21 amendment. I would like to say a couple of things
22 preliminarily, if I could, and then decide how you would
23 like to proceed, whether you would prefer the amendment to
24 this section or whether you would prefer to go to the
25 Internal Revenue Service oversight.

1 I might say first that the only recorded vote that
2 there has been in this committee since I have been here on
3 tuition tax credits was one on which I was recorded in the
4 affirmative. There were not more than five recorded that
5 way.

6 I would also like to ask Mr. Chapeton directly,
7 have I ever refused to discuss this issue with you in any
8 way?

9 Mr. Chapeton. No, sir. We talked about it last
10 week and I talked to your staff yesterday. I did ask for
11 a meeting with you yesterday and you were unavailable but
12 I talked to your staff.

13 Mr. Chapeton. You asked for a meeting with me
14 yesterday?

15 Mr. Chapeton. Well, on Monday I called your office
16 and asked if I could see you on Tuesday, and they said that
17 your schedule was very tight so I talked to your assistant.

18 Senator Bradley. You specifically requested a meeting?

19 Mr. Chapeton. No, and when I talked to your
20 assistant, I think we settled the matter.

21 Senator Bradley. I just want to get the air cleared
22 that whenever you asked to meet, we met.

23 Mr. Chapeton. No, I have not had any difficulty
24 talking to you about this issue.

25 Senator Bradley. Thank you.

1 Also, Mr. Chairman, I think it should be clear
2 that as far as I am concerned, we could have moved on this
3 legislation 3 weeks ago, and I think the chairman is aware
4 of that. It was the decision of the committee or whomever
5 not to move. I am prepared to move, so I think it is important
6 to establish the background of support for the legislation
7 and also the position of wanting to move forward on the
8 legislation and being willing to discuss and meet and talk
9 about this with anyone who was interested, so much so that
10 yesterday I even placed a call to the President to talk about
11 this discrimination aspect of the legislation. I have talked
12 to the Secretary of the Treasury and to Mr. Meese. I did
13 not get through to the President. Therefore, I want to lay
14 that as the background.

15 Then, Mr. Chairman, what I would like to do is
16 to try to put in perspective what has happened since the
17 committee last voted on this issue. What has happened, of
18 course, is an astonishing reversal on 501(c)(3). I will
19 not go into great detail about the Bob Jones case except
20 to summarize it by saying that the administration came down
21 in the case on the side of the party that wanted tax
22 exemption as well as being able to practice racial
23 discrimination.

24 Now in my judgment that was a very bad misjudgment
25 of the American public and its present position and attitude

1 on this issue, because I think irrevocably the public of
2 this country does not want a two-track school system. I
3 think that this was particularly troublesome because it
4 reversed a national policy on 501(c)(3) that had been held
5 through three to four administrations, and I think it created
6 a legitimate climate of doubt about what the administration's
7 intentions are in this area.

8 I think the administration recognized that it had
9 created a climate of doubt, and that is why it submitted
10 S. 2024, to clarify their position. In S. 2024, the bill that
11 was submitted by the administration, they suggested that
12 they wanted to make it clear that the IRS be authorized and
13 directed to deny exemption to schools that discriminate.
14 That is the bill introduced by the administration.

15 Now if you are going to do that, that is, deny
16 tax-exempt status to schools that racially discriminate,
17 you have to have some means of achieving that end. You have
18 to have some rules and procedures and guidelines for
19 determining whether a school has discriminated and for
20 enforcing the antidiscrimination law.

21 Now you would either have that in the form of the
22 present Revenue ruling, which is Revenue Procedure 7550,
23 or you would have to establish roughly a new one that would
24 achieve the same end, but the result is that you would have
25 to establish some procedure for audits and reviews and

1 denying exemptions and specifying standards and procedures
2 for reapplication.

3 Therefore, I think that when we look at this issue
4 and we look at my amendments, they should be looked at in
5 the form that what I am proposing to do with my amendments
6 is no more than what would exist under law if Bob Jones is
7 affirmed. If it is reversed, the administration's bill,
8 if we can believe their commitment, will be before us and
9 we will have to do the same thing, so I am prepared to offer
10 two amendments at this stage or open it to further discussion.

11 The first amendment gives the Internal Revenue
12 Service concurrent authority with the Attorney General to
13 enforce the bill's antidiscrimination provisions. It
14 authorizes and directs the Secretary of the Treasury to
15 establish procedures for auditing schools and for disallowing
16 the credit where there is a final administrative determination
17 that the school discriminates. This is no more than what
18 currently exists under the present 501(c)(3) procedure, without
19 the Bob Jones case intervening.

20 It says that such procedures will be established
21 within 6 months, and the committee report shall state that
22 they shall be designed and implemented so as to maximize
23 compliance with the antidiscrimination portion of the bill,
24 and will state specifically that it does not intend the IRS
25 to require schools to meet quotas. It authorizes and directs

1 the Treasury Secretary to prescribe standards and procedures
2 for what happens if a school is declared ineligible because
3 it discriminates racially. Therefore, the first portion
4 of the amendment deals with IRS oversight. The second portion
5 of the amendment deals with what happens if a school is found
6 to discriminate racially, what must they do to become
7 eligible again for the tax credits.

8 Here is where I have taken the language directly
9 from the administration's bill. The definition of "racially
10 discriminatory policies" is that taken directly from S. 2024.
11 The standards that have to be met and demonstrated are taken
12 directly from S. 2024.

13 Therefore, Mr. Chairman, this is essentially the
14 amendment that I would offer. I would suggest, as the final
15 part of that amendment, that the committee report shall state
16 that a clear and convincing demonstration that a school is
17 not discriminating include certain proofs of good effort,
18 and I have simply been specific where you have been general
19 in the bill before us now.

20 Let me say that I think that it would be a terrible
21 mistake for us to leave any doubt in the public mind about
22 the intent of this committee on a policy as central to the
23 national interest as racial discrimination in education.
24 Not only is that a very important policy, guaranteed by the
25 Constitution in the 5th, 13th, and 14th amendments, but I

1 think that it is a policy that none of us want to be a part
2 of destroying. Therefore, Mr. Chairman, the amendment is
3 offered with this in mind, and I might say as well that if
4 this bill goes to the floor and it does not have a strong
5 antidiscrimination pledge, a strong antidiscrimination section,
6 it will be a very difficult bill to pass in my view.

7 The Chairman. Well, what I would propose to do,
8 unless there is some objection, would be to adopt the
9 amendments which the administration has now agreed would
10 strengthen the bill, at least if that is satisfactory to
11 the Senator from New Jersey. Is there any objection?

12 Senator Bradley. I would certainly support what
13 the administration has suggested. I think Senator Moynihan
14 said it is in response to our questions that we raised, and
15 I think that it is an improvement over the bill that was
16 originally submitted to the Finance Committee.

17 Mr. Chapeton. Mr. Chairman, I do not know if it
18 would be appropriate but I would like to make just a couple
19 of comments on Senator Bradley's points, or do you want to
20 wait?

21 The Chairman. I thought first we might dispose
22 of the amendment that I will offer, that will take care of,
23 or at least strengthen -- as I see it, and as requested by
24 a number of the members of this committee -- strengthen some
25 of the provisions. I would ask that -- is that amendment

1 before us? You said it was not in draft form but we have
2 an outline of it. Is there any further discussion of that
3 amendment.

4 Mr. Moynihan. I would like to second.

5 The Chairman. If not, I would just ask the clerk
6 to call the roll on that amendment.

7 The Clerk. Mr. Packwood?

8 [No response.]

9 The Clerk. Mr. Roth?

10 Senator Roth. Aye.

11 The Clerk. Mr. Danforth?

12 Senator Danforth. Aye.

13 The Clerk. Mr. Chafee?

14 Senator Chafee. Aye.

15 The Clerk. Mr. Heinz?

16 [No response.]

17 The Clerk. Mr. Wallop?

18 The Chairman. Aye.

19 The Clerk. Mr. Durenberger?

20 [No response.]

21 The Clerk. Mr. Armstrong?

22 [No response.]

23 The Clerk. Mr. Symms?

24 The Chairman. Aye.

25 The Clerk. Mr. Grassley?

1 Senator Grassley. Aye.

2 The Clerk. Mr. Long?

3 Senator Long. Aye.

4 The Clerk. Mr. Byrd?

5 Senator Byrd. Aye.

6 The Clerk. Mr. Bentsen?

7 Senator Bentsen. Aye.

8 The Clerk. Mr. Matsunaga?

9 [No response.]

10 The Clerk. Mr. Moynihan?

11 Senator Moynihan. Aye.

12 The Clerk. Mr. Baucus?

13 [No response.]

14 The Clerk. Mr. Boren?

15 Senator Boren. Aye.

16 The Clerk. Mr. Bradley?

17 Senator Bradley. Aye.

18 The Clerk. Mr. Mitchell?

19 Senator Mitchell. Aye.

20 The Clerk. Mr. Chairman?

21 The Chairman. Mr. Packwood, aye, and I vote aye.

22 On this vote the yeas are 16, the nays are zero,

23 and the absent members will be afforded the opportunity to

24 record their votes. The amendment is agreed to.

25 Senator Bradley. Mr. Chairman?

1 The Chairman. Senator Bradley.

2 Senator Bradley. Before we go to the question
3 of the Internal Revenue Service, I would at least like to
4 address -- I think at this time, since the committee has
5 adopted this amendment -- one further improvement that I
6 think would be important.

7 Under the amendment that we have just adopted,
8 in its broader construct, a petitioner to the Attorney General
9 may be a student or any third party that alleges a specific
10 incident of racial discrimination. The procedure is that
11 the petition is registered with the Attorney General. The
12 Attorney General then asks the affected school, do they follow
13 a policy or practices of racial discrimination. That school
14 then has the right to reply to the Attorney General in writing.
15 After he receives those responses, he determines if there
16 is good cause to pursue a declaratory judgment.

17 Now I think that it is absolutely central that
18 the petitioner be allowed to see what the school has said
19 in response to his allegations, and I think that that response
20 should be available to the petitioner and to the public
21 because, if not, you could very well have a situation where
22 someone alleges racial discrimination, the Attorney General
23 asks the school, "Has there been racial discrimination,
24 and do you follow a practice of racial discrimination." The
25 school says no but does not justify their decision, and then

1 the Attorney General decides not to go forward.

2 I think a clear openness about this process is very
3 important. If indeed the charge is a frivolous one, or
4 harrassment or whatever, the response of the school will
5 be clear in that regard and the response will be open to
6 the public at large, and specifically to the petitioner who
7 has alleged the act of discrimination. I would like to propose
8 that that is how we amend the provision that we have just
9 adopted. Otherwise, there could be that reasonable level
10 of doubt.

11 The Chairman. I wonder if we might address the
12 amendment suggested by Senator Bradley and see if there is
13 any way we can accommodate what Senator Bradley has discussed?
14 I want the record to indicate very clearly there is no
15 question in anybody's mind about Senator Bradley's support
16 for tuition tax credits. I have discussed it with him
17 privately, I have discussed it with him publicly, and I do
18 not think there is any doubt in anyone's mind about his strong
19 and forthright support.

20 He does have a concern about the antidiscrimination
21 provisions, as he has indicated to the administration and
22 to others on this committee. What I would hope, if it could
23 be done, if there is any way to accommodate some of those
24 concerns, we are at the threshold right now of whether we
25 are going to report out tuition tax credits. I would withhold

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any further comment until the administration has responded to Senator Bradley's concerns but I want to commend the administration, too -- Treasury, Justice, the White House, and others who have recommended that the antidiscrimination proposals be strengthened.

On that note, I do not know who wishes to proceed.

Mr. Chapeton. I thought Mr. Reynolds might respond to this latter point.

The Chairman. Mr. Reynolds?

Mr. Reynolds. Mr. Chairman, Senator Bradley, we agree that the process that we are talking about in the antidiscrimination provisions should be as open as we can possibly make it. There are some complications when you are involved in litigation and an investigatory kind of a procedure, in making public or agreeing in advance to make public information that is submitted by different parties or possible parties to the litigation.

The concern I would have is that if you have in the statute that anything the school gives the Attorney General is turned over to a petitioner or a group of petitioners, there is certainly legitimate legal grounds for the school to insist on subpoena process before it turns that information over. If what you are interested in -- as I believe it is -- is that the petitioner has available the full information that the Attorney General based his decision

1 on, it seems to me that a notice provision that would allow
2 that to be made available to the petitioner after the Attorney
3 General had made his decision would accommodate your concerns,
4 and I think that would be a better way to do it within the
5 context of the litigation process. I am concerned if we
6 trickle paper out as it trickles in because I think it would
7 be counterproductive.

8 Senator Bradley. That would be acceptable to me
9 if the notice is available to the petitioner.

10 The Chairman. Then can you work that out in the
11 amendment just adopted, work out some language that says
12 that?

13 Mr. Reynolds. I think that we can work that out.

14 The Chairman. Senator Boren?

15 Senator Boren. Mr. Chairman, I wonder, in reading
16 the description of the administration amendment which we
17 have adopted, does this imply -- it says a petition will
18 be filed with the Attorney General, and the Attorney General
19 will then, after taking evidence, decide whether or not to
20 file an action for declaratory judgment -- does that mean
21 that the individual citizen -- is that an exclusive remedy?
22 Let's say I am alleging that my child is being discriminated
23 against by a school, I make a complaint to the Justice
24 Department, I file the requisite complaint with the Attorney
25 General, he investigates and he decides he does not think

1 that there is room for complaint, but I still think there
2 is. Am I barred under this provision? Is this an exclusive
3 remedy or may I go to court and seek my own action against
4 the school or seek a declaratory judgment that it is
5 practicing discrimination? Does this provision bar me from
6 my own individual right of action?

7 Mr. Reynolds. Senator, that is a good question
8 and I think it is pertinent to Senator Bradley's suggestion
9 of including yet another procedure for investigation and
10 dealing with these antidiscrimination problems.

11 You would have your own separate right of action,
12 and it would not be precluded by virtue of the fact that
13 you had filed a petition with the Attorney General under
14 this provision. The Supreme Court has recognized a private
15 right of action in circumstances where there is racial
16 discrimination in a private school context, and there is
17 nothing in this bill that would preclude you from pursuing
18 your remedies in that context.

19 Therefore, there is built in as the law now exists
20 a safety net, if you will, that guards against the
21 contingency that the Attorney General might decide no good
22 cause and the complainant might feel that there is every
23 reason to proceed against the school.

24 Senator Boren. Well, in terms of the way that
25 the individual may proceed, I understand the individual might

1 be able to proceed in terms of seeking personal damages,
2 for example, against the school for a violation of civil
3 rights.

4 Mr. Reynolds. That is right.

5 Senator Boren. Could the individual still proceed
6 to seek a declaratory judgment that the institution itself
7 was not entitled to the tax treatment, the tax-exempt status?

8 Mr. Reynolds. I think the individual would have
9 the right to seek injunctive relief to stop the school from
10 engaging in the practices that were discriminatory and to
11 get damages, but the 1981 suit would not allow for a private
12 attorney's general kind of action which would allow the private
13 individual to sue the school in order to get the tuition
14 tax credit.

15 Senator Boren. Mr. Chairman, I think we should
16 allow the individual to seek to enjoin the Federal Government
17 from authorizing a tuition tax credit for an institution.
18 I simply am very uneasy about leaving it up to the determination
19 of the Attorney General to determine whether or not an
20 individual citizen should have the right to seek a declaratory
21 judgment as to whether or not the school should be entitled
22 to be qualified to receive the tuition tax credits.

23 Mr. Reynolds. Well, Senator, if the individual
24 disagrees with the Attorney General's initial determination
25 and goes to court and makes his case that the school is

1 discriminating, then you would have no difficulty at that
 2 point having the tuition tax credit benefit removed from
 3 the parents of that school. Therefore, it is not a situation
 4 where -- there is a judicial process at work, and the way
 5 that the process is set up, if a court makes the determination
 6 that you have a school that is engaged in discrimination,
 7 then there would be the ability to remove the tuition tax
 8 credit benefit to the parents of that school.

9 Senator Boren. Would it be automatic?

10 Mr. Reynolds. It would not be automatic, but it
 11 would --

12 Senator Boren. Could we put a provision in saying
 13 that if an individual brought action against the school and
 14 if that individual prevailed in district court, that there
 15 would be an immediate suspension of the granting of tuition
 16 tax credits to that institution pending appeal, pending the
 17 final determination? If there was a finding by a court of
 18 an individual act of discrimination brought by a private
 19 citizen, that should --

20 Senator Bradley. Would the Senator yield on that
 21 point?

22 I frankly think that your point is directly
 23 related to the whole question of 501(c)(3). Unless a school
 24 can be denied tax-exempt status if it follows a practice
 25 of racial discrimination, then there would be no basis, so

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1 until Bob Jones is decided one way or the other, until it
2 is either affirmed or until we have a new law, I think that
3 your point is somewhat moot.

4 Senator Boren. Well, I would simply like to propose
5 Mr. Chairman, that if an individual prevails in district
6 court in a case alleging discrimination, discriminatory
7 treatment, against any institution so qualified under this
8 bill, that that institution would have its tuition tax credit
9 immediately suspended just as they would if the Attorney
10 General filed a petition in such a determination.

11 Senator Bradley. However, there is no basis for
12 doing that if the law says that you can still be tax-exempt
13 and discriminate racially, and that is in question now.
14 Therefore, I think that gets to our IRS oversight issue.

15 Senator Moynihan. Mr. Chairman, would the Senator
16 from Oklahoma yield?

17 Senator Boren. Yes.

18 Senator Moynihan. As we go into the question of
19 the IRS, I would just make one statement and ask one
20 question.

21 I was counselor to the President in 1970 when the
22 July 10 statement was issued by the White House, by the
23 President, that the IRS would henceforth establish regulations
24 to entitle educational institutions to 501(c)(3) benefits
25 and to remove those benefits where there was evidence of

1 racial discrimination. I believe, if I recall, I drafted
2 the actual statement that is in the Presidential papers.

3 Randolph Thrower, the then-Commissioner of the
4 IRS, took this up in great conviction that this was the right
5 thing to do and that he had the power to do it under law --
6 and he is of course a very distinguished attorney -- and
7 he still is very much of the view that he had the power,
8 and the Court will decide. Mr. Coleman has filed his brief,
9 and the Court will at its next term decide.

10 I would like to ask you, however, in the interim
11 it is the case, I believe, that no new tax-exempt
12 certificates, if that is the term, are being issued by the
13 IRS. All matters are on hold pending the outcome of the
14 Court case and/or the legislative proposal the administration
15 has made. Is that not the case?

16 Mr. Chapeton. Where there is any possibility of
17 a question of that, that is correct.

18 Senator Moynihan. Yes.

19 Mr. Chapeton. Where there is no question whatsoever
20 presented, exemption letters are going out.

21 Senator Moynihan. Where there is no question of
22 any kind.

23 Mr. Chapeton. Right.

24 Senator Moynihan. Therefore, we are all on hold
25 and in a sense, in effect, the previous policy has not been

1 changed in terms of the way the Government is behaving. The
2 Government is not acting differently at this point.

3 Mr. Chapeton. That is correct.

4 Senator Moynihan. It is not acting at all.

5 Mr. Chapeton. We are on hold on that point, that
6 is correct.

7 Senator Moynihan. Yes. Therefore, Senator Bradley's
8 proposal would not at this point reverse your present
9 behavior.

10 Mr. Chapeton. No, and of course Senator Bradley's
11 amendment would go only to the tuition tax credit. The other
12 question involves 501(c)(3) status of the schools.

13 Senator Moynihan. That is right.

14 Mr. Chapeton. Mr. Chairman, if I might just
15 briefly make a few points on Senator Bradley's proposal,
16 I think that the most important point is that the
17 administration and Senator Bradley are together on the
18 result, that is, that no tax credit should be available to
19 schools that discriminate. Indeed, although this question
20 is not before the committee today, I think we are very much
21 together on the point that the correct policy is no tax
22 exemption for schools that discriminate.

23 As we all know, the question on whether that is
24 presently contained in the Internal Revenue Code is pending
25 before the Supreme Court, but the administration is clearly

1 on record that if the Supreme Court decides that the Internal
2 Revenue code does not now contain that prohibition, then
3 the administration will present legislation adopting that
4 policy. Therefore, on the policy point I believe we are
5 all together.

6 We do recognize, as Senator Bradley clearly
7 recognizes, that the question of administering that policy
8 is a difficult one and it is a question that came to the
9 fore in the mid- to late seventies when, because of certain
10 IRS announcements on audit policies of the schools, many,
11 many schools, many hundreds of thousands of schools
12 thought they were not in any way suspect on the racially
13 discriminatory question, that their policies were being placed
14 into question and being placed into question unfairly. The
15 IRS received more letters on those revenue procedures than
16 it has ever received on any other issue, and it was certainly
17 a matter of concern on how you implement that policy.

18 I know Senator Bradley recognizes that. I know
19 it is a question with which we must deal, either after the
20 Supreme Court acts or, depending on which way they act, after
21 further legislation is passed.

22 Our point in this legislation is that we want to
23 add a separate layer of antidiscrimination protection for
24 tuition tax credits, apart from those questions, in addition
25 to those questions, in addition to that policy I have stated,

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a totally separate layer but that avoids for the present those questions with which we must all deal in the future. We know, no matter whether Senator Bradley's amendment is adopted or not adopted, the Treasury will have to deal again with the question of how we administer the 501(c)(3) policy. However, I repeat, it is a very difficult question and one that is going to take an awful lot of attention.

Here we have a separate layer of antidiscrimination rules, and we simply use the Justice Department. We think they are very, very strong antidiscrimination rules, totally using the Justice Department and in addition to whatever else we do. We think that gives every possible protection against antidiscrimination in the tuition tax credit area.

Senator Bradley. Mr. Chairman, if Bob Jones is decided so that tax-exempt status can be granted to a school that racially discriminates, as Mr. Chapeton says, we will then deal with the administration bill, S. 2024, which he assumes we will adopt. If, however, Bob Jones is decided the other way, there is no need for a bill and current law takes precedence.

What I am saying is, let's put into this law what the administration says it wants in S. 2024 so that we do not have to act if it goes the other way, so that we will have produced a tax credit bill that is the strongest possible bill on antidiscrimination. If we can produce the

1 majority to pass that bill if the Bob Jones case decides
2 you can discriminate and get tax exemption, why can't we
3 produce it now to cut that off at the pass, to send a clear
4 direction of what national policy is and what this committee
5 thinks it should be on racial discrimination? That is the
6 amendment.

7 Mr. Chapeton. Senator, I would just add the further
8 point that, as you well recognize, if the Bob Jones case
9 goes that way and if your amendment were adopted, this
10 committee will still have to act again on that question at
11 that time and on the 501(c)(3) classification.

12 The Chairman. As I understand, for the reasons
13 stated the administration opposes the amendment that Senator
14 Bradley is now discussing. Is that correct?

15 Mr. Chapeton. That is correct.

16 The Chairman. Are there three amendments or is
17 there one amendment --

18 Senator Bradley. No: The amendment we are
19 discussing now is the Internal Revenue Service oversight.
20 You have a copy of it in front of you.

21 The Chairman. Right. However, we did work out
22 one amendment.

23 Senator Bradley. Yes.

24 The Chairman. Is there still another one?

25 Senator Bradley. No, this is the other one.

1 The Chairman. I think we should proceed to vote,
2 find out where we are, and again, without -- there may be
3 great merit to the Bradley amendment -- I think very honestly
4 if it is adopted, we are not going to report the bill.

5 Senator Bradley. Mr. Chairman, I would like to
6 address that, if I could.

7 The Chairman. Let me first indicate that there
8 is a very fragile coalition. I have met with the coalition
9 three times in the past 2 or 3 weeks, and it has been called
10 to my attention on each occasion that in order to hold the
11 coalition together, there are certain things that must be
12 done and certain things that cannot be accepted.

13 It was on that basis that we had the discussions
14 during the so-called Labor Day recess, and the administration,
15 I think, made a good effort and moved a long way to allay
16 some of the concerns expressed by Senator Packwood, Senator
17 Moynihan and myself, Senator Bradley, and nearly every other
18 member of the committee. With one exception, I think
19 everything is in agreement. There is an agreement on
20 everything.

21 Senator Bradley feels very strongly, based on his
22 strong support of tuition tax credits and the strongest possible
23 antidiscrimination provisions, that we should still accept
24 the amendment that is now before us. Very frankly, as I
25 understand, that would end the active support of the coalition

1 and would in effect doom any chance tuition tax credits might
2 have this year. Now if I am mistaken in that, I would
3 certainly be happy to correct what I have just said for the
4 record. Is that the administration's understanding?

5 Mr. Chapeton. That is my understanding, yes, Mr.
6 Chairman.

7 Mr. Reynolds. It is also my understanding, Mr.
8 Chairman.

9 Senator Bradley. Mr. Chairman?

10 The Chairman. Is there anybody who disagrees --
11 and then I will yield to Senator Bradley -- anyone who
12 disagrees with that?

13 Senator Chafee. Well, could you explain what
14 the problem is? I mean, it seems strange that a program
15 will be shot down because it has strong antidiscrimination
16 language. Could somebody explain the rationale of this group
17 whose approval hinges on the Bradley amendment not being
18 accepted?

19 Mr. Chapeton. Senator Chafee, I guess the quickest
20 way to explain it as I understand it is that there has been
21 an attempt to draft a very careful antidiscrimination provision
22 that does not, in this context, raise the question I mentioned
23 to Senator Bradley, the question of how IRS conducts audits
24 of schools on the basic 501(c)(3) questions; that those
25 questions, which will have to be faced at a later time, not

1 be added to this because they are very difficult questions.

2 As I stated, the IRS action in the seventies
3 coalesced a group in opposition to what was then considered
4 IRS overreaching, out of all proportion. The thought was
5 that that has to be avoided here, or otherwise you get into
6 those questions and they become so difficult that without
7 knowing how that is going to come out, people cannot support
8 this amendment, certain elements of it.

9 Senator Bradley. Mr. Chairman, I find it curious
10 that if the committee votes for the strongest possible
11 antidiscrimination language, that we will not report the
12 bill out. There is another way. If the majority of the
13 committee supports the strong antidiscrimination language,
14 and the majority of the committee supports reporting the
15 bill out, then let's go to the floor and let those who want
16 to weaken the antidiscrimination language propose their
17 weakening amendments. We will see who they are and we will
18 see who this coalition is.

19 A part of this coalition, I might add, a small
20 part of this coalition -- we will see who wants to strike
21 the discrimination clauses and who wants to turn back the
22 clock. It would be very good for us to take it to the floor
23 and identify who are the real obstructionists to this bill.

24 Senator Long. Mr. Chairman, I would just like
25 to say one thing here. I am just looking at the explanation

1 of the amendment. It is the first time I have seen it.

2 The point I have made before about wanting to make
3 this available to as many people as possible has to do with
4 the question of, do the people get the aid or don't they
5 get the aid. Let's just look at page 2 of the Senator's
6 explanation. Do they get it or don't they get it?

7 "The committee report shall state that the committee
8 intends that a clear and convincing demonstration that a
9 school is not discriminating shall include evidence as follows:
10 proof of active and vigorous recruitment programs to secure
11 black and other minority students."

12 Now how active and how vigorous does a recruitment
13 program have to be to meet that standard? In other words,
14 where do you draw the line? I would be curious to know if
15 anybody, including the sponsor of the amendment, could say
16 how vigorous must a program be, by the degree.

17 Senator Bradley. Let me respond to you, Senator.
18 This is only after a school has been declared ineligible
19 because it has been shown to discriminate racially. This
20 is not every school out there.

21 Senator Long. Well, can you answer the question?
22 How vigorous? "Proof of active and vigorous recruitment
23 programs," not one but plural -- how many programs and how
24 vigorous?

25 Senator Bradley. Senator, if you had a school

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1 that was determined, either in the courts by the Attorney
2 General route or by the IRS, to have discriminated racially,
3 and that school and the parents are denied eligibility for
4 these tuition tax credits, the burden of proof at that point --
5 at that point -- should be on the school. We specifically
6 in here said no quotas --

7 Senator Long. All right, now. I heard your
8 statement. How much burden do you want them to carry, 50
9 tons or 50 trillion tons? I would like to know. Fifty tons,
10 5 million tons, or 50 trillion tons? What is the degree
11 of the burden you want to put on the people?

12 Senator Bradley. If the Senator would like to
13 propose a clarifying amendment to be very specific about
14 whether it means one ad in a newspaper or three ads, or
15 whether it means this person speaking or that person, that
16 is fine with me.

17 Senator Long. Senator, I do not think you can
18 clarify it. It is your amendment. I challenge you to clarify
19 it.

20 Senator Bradley. This is a decision that is left
21 to the Internal Revenue Service.

22 Senator Long. Well, the point is, Senator, if
23 you cannot tell me what it means, who on God's green earth
24 can tel me what it means?

25 Senator Bradley. We have frequently in the law

1 such words as "good faith effort," "reasonable effort." Now
2 I cannot give you a definition of what that means in every
3 place it occurs in the law, and the reason that it is vague
4 is because there has to be a range of discretion in applying
5 the standard. If the Senator wants to be more specific,
6 in my opinion that is fine.

7 Senator Moynihan. Mr. Chairman?

8 The Chairman. Senator Moynihan.

9 Senator Moynihan. May I just ask one question?

10 We are going to vote on Senator Bradley's amendment, and
11 then any others that may be around. Won't that amendment --
12 eventually today won't we be able to vote to report the bill
13 out, to have a vote on reporting the bill out?

14 The Chairman. That is a possibility, but rather
15 remote.

16 [Laughter.]

17 Senator Moynihan. A remote possibility? With
18 great respect, could I ask what are the procedures of the
19 committee in that regard? I mean, cannot any member propose
20 to report --

21 The Chairman. On, no, I do not have any quarrel
22 with the amendment. I just do not want it to be adopted.

23 Senator Moynihan. No, sir. I am saying, with
24 respect to a motion to report out a bill, might not any
25 member of the committee make such a motion?

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The Chairman. Well, we have a number of other matters to take up in the committee, and we might have to move on to those.

Senator Bradley. I thought the President had this as a prime consideration. It was very important. You had meetings yesterday which some Senators attended; then you had a press conference to state that it was an important matter.

The Chairman. It is important, and I think we have addressed 99 percent of the concerns of Senator Bradley and I would hope we could accommodate all of them, because I know --

Senator Moynihan. Could I ask, sir, Senator Packwood is not here -- and he and I have been 6 years at this -- would he be of the view that we should not report the bill out of the committee if we have this change?

The Chairman. I have just talked to Senator Packwood and he has indicated his satisfaction with the efforts of the administration. I think I can say that he is willing to report the bill out without further amendment.

Senator Moynihan. Would he not be willing to have it reported out with further amendment?

The Chairman. That might take one more phone call.

[Laughter.]

Senator Bradley. Well, I think that we kind of

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1 have the cards laid out on the table, Mr. Chairman. Let
2 me just say --

3 Senator Danforth. I would just like to say I have
4 an amendment on a different subject.

5 The Chairman. Right.

6 Senator Danforth. I do not know what or who the
7 coalition is. I support the tuition tax credit. Nobody
8 ever consulted me about what amendments should be in or what
9 amendments should be out, but I would hope that reasonable
10 people could differ as to how the antidiscrimination provisions
11 are going to be enforced without that being viewed as killing
12 the bill. It seems to me that the tuition tax credit is
13 an important program. It also seems to me that making sure
14 that antidiscrimination provisions are adequately enforced
15 is very important, and I would hope that however we vote
16 on this would not be viewed as a vote for or against the
17 bill itself.

18 The Chairman. No, I understand that. It just
19 seems to me that I think there is some question whether or
20 not the Bradley amendment is going to mean improved enforcement.
21 We have had the IRS severely criticized. In fact, we have
22 joined in some of that criticism here a few months ago.

23 However, I do know that this is a matter of greatest
24 priority, and certainly we hope to report the bill, but if
25 in fact you lose 20 votes in the process, which we might

1 do, then it probably would not make much difference.

2 Senator Mitchell. Mr. Chairman, could I just ask
3 a question?

4 The Chairman. Sure.

5 Senator Mitchell. I listened to Mr. Chapeton's
6 answer to Senator Chafee's question but I am afraid I still
7 do not understand it. Let me rephrase it: What is there
8 in the Bradley amendment that is not in the administration's
9 amendment that will result in the defeat of this bill, that
10 might not otherwise occur?

11 Mr. Chapeton. Senator, I cannot say unqualifiedly
12 that the bill would be defeated. I know that it will lose
13 some support, the support of the groups that have been
14 concerned about the IRS's vigorous activity in the mid-1970's.
15 The question is one of administration, it is not one of policy.
16 As I understand it, even with these groups it is not a
17 question of policy, it is a question of administration that
18 that will then suddenly be attached to this bill, that they
19 have strong views on and they do not want that question with
20 this bill.

21 Senator Mitchell. All right, but what is the status
22 of those efforts now? Are they being pursued by the Internal
23 Revenue Service?

24 Mr. Chapeton. No. That whole question is on hold
25 and we will have to deal with it after the --

1 Senator Mitchell. Is it on hold as a result of
2 congressional action or administrative action?

3 Mr. Chapeton. As a result of administrative action
4 while the Bob Jones case is pending.

5 Senator Mitchell. All right. Are you suggesting
6 that in some manner the Bradley amendment will require actions
7 to be taken that are not now being taken as a result of that
8 administrative hold?

9 Mr. Chapeton. Yes. I think Senator Bradley would
10 agree with that, on the sole question of whether a school
11 is eligible for tuition tax credits.

12 Senator Mitchell. Whether a school is eligible --

13 Mr. Chapeton. Is eligible for tuition tax credits.

14 Senator Mitchell. What are those actions that
15 you are saying will produce this dire result?

16 Mr. Chapeton. The IRS will have to publish rules
17 implementing what constitutes a nondiscriminatory policy.

18 Senator Mitchell. Mr. Reynolds, did you want to
19 say something?

20 Mr. Reynolds. Well, I did want to say something
21 but I did not want to interrupt.

22 Senator Mitchell. No, go ahead.

23 Mr. Reynolds. What I wanted to interject was that
24 I think the primary concern with Senator Bradley's amendment
25 is that the coalition which the chairman spoke of is comprised

1 of a large number of groups who are very clearly identified
2 as pro-civil rights groups and support the whole concept of
3 a strong antidiscrimination provision. Those --

4 Senator Bradley. I might say they are not opposing
5 the amendment.

6 Mr. Reynolds. Those groups -- well, let me at
7 least say what my understanding is, and then certainly the
8 Senator can correct me -- those groups as I understand it
9 are behind the administration's bill and the amendments to
10 the administration's bill that have made it stronger than
11 it was when originally sent up. They do not feel it is a
12 soft provision on antidiscrimination. They do not feel that
13 there is any reason to feel apologetic by the provision the
14 administration sent up. Indeed, the feeling is that it is
15 a very forceful antidiscrimination provision. I would submit
16 personally, Senator, that I think that this provision is
17 the strongest antidiscrimination provision on the books in
18 the Federal Code. I do not think there is a stronger provision
19 of antidiscrimination that is available, that is in a statute,
20 a Federal statute.

21 However, beyond that, the concern is that what
22 Senator Bradley has proposed is to layer that antidiscrimination
23 provision with an alternative provision that is very open-
24 ended and invites the IRS to establish procedures to go in
25 and audit schools and to set up a whole separate administrative

1 process. I suspect that -- well, I don't know how far it
2 could reach or would reach. I think the real concern is
3 that, having answered the antidiscrimination problem
4 forthrightly in the bill, we are inviting some kind of ill-
5 defined participation by the IRS in the private schools'
6 activities. The concern is the Kurtz amendment concerns
7 that we experienced in 1978. There is no limitation, there
8 is nothing in this kind of a provision that defines or in
9 any way counsels the IRS as to what it can or cannot do.

10 That whole question of IRS participation under
11 501(c)(3) is going to be before Congress, and one of the
12 concerns at least, in addition to the open-endedness, I would
13 think is the concern the Senate would have to in this context
14 begin to walk down that road. When it is going to have to
15 visit that under 501(c)(3), I doubt that you would want to
16 make certain decisions now on IRS administration that might
17 come back later and have to be dealt with under 501(c)(3),
18 and that is the place where one ought to deal with those
19 problems.

20 Senator Mitchell. Your references to open-endedness
21 are different from Mr. Chapeton's, who suggested that all
22 it would require would be the IRS to publish regulations.

23 Mr. Reynolds. However, nobody tells us what
24 regulations. Nothing in the bill suggests the content of
25 the regulations or how much IRS should or should not be

1 doing, and I think that the concern is that without any kind
2 of definition in that regard, since you already have a
3 terribly strong antidiscrimination bill, this is an open
4 invitation to the IRS that could go in any number of
5 directions, and that is why the support will --

6 Senator Mitchell. Would you then support this
7 with some more precise definition?

8 Senator Bradley. Would the Treasury like to have
9 the Congress start to write all the regulations? We might
10 start to write the regulations on what is an acceptable
11 medical deduction. Would the Treasury like that kind of
12 detail?

13 Mr. Reynolds. My problem is --

14 The Chairman. Maybe we could just try to speed
15 up the process. Phil, just give us the basic difference
16 between what we have in the bill now and what Senator Bradley
17 proposed to do. It is a very basic difference, and if we
18 agree with it it is one thing, and if we do not it is something
19 else.

20 Mr. Morrison. As I understand, one of the coalition's
21 chief objections is that under the administration bill as
22 it now stands, as amendment, governmental involvement in
23 the schools' policies does not begin until a citizen alleges
24 an act of discrimination.

25 The Chairman. Alleges?

1 Mr. Morrison. Alleges an act of discrimination.
2 Under the Bradley amendment, Government involvement could
3 begin sua sponte on an IRS audit without the allegation of
4 any discriminatory action.

5 The Chairman. Is there any further discussion?

6 [No response.]

7 The Chairman. The question, then, is on the Bradley
8 amendment. The clerk will call the roll.

9 The Clerk. Mr. Packwood?

10 The Chairman. No.

11 The Clerk. Mr. Roth?

12 Senator Roth. No.

13 The Clerk. Mr. Danforth?

14 Senator Danforth. Aye.

15 The Clerk. Mr. Chafee?

16 Senator Chafee. Aye.

17 The Clerk. Mr. Heinz?

18 [No response.]

19 The Clerk. Mr. Wallop?

20 The Chairman. No.

21 The Clerk. Mr. Durenberger?

22 The Chairman. No.

23 The Clerk. Mr. Armstrong?

24 [No response.]

25 The Clerk. Mr. Symms?

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The Chairman. No.

The Clerk. Mr. Grassley?

Senator Grassley. No.

The Clerk. Mr. Long?

Senator Long. No.

The Clerk. Mr. Byrd?

Senator Byrd. No.

The Clerk. Mr. Bentsen?

Senator Bentsen. Aye.

The Clerk. Mr. Matsunaga?

Senator Matsunaga. Aye.

The Clerk. Mr. Moynihan?

Senator Moynihan. Aye.

The Clerk. Mr. Baucus?

Senator Bradley. Aye by proxy.

The Clerk. Mr. Boren?

Senator Boren. Aye.

The Clerk. Mr. Bradley?

Senator Bradley. Aye.

The Clerk. Mr. Mitchell?

Senator Mitchell. Aye.

The Clerk. Mr. Chairman?

The Chairman. Mr. Armstrong no, and I vote no.

On this vote the yeas are 9, the nays are 10, and
the amendment is not agreed to.

1 Senator Danforth?

2 Senator Danforth. Mr. Chairman, I would offer
3 an amendment at this point that we pay for the program, and
4 this is a point that I made on the first day of markup. I
5 support the tuition tax credit, have from the beginning,
6 but we have spent the last year and a half trying to contain
7 the growth rate of the Federal Government, to bring down
8 Government spending. Among other programs that we have touched
9 in that effort have been programs relating to education.

10 This committee has been at the forefront of the
11 effort of trying to establish an economic policy for this
12 country, and last month we passed a very significant bill,
13 both raising revenues and reducing spending. Now we are
14 putting in place a brand-new program, and the brand-new program
15 is a spending program. It is called a tax credit but in
16 point of fact what it does is to spend money for a new
17 educational effort.

18 Now I think education is about the best way we
19 can spend money, and I think that it is very important to
20 the future of the country, and that is why I favor the
21 tuition tax credit. However, it seems to me that despite
22 efforts to reduce what would otherwise have been the cost
23 of the program, we are still on the verge of reporting out
24 of this committee a new spending initiative. I think that
25 we should, if we are going to do that, pay for the program.

1 I think that what is at stake is not only the
2 credibility of the Congress in total economic policy but
3 I also think what is at stake is the deep concern that has
4 been expressed by those many Americans who are deeply
5 interested in public education, who are terribly concerned
6 about this program, not that they are concerned about the
7 tuition tax credit per se but they believe that what Congress
8 is about to do is to start a policy of robbing Peter to pay
9 Paul. They believe that there is a finite amount of funds
10 available for education, and that if we are going to be aiding
11 private education, the flip side of that is that we are going
12 to be diminishing our support for public education.

13 Therefore, I would like to make it clear by an
14 amendment that we are going to start paying for new programs,
15 not just increasing the deficit by new programs by whatever
16 modest amount. I would also like to make it clear by an
17 amendment that if we are going to help private education
18 in this country, we are not going to do it at the expense
19 of public education.

20 Now at the first day of the markup, which seems
21 like a long, long time ago, I raised precisely this point
22 and I raised it for the purpose of attempting to stimulate
23 activity on the part of the Treasury and the part of the
24 Joint Committee and the part of members of the Finance
25 Committee to come up with whatever means they wanted to.

1 I do not have anything particularly in mind, or did not at
2 the time, to pay for the program. However, in the absence
3 of anybody else thinking up anything, I have a specific
4 proposal, and that is for a luxury tax.

5 I think that the Joint Committee staff is prepared
6 to discuss what I proposed, but essentially what it is is
7 a 10 percent excise tax on the excess price, over a certain
8 dollar amount, for certain luxury items -- expensive cars,
9 boats, jewelry, furs. I think, Mr. Chairman, that as a matter
10 of fact this kind of an amendment, if we want it, does
11 something else as well. That is that as a kind of a supply-
12 side tax program, it taxes consumption and the most conspicuous
13 type of consumption, and it uses the funds raised in effect
14 as an investment in education which is an investment in the
15 future of the country.

16 The Chairman. Would that raise enough to pay for
17 the program, Mr. Brockway?

18 Mr. Brockway. Mr. Chairman, during the early years
19 of the phase-out it would raise somewhat more. After it
20 was fully effective it would raise somewhat less, I believe.
21 This would run about \$500 million a year, 4 or 5 years out,
22 and that is somewhat less than the proposal but it --

23 The Chairman. Well, I have the same concerns
24 expressed by Senator Danforth but I do not really want to
25 raise any more taxes this year. That is why we delayed the

1 effective date, so there would be no cost in fiscal year
2 1983, so that there might be time to address the concern
3 that, I might add, is a result of Senator Danforth's inquiry
4 the last time. There are probably a number of ways we could
5 pay for this program. We could repeal immediately the all-
6 saver certificate, which has not been one of the greatest
7 things. I think there are so many different options that
8 we have that many of us concluded that we not try to address
9 the revenue side to pay for it.

10 I do not have any quarrel with Senator Danforth's
11 concern, and I would say to him that we did delay the
12 effective date because of the concern he expressed at the
13 last meeting. I passed this on to White House representatives
14 and other representatives, that it was not only his concern
15 but the concern of others on this committee.

16 However, there should come a time when we should
17 not punish those families and children who send their
18 children to private schools, and I would hope we could find
19 a way during Fiscal Year 1983 to meet the suggestion expressed
20 by Senator Danforth without at this time adopting a luxury
21 tax. Is this the one that would tax boats, jewelry --

22 Mr. Brockway. Yes, Mr. Chairman, it is cars over
23 \$20,000, boats and yachts over \$5,000, jewelry over \$1,000,
24 and furs over \$1,000, and the tax is on the excess over the
25 threshold amounts.

1 Senator Danforth. Mr. Chairman, let me add this:
2 If anybody has a better idea, fine. I do not believe that
3 simply putting off the program by a year does very much.
4 I mean, what we are into here is an entitlement program,
5 and it is going to go on forever, and the battle of the budget
6 as far as I can see is going to go on forever also. It seems
7 to me that what is involved is responsible legislation, and
8 what is involved is the perception of the country of what
9 we are doing in Congress.

10 To turn a phrase used by then-candidate Reagan,
11 I can see the American people saying, in effect, "There they
12 go again," when Congress a month after what we thought was
13 a serious effort last year now gets into another entitlement
14 program.

15 I am going to vote for the tuition tax credit but
16 it seems to me we should pay for it.' If anybody wants to
17 offer a substitute for this kind of tax, go ahead.

18 Senator Bentsen. Mr. Chairman, if I might, please,
19 I have been seeking recognition for some time. Let me say
20 that I share the concern of Senator Danforth for education,
21 and I suppose I have voted for about as many cuts as anyone
22 here. I voted for Johnson's budget resolution which I know
23 was an unpopular vote, because there are only two running
24 for reelection who voted for it.

25 However, in these priorities I am deeply concerned

1 about what is happening to education, and particularly public
2 education, what we have seen happen to Pell grants and what
3 has happened to student loans. People keep telling me
4 education is expensive. If they think education is expensive,
5 they ought to try ignorance. If we are going to be competitive
6 in this world, we have to keep education as a very high
7 priority.

8 The problem I find with Senator Danforth's amendment
9 this morning on the luxury tax, I do not see that it restores
10 anything for public education.

11 The Chairman. Senator Long? Excuse me.

12 Senator Long. I would like to suggest as an
13 alternative to this that we simply offer an amendment saying
14 that this program shall not go into effect until the Congress
15 shall have either, A, reduced projected spending or, B, raised
16 projected revenues by an amount sufficient to reduce the
17 overall deficit in the Government.

18 Now that would give us the option that on whatever
19 revenue bill in the future we want to act, including the
20 budget resolution, to say all right, now, we have reduced
21 spending by enough to accommodate this program, or we have
22 now raised revenues by enough to accommodate this program,
23 and we could make that a part of next year's fiscal effort.

24 Senator Danforth. Now let me see if I understand
25 what you are saying: You are saying that the program would

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1 not go into effect until such time as we paid for it, in
2 effect.

3 Senator Long. Basically, we either reduce spending
4 to pay for it or we raise revenues to pay for it, and we
5 could declare on whatever measure we passed, be it a budget
6 resolution or be it an act of Congress to raise more revenues,
7 either by something that reduces spending or by something
8 that increases revenues, that this will accommodate this
9 program.

10 Senator Danforth. Could we make it clear in the
11 amendment that we are not going to accommodate the program
12 by reducing what we would otherwise put into education?

13 Senator Long. That is the idea, when I say --

14 Senator Danforth. We are not going to take it
15 out of public education to accommodate this program.

16 Senator Long. Well, I would think we would say
17 that -- I would suggest that we leave open all options because
18 by the time you start saying, "No, we are not going to take
19 it out of any item, meritorious though it may be," then that
20 immediately raises the question, how about all the other
21 items. Therefore, I think it would be better to say that
22 it is against projected spending --

23 Senator Danforth. I think we are close to -- I
24 think you have made an excellent proposal except that I would
25 like to clarify the fact that we are not going to be robbing

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1 Peter to pay Paul. I think that that is a specific concern
2 that is expressed by people who are interested in public
3 education, that they are going to end up being the losers,
4 and I would like to clarify in the amendment or even in the
5 report language that that is not going to be the case.

6 Senator Long. If that is the only exception that
7 you want, I have no objection.

8 Senator Danforth. Right. Well, I would be prepared
9 to agree to that.

10 Senator Matsunaga. If the Senator from Missouri
11 will yield, did I understand him to say that he is accepting
12 the modification of the Senator from Louisiana?

13 Senator Danforth. Yes.

14 Senator Boren. This still would not provide, as
15 I understand it, it would not answer the objection raised
16 by Senator Bentsen that whatever funds we raised or whatever
17 spending we cut elsewhere, that public education would share
18 in the benefits of this. This is where I have the trouble
19 with it. We have used the term "entitlement" here and we
20 have used the term "penalizing." We are not penalizing anyone
21 who wants to go to a private school. They can go to public
22 education. We are providing public education everywhere
23 in this country, and people are entitled to public education.
24 They are not entitled to private education. There is no
25 such entitlement.

1 Senator Danforth. Let me say that I do not think
2 increased spending for public education is within the
3 jurisdiction of this committee. What I wanted to make clear
4 by the amendment is that yes, we do want to aid private
5 education -- at least I do -- and we do want to aid private
6 education through the tuition tax credit, but what we do
7 not want to do is to set up a future whereby in order to
8 fund assistance to private education, we are going to take
9 it out of the pocket of public education.

10 Senator Boren. I understand that, but for those
11 of us who feel that we have an obligation to fund public
12 education and we have an obligation to preserve the right
13 to private education, this does not provide any more funding
14 for public education. You know, we could have a tax credit
15 proposal or a new special credit for books, supplies, and
16 expenses for every parent that has children in the public
17 schools, to pay for their miscellaneous expenses. We could
18 do that, if we are concerned with meeting our obligations
19 to public education, as opposed to those who choose, rather
20 than to attend the public schools, to place their children
21 in private schools. I do not think it solves the problem.

22 Senator Chafee. Mr. Chairman?

23 The Chairman. Senator Chafee.

24 Senator Chafee. I am not sure I completely
25 understand Senator Long's amendment to Senator Danforth's

1 amendment. Let us suppose that next year we increase taxes
2 through increasing the income tax, personal income tax, just
3 for an example, and that was going to yield \$20 billion.
4 Would then automatically the tuition tax credit go into effect
5 because we have increased revenues, or would we --

6 Senator Long. It could, but it is my thought that
7 it would be better to make it -- to simply put some language
8 in the bill to make it clear that this tax makes possible
9 this program.

10 Senator Chafee. We would have to specifically
11 say so, and then the other side of the --

12 Senator Long. Let me say, not necessarily, but
13 I would hope that we would make it clear by simply putting --
14 whatever revenue measure we passed next year, if we wanted
15 to do so we can put it in there to make it clear, just as
16 we could have done with the tax bill this year, that this
17 bill makes possible this program.

18 Senator Chafee. Well, then, on the other side
19 of the coin I think you had something, "unless we reduce
20 expenditures" --

21 Senator Long. You can do it by cutting spending
22 and say, yes, by reducing spending on this item -- we had
23 \$7 billion of spending cuts in the bill that we reported,
24 the same revenue bill. We could have said, if there had
25 not been anything but those spending cuts, we could have

1 said this makes possible this program.

2 Senator Chafee. Well, what I would suggest, Mr.
3 Chairman, is that we do have language in there specifically
4 referring to tuition tax credits. Otherwise, it seems to
5 me we might make an increased tax for more revenue for the
6 Nation and the administration would say, "Okay, there is
7 increased revenue. Therefore we can proceed with the tuition
8 tax credits."

9 Senator Long. It is all right with me, if it is
10 all right with the Senator from Missouri, to say that the
11 program does not go into effect until the Congress by specific
12 legislation declares that the further reduction or that the
13 additional revenue raised will implement, will make possible
14 the program.

15 Senator Chafee. Well, Mr. Chairman, I am opposed
16 to the whole basis of tuition tax credits but I think that
17 this amendment is an improvement on the existing legislation.

18 The Chairman. I have been engaged in another
19 conversation. Could somebody quickly restate -- Dave, what
20 is the --

21 Mr. Brockway. As I understand Senator Long's proposal,
22 rather than adopting the luxury tax or other alternatives
23 suggested by Senator Danforth, as a requirement in order
24 for the tuition tax credit to go into effect, the Congress
25 would either have to cut spending or raise revenues. I guess

1 there is at least one point that I am not quite sure on.
2 Presumably would either need to have some permanent change
3 in the law that produced a recurring revenue increase to
4 pick up this or some other tax in each year, or if it was
5 only a 1-year effect, then in that later year in order for
6 the credits to still work, the Congress would have to take
7 some action, either a tax increase designated for this
8 purpose or some other spending cut designated for this purpose.

9 Senator Long. On any bill where we either raise
10 revenue above that which is projected already, on either
11 bill where we either raise more revenue by taxes or where
12 we reduce spending -- as we actually did on our economy bill
13 this year, compared to the existing law -- wherever we do
14 that, we could simply say that the revenues either saved
15 on the one hand or produced by the additional taxes would
16 implement the program, period. It can be used for that
17 program. That is basically what you would say. Where you
18 raise money or where you reduce spending, you simply say
19 in the bill that these funds can be used to implement this
20 program.

21 The Chairman. Does the administration have any
22 position on the suggestion?

23 Mr. Chapeton. Well, Senator, I think we would
24 prefer not to -- I am not sure I understand -- I understand
25 Senator Danforth's concern, certainly, but to try to earmark

1 certain receipts later or certain budget cuts later for this
2 purpose, I think we would prefer -- I think we would not
3 support it. I think we would prefer that the committee
4 decide this is a desirable amendment and adopt it. The
5 committee's other amendments have reduced the cost of it,
6 and we will just have to look next year at what the budgetary
7 situation is next year overall.

8 Mr. Brockway. Mr. Chairman, I should point out
9 also that Senator Danforth also made one suggestion which
10 I gather was a modification to the amendment, and that is
11 that the spending cut -- if this is to be funded out of a
12 spending cut out of some other spending program -- it not
13 be out of funds for education, so that you are not taking
14 it from public education and putting it into the tuition
15 tax credit.

16 The Chairman. Well, I think we are going to have
17 to come back this afternoon, anyway. I am now advised that
18 Senator Packwood would be recorded for the Bradley amendment,
19 and so we will stand in recess until two o'clock.

20 [Whereupon, at 12:35 p.m., the committee recessed,
21 to reconvene at 2:00 p.m. the same day.]
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AFTERNOON SESSION 2:30 P.M.

Senator Danforth. [acting chairman] Senator Dole has suggested that in his absence we might make some progress on the noncontroversial tariff bills. Last week we went through a fairly long list of them. I do not know whether anybody wants them restated. Does everybody have them on a sheet, Claud?

Senator Moynihan. Mr. Chairman?

Senator Danforth. Yes?

Senator Moynihan. With respect, sir, can we assume that Senator Dole will return to the committee before we adjourn today?

Senator Danforth. Yes, that is my understanding.

Senator Moynihan. I thank you.

Mr. Gingrich. Mr. Chairman, do all members of the committee have the chart which we passed out, because I will do it in terms of the chart which was passed out last week.

It is our understanding that the following bills are noncontroversial: S. 1746, S. 2031, S. 2560, S. 2566, S. 2692, S. 2705, S. 2539, S. 2540, S. 2685, S. 1392, S. 1717, and in addition it is also our understanding that a compromise has been reached on S. 1588, the fresh carrots bill, as well as on S. 1723, the cultural property bill.

Senator Long. Well, there was one thing that I

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1 thought I had received an objection to since the matter was
2 put on the calendar, I believe, S. 2699. I understand that
3 a producer in my State send in a letter opposing this because
4 they produce a competing product, and I understand that
5 Senator Bradley will oppose this bill also.

6 Senator Bradley. Senator Long, in your absence
7 the other day I did voice my objection to the bill. I knew
8 of your objection and that was one of the reasons that I
9 voiced it. I am not as opposed to this as I am to others.

10 Mr. Gingrich. Senator Long, when we listed that
11 as noncontroversial we had not received any comments in
12 opposition. Since this chart was prepared, we have received
13 opposition from the Union Carbide Corporation. That is
14 correct.

15 Senator Long. I would think, then, that you would
16 have to regard that as a --

17 Mr. Gingrich. I did. I left it off the list of
18 noncontroversial bills.

19 Senator Long. Okay. You have taken that off the
20 list, then, have you?

21 Mr. Gingrich. Yes, sir.

22 Senator Danforth. Okay. Now S. 2560, the
23 administration had objected to that but that has been worked
24 out?

25 Mr. Gingrich. Yes, sir. They have withdrawn their

1 opposition.

2 Senator Danforth. Therefore, all the ones you
3 have named are uncontroversial?

4 Then I am told that S. 2853 relating to hatters'
5 fur and S. 2858 relating to the Virgin Islands, are those
6 two noncontroversial as well?

7 Mr. Gingrich. Yes, sir. We have listed those
8 bills for public comment. The comment period closes today.
9 To date, we do not have any comments in opposition to either
10 of those bills.

11 Senator Danforth. Would you like to briefly
12 describe what those two are?

13 Mr. Gingrich. Yes, sir. In addition to those,
14 there is a third bill, S. 2889, on color couplers, which
15 Senator Packwood raised last week. It is also noncontroversial.

16 Senator Danforth. Okay. Well, would you briefly
17 describe those three?

18 Mr. Gingrich. Yes. S. 2889, the color couplers
19 bill, simply extends an existing duty suspension on the color
20 couplers for 3 more years. The product is produced in this
21 country only by the Eastman Kodak Corporation. They support
22 this legislation.

23 S. 2853, the fur bill or fur hatters' bill, will
24 temporarily suspend the duty on fur used in the production
25 of cowboy hats for 3 years.

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S. 2858, the watches bill, is a bill designed to stimulate the production of watches in the Virgin Islands, essentially by allowing producers who produce in the Virgin Islands, in American Samoa and Guam, to get a rebate from the duties they pay, equivalent to 90 percent of the wages they pay in the U.S. insular possessions. The bill is supported by the administration, the Watch Association, and everyone else that we have had comments from.

Senator Danforth. Now your notion is to combine all of these bills in a single bill? You have a single House bill that you would put it on?

Mr. Gingrich. Yes, sir. It is my understanding that it is the Chairman's intention to put these bills on H. 4566, to take all of the provisions out of 4566 and insert these provisions.

Senator Danforth. All right, now. Well, without objection, can we approved these --

Mr. Grassley. Reserving the right to object, now, we are just talking about a category that we have listed separate as noncontroversial?

Senator Danforth. So far, all we have before us is what we believe to be the noncontroversial tariff bills, and the question is, can we agree to them en bloc and put them on this House bill.

Senator Bradley. Mr. Chairman, could I add one

1 more to that list of noncontroversial? S. 2895 would reduce
2 for one year the duty on caffeine from 8.5 to 6 percent.
3 It is Senator Grassley's and my bill and it is a compromise
4 that is proposed by the administration. It is not as generous
5 as the House suggested but it has been accepted by both
6 importers and domestic producers of caffeine.

7 Senator Danforth. Is there any objection to that,
8 Claud?

9 Mr. Gingrich. None that we know of. It is our
10 understanding -- we do not have public comments yet but from
11 looking at the comments made in the House -- it is our
12 understanding that the importer that did object does not
13 object to this compromise bill.

14 Senator Danforth. All right. Is there any
15 objection --

16 Senator Grassley. Mr. Chairman?

17 Senator Danforth. Yes?

18 Senator Grassley. Last week I had a bill that
19 was on the controversial calendar. That was S. 1979. Then
20 I reintroduced S. 2885 and S. 2884, that I asked for
21 consideration by this committee, and if there isn't any
22 objection to those I would like to include those on here
23 because I hope I took care of the objections by reintroducing
24 the legislation.

25 Senator Danforth. What are those, Claud?

1 Mr. Gingrich. Those bills would reduce or suspend
2 the duty on -- S. 2885 would suspend the duty on sulfapuradine
3 S. 2884 would reduce the duty on sulfathiazol. It is our
4 understanding that there is no objection to S. 2885; that
5 one producer of a competitive product does object to
6 S. 2884, the sulfathiazol bill.

7 Senator Danforth. Could we just, at least for
8 the time being, take the one to which there is no objection?

9 Senator Grassley. Yes.

10 Senator Matsunaga. Mr. Chairman?

11 Senator Danforth. Yes?

12 Senator Matsunaga. S. 1723, which is listed in
13 the controversial column, is now no longer controversial.
14 Did you include that among the noncontroversial?

15 Mr. Gingrich. Yes, sir, we did. We indicated
16 that it was our understanding that a compromise bill has
17 been reached between your office and --

18 Senator Matsunaga. Fine. Therefore, it is
19 included in the motion to approve.

20 Senator Chafee. Mr. Chairman?

21 Senator Danforth. Senator Chafee.

22 Senator Chafee. I would like to ask about S. 2247,
23 which you had on the controversial -- this is about
24 eliminating the duty on certain athletic footwear for donation
25 to the Special Olympics. Is that on the noncontroversial

1 now?

2 Mr. Gingrich. No, sir, we considered it controversial
3 because we had both domestic objections and the administration
4 objected.

5 Senator Chafee. Therefore, that is not one of
6 the ones we are considering now.

7 Mr. Gingrich. That is correct.

8 Senator Grassley. Mr. Chairman, I accept the
9 committee's or the chairman's view on the one bill without
10 controversy, so it is part of the list. Now it was suggested
11 that there was one company that was, perhaps, opposed to
12 the other one but if there isn't anybody on the committee
13 who is opposed to it, then I would like to have that
14 included because it was my understanding the administration
15 did not have any opposition to my original bill, even, S.
16 1979. Therefore, if there is not any opposition from any
17 members of the committee, I would like to include it on as
18 well. If there is, then of course I would --

19 Senator Danforth. Does anybody object to it other
20 than -- does anybody in the Congress that you know of object
21 to this bill?

22 Mr. Gingrich. Yes, sir. Senator Hayakawa has
23 sent a letter to Senator Dole today objecting to it.

24 Senator Grassley. Well, then, under those
25 circumstances --

1 Senator Danforth. Then could we just leave it off
2 the list and then, without objection, agree to the ones that
3 have been mentioned en bloc.

4 Another suggestion that has been made, by me if
5 not by anybody else, is to take the reciprocity bill which
6 has already been passed and put it on this bill. Is there
7 any objection to doing that?

8 Senator Byrd. To take what?

9 Senator Danforth. The reciprocity bill which we
10 have already reported out of this committee.

11 Senator Byrd. Put it on what bill?

12 Senator Danforth. Put it on as an amendment to
13 this miscellaneous tariff bill.

14 Senator Long. Well, that presents just one problem.
15 I think I voted against the reciprocity bill, Mr. Chairman,
16 and so that makes it -- it is no longer a noncontroversial
17 bill if anybody opposes it. I think I made you a proposition
18 one time that it would not take much modificiation to get
19 me aboard. However, those who were for the bill did not
20 feel like accommodating me, so the reciprocity bill remains
21 a controversial bill, and I would urge you to reconsider
22 your position. Maybe we could make it noncontroversial.

23 Senator Danforth. I appreciate your urging.

24 Senator Long. Well, my impression is, the nearer
25 you get to Christmas time, the more considerate the authors

1 of legislation are, the nearer you get to the close of the
2 session. If you would make a few modifications, I would
3 be willing to go along with you.

4 Senator Danforth. Well, I also recognize your
5 flexibility, Senator Long, and Christmas spirit.

6 Senator Long. Well, as far as I am concerned it
7 is controversial. Let me say that as far as I am concerned,
8 any objection I have is negotiable. I would be glad to talk
9 with you about that.

10 Senator Danforth. Well, the bill is open to
11 amendment. I mean, all we have done so far is dispense with
12 tariff bills that have absolutely no controversy at all.
13 The bill is open for any amendment on any subject, and I
14 am sure there are controversial tariff measures which will
15 be offered. All I was suggesting was that we add to the
16 bill the reciprocity bill, which has already been reported
17 out of this committee, so that we will have a vehicle for
18 going to conference on it.

19 Senator Long. Well, doesn't this reciprocity bill
20 give you a vehicle? Is that an S-numbered bill or an H-
21 numbered bill?

22 Mr. Lang. It is an S-numbered bill, Senator. It
23 was reported favorably out as S. 2094, and that is the way
24 it is in the Senate now.

25 Senator Long. However, that still does not give

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you a vehicle, if you add the reciprocity. If that was an S-numbered bill, that still does not give you your House vehicle, does it?

Mr. Lang. What Senator Danforth is proposing is that the substance of S. 2094 be included on H.R. 4566, which will be the vehicle for these noncontroversial miscellaneous tariff amendments, so you would have on one bill numbered with an H.R. number, 5 or 6 or 10, whatever it is, miscellaneous tariff measures plus the substance of the reciprocity bill that has already been favorably reported out. As I understand it, that is Senator Danforth's proposal.

Senator Long. As I understand it, sir, what you are proposing to do now is to take what is suggested to be a group of noncontroversial proposals and add to that one that is controversial.

Senator Danforth. Yes, it is somewhat controversial. I think it had two votes against it in the committee. What I am attempting to do is to take this bill in stages: start out with the noncontroversial tariff measures, agree to them, which we have done, en bloc, and then take up the reciprocity question, and then take up, one at a time, any other tariff measures that anybody wants to offer.

Senator Long. Well, you can do it over my objection.

Senator Danforth. All right. Well, noting the

1 objection of Senator Long, the committee agrees to it.

2 Now, any other amendments to the bill?

3 Senator Bradley. Mr. Chairman, we have put 2895
4 in that group?

5 Mr. Gingrich. That is our understanding.

6 Senator Mitchell. Are you ready to take items
7 off this list that were deemed controversial?

8 Senator Danforth. Right.

9 Senator Mitchell. I have one piece of legislation,
10 Mr. Chairman. I will be glad to offer that now. I do not
11 know what order you want to follow. First come, first served?

12 Senator Danforth. First come, first served.

13 Senator Mitchell. Well, then, I would propose
14 the approval of S. 1565. I will be glad to describe it
15 briefly.

16 This deals with a piece of legislation that will
17 greatly benefit commercial fishermen in our country who use
18 synthetic nets in their operations. I might add that measure
19 has been approved by a subcommittee of the House Ways and
20 Means Committee and it is expected to be approved by the
21 full committee there shortly.

22 The purpose is to reduce substantially the high
23 import duty which our Government now levies on imported
24 synthetic net. Mr. Chairman, what we are talking about here
25 are very high netting prices for U.S. fishermen who cannot

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obtain in this country synthetic nets of certain shapes and sizes or nets made of synthetic fibers other than nylon. The fishing industry has been beset by dramatically rising costs. They are having a very, very severe time of it, and this legislation will help them without harming anybody in this country.

My bill would reduce the overly protective duty from its present level of 30.6 percent ad valorem plus 21 cents a pound, to 17 percent ad valorem. That will occur in any event over the next several years; this would accelerate the reduction to 17 percent. I would point out that a 17 percent duty would continue to provide substantial protection for domestic makers of fish netting but would not have the significant adverse effect on fishing vessel owners and operators which today results from the established duty.

I think that this is an important step, though small but still important, that we can take to help our beleaguered fishing industry without doing any harm whatsoever here domestically. I know there is some opposition to it from domestic net manufacturers. I would point out that their argument is not that they make these nets but that they expect to make them at some future time. With respect to that, I would say that although this change was prescribed in 1979, they have taken no steps since then to produce this kind of netting. They are going to have to adjust to the

1 17-cent tariff in any event in a few years, and I believe
2 that the arguments are not well-founded in opposition. I
3 would urge adoption of the bill by the committee, Mr. Chairman.

4 Senator Bradley. Mr. Chairman, I would like to
5 add my support to Senator Mitchell's amendment. I think
6 that it is critical for any State with a fishing industry.
7 I think that it is also consistent with our principle of
8 open and fair trade.

9 Senator Danforth. Who objects to this, Claud?

10 Mr. Gingrich. The domestic fish net industry
11 objects. The domestic --

12 Senator Danforth. Who in the Congress?

13 Mr. Gingrich. Senator Heinz has filed a letter
14 with Senator Dole indicating that he wishes to be recorded
15 in opposition to this bill.

16 Senator Danforth. Does he want to be heard on
17 this before we vote, or just recorded in opposition?

18 Senator Bradley. Do you mean Senator Heinz is
19 going to be here today?

20 Senator Danforth. I do not know.

21 Mr. Gingrich. His staff indicates that if possible
22 he would like to be heard on it.

23 Senator Danforth. He would?

24 Senator Mitchell. Well, when will that be, Mr.
25 Chairman?

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1 The Chairman. Is he in town?

2 Mr. Gingrich. He will be in town later this
3 afternoon for the cloture vote.

4 Senator Mitchell. Well, I would just like to say,
5 Mr. Chairman, this meeting was scheduled a long time ago --

6 Senator Danforth. I understand. I was just
7 wanting to give him a fair chance to appear, but I do not
8 think that it is reasonable to hold up the whole bill.

9 Let's put this off temporarily, George, if that
10 is satisfactory to you, and see if Senator Heinz shows up.
11 If not, we will take it up.

12 Senator Mitchell: All right.

13 Senator Danforth. Any other amendments?

14 Senator Grassley. Now are we in that area of
15 controversy so I can bring up this other one?

16 Senator Danforth. Sure.

17 Senator Grassley. Staff, is this S. 2885?

18 Mr. Gingrich. S. 2884 is the sulfathiazol bill.

19 Senator Grassley. This bill removes the duty on
20 sulfathiazol. Sulfathiazol is an ingredient used in
21 antibiotics, mostly used in the pork industry, although I
22 suppose more general than that but my acquaintance of it
23 is more with the pork industry.

24 The purpose of the series of legislation that I
25 put in was because of the need for this drug and the fact

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1 that the duty on it increases the cost. It is heavily used
2 in the pork industry and reducing the cost of the drug
3 obviously is going to reduce the cost of production of
4 livestock, and hence is a consumer item from the standpoint
5 that less cost of production will obviously mean less cost
6 to the consumer.

7 However, I think the most important thing here
8 is to have a viable amount of drugs available for the
9 production of the end product so it can be used, and of course
10 the purpose of the duty is to protect industry, and the extent
11 to which that domestic industry is less, then obviously the
12 extent to which the import duty is less than demand.

13 Therefore, that is my view on this legislation.
14 That is why I offered it, and I would move its adoption.

15 Senator Danforth. All right, who objects to this?

16 Mr. Gingrich. This is the bill with respect to
17 which Senator Hayakawa has filed a statement in objection.

18 Senator Danforth. Does anybody object to this?

19 [No response.]

20 Senator Danforth. All right. Without objection,
21 it is agreed to.

22 Senator Grassley. Thank you.

23 The Chairman. I might announce to those who have
24 an interest in another matter that we have been working on
25 that next door, and we are trying to figure out some way

1 to resolve one problem.

2 Now with reference to the tariff bills, a number
3 of the noncontroversial ones have been agreed to?

4 Mr. Gingrich. Yes, sir.

5 The Chairman. Now there are others yet to be
6 discussed. Senator Matsunaga, did you have --

7 Senator Matsunaga. I have one which I would now
8 offer as an amendment to the pending House bill. That is
9 S. 231, and this is a proposal to increase from \$250 to \$600
10 the value limitation on imports which may be entered on the
11 informal entry procedure. The administration supports this.
12 There is no loss of revenues at all. All that this does
13 is to bring up the dollar value.

14 In 1930 it was \$100, and that was raised to \$250
15 in 1953 to account for inflation, and since 1953 it has
16 remained at \$250, for the past 29 years, so you can imagine
17 what that limitation of \$250 does, not only for small
18 businessmen bringing in items from abroad but also to the
19 Customs Service. They need to have additional inspectors
20 to open up the boxes and so on.

21 There is no loss in tariff and no lowering of tariff
22 at all. It is simply a matter of reducing the procedure
23 of clearing items being imported. The duty will still be
24 paid. It is only a matter to permit businessmen to expedite
25 their imports without having to fill out long forms and have

1 the duty determined by declaration of the importing businessman.

2 Now I might point out that entries between \$251
3 to \$600 totaled 535,000 in 1981. This was 12 percent of
4 all formal duty entries but the value of those entries
5 between \$251 to \$600 amounted to only \$4.4 million of a total
6 of \$250 billion of imports in 1981. In other words, the
7 value of imports covered by my proposal will amount to a
8 mere six ten-thousandths of 1 percent. That is .0006 percent
9 of all imports, and yet the trouble that the Customs people
10 need to go through now is tremendous, so we can save a lot
11 of people.

12 The Chairman. As I understand, the Treasury did
13 support this at one time but they have now withdrawn their
14 support. Is that correct?

15 Mr. Gingrich. That is correct, Mr. Chairman.

16 Senator Matsunaga. As a matter of fact, in 1978
17 the Treasury itself, the Customs Service proposed this, and
18 they proposed to raise it up to \$800 but I am proposing to
19 raise it to \$600. If there is any opposition we could
20 compromise even further down to \$500. I would be willing
21 to go down to \$500 if there is any objection but --

22 The Chairman. Was that the basis of their
23 objection, Claud?

24 Mr. Gingrich. The basis of the Government's
25 objection at this point apparently is that they are not sure

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1 of the impact of this change on the Postal Service. They
2 feel that a number of people will begin to send stuff through
3 the mails who otherwise shipped it commercially before.

4 I should point out there is also opposition to
5 this from a number of other sources, particularly the textile
6 and apparel unions.

7 The Chairman. Who?

8 Mr. Gingrich. The textile and apparel unions and
9 the textile and apparel industries.

10 Senator Moynihan. Mr. Chairman?

11 The Chairman. Senator Moynihan.

12 Senator Moynihan. With respect, it is a rare
13 occasion when Senator Matsunaga and I are not agreed on a
14 matter but I would have to say that this measure, although
15 the purposes for which Senator Matsunaga proposes it are
16 entirely attractive and would in ordinary circumstances merit
17 our support, the problem is that about 20 percent of all
18 the entry of products by this informal mode, they involve
19 about 20 percent of --

20 Senator Matsunaga. Twelve percent.

21 Senator Moynihan. -- of those matters subject
22 to import restraint and restrictions of some kind, beginning
23 with the multifiber agreements and spreading somewhat across
24 the trade spectrum where these restrictions are.

25 The great problem, and I can speak as someone who

1 was involved in the first long-term textile, cotton textile
2 agreement in 1962, the great problem a government has is
3 knowing what is coming in so that we know who is keeping
4 their agreements and who is not. The trade unions involved
5 here, which trade unions helped us pass the Trade Agreements
6 Act of 1969 -- I mean, they were here saying they were for
7 the trading bill, asking some restrictions and restraints
8 which they got -- the Amalgamated Clothing and Textile Workers,
9 the United Food and Commercial Workers, have formally requested
10 us, pleaded with us not to do this.

11 Senator Heinz, who cannot be here at this portion
12 of the day, asked to be recorded as very much against this.
13 I think it would take much more consideration about this
14 other, I am sure, unintended effect but one which is
15 threatening to these people.

16 The Chairman. I just want to add, as I understand,
17 if we report out we have a vehicle on which to report the
18 noncontroversial tariff matters. Is that correct?

19 Mr. Gingrich. Yes, sir, H.R. 4566.

20 The Chairman. If that is done, then those who
21 have matters that may be in dispute certainly have a right
22 to offer those on the Senate floor. I would hope we might
23 limit consideration now to those matters that are strictly
24 noncontroversial. I have one to raise for Senator Packwood
25 that I understand there is some opposition to. If Senator

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1 Matsunaga wishes to pursue it further at this time, I am
2 certainly willing to do that but I would hope that maybe --
3 I think a number of members have some that are in dispute.

4 Senator Danforth. Mr. Chairman, we have already
5 added one on which Senator Hayakawa has voiced disagreement,
6 and Senator Mitchell had a fish net provision which I told
7 him we would take up where I think Senator Heinz is in
8 opposition, but I think the question is always degree of
9 controversy. We moved from strict noncontroversiality to
10 very modest amounts of controversy.

11 However, I would hope on this particular amendment
12 that we would not agree to it. This is highly controversial,
13 opposed -- as was pointed out -- by the administration, by
14 the AFL-CIO, and especially for certain very import-sensitive
15 areas, particularly textiles, I think it would pose real
16 problems.

17 Senator Matsunaga. Well, Mr. Chairman, the
18 opposition arises from misunderstanding but because there
19 is opposition, I will reserve the right to offer it on the
20 floor and withdraw that.

21 The Chairman. I appreciate that.

22 I have been asked to raise for Senator Packwood
23 the so-called Special Olympics bill, S. 2247, introduced
24 by Packwood, Hatfield, Lugar, Randolph, Stennis, and Riegle.

25 The Nike Shoe Company has agreed to become the

1 supplier of shoes for the Special Olympics. They have agreed
2 to supply at least 100,000 pairs of shoes per year. Most
3 of the Nike shoes involved are imported, and they are subject
4 to a tariff on shoes which averages about \$1.59 per pair.

5 S. 2247 eliminates the tariff on shoes imported
6 for contribution to the Special Olympics. The bill would
7 benefit any shoe importer providing shoes to the Special
8 Olympics. However, currently only the Nike Company is
9 providing shoes.

10 Now my information is that that bill is opposed
11 by Senators Danforth, Heinz, Bradley, and maybe others on
12 the committee. Is that a correct representation? I know
13 Senator Packwood feels very strongly about it, and so does
14 Senator Symms who spoke to me this morning about it.

15 Mr. Gingrich. The only written confirmation we
16 have about it is a letter from Senator Heinz asking to be
17 recorded in opposition to S. 2247.

18 Senator Danforth. Well, I am fairly strongly opposed
19 to this myself, Mr. Chairman. This will not, in fact, mean
20 more shoes for people participating in the Special Olympics.
21 Other shoe manufacturers have expressed a willingness to
22 do this but it would be an encouragement to one particular
23 shoe manufacturer, namely Nike. I would think that if we
24 would want to encourage shoe manufacturers or anybody else
25 to make contributions to a charitable organization, we would

1 do so in a way which would be even-handed and apply to all
2 manufacturers, not just imported manufacturers.

3 The purpose of tariffs in the first place is to
4 put people on even footing, not to tilt competition one way
5 or another but to provide for equity. This would simply
6 say that we would do away with the whole purpose of the tariff
7 in the first place. I think that it is bad trade policy
8 and bad policy for the committee.

9 The Chairman. Well, I think in this instance,
10 as in the one just discussed with Senator Matsunaga, that
11 certainly Senator Packwood will have an opportunity to offer
12 this on the floor. I have discussed this with Senator Bradley.
13 His opposition is not that strong. Do you prefer we do that?

14 Senator Danforth. I would prefer that we keep
15 it off of the bill.

16 The Chairman. Are there other "noncontroversial"
17 tariff bills? If not, maybe we can agree on those and ask
18 that they be reported.

19 Senator Mitchell, did you have one?

20 Senator Mitchell. Well, we discussed earlier,
21 Mr. Chairman, before you came, my legislation which was
22 discussed. My understanding was that if Senator Heinz showed
23 up he could express his opposition; if not, we would proceed
24 act on it. There is no other opposition expressed. I believe
25 all he wants is to be recorded in opposition.

1 The Chairman. All right. The record will indicate
2 that. Senator Heinz planned on being here about three
3 o'clock.

4 Are there other noncontroversial tariff bills?

5 Mr. Gingrich. No, sir. It is my understanding
6 we have taken care of all of them.

7 Senator Danforth. Mr. Chairman, before you came
8 in we did add the provisions of the reciprocity bill.

9 There is a technical amendment to the reciprocity
10 provisions. Would you explain that amendment, Claud?

11 Mr. Gingrich. This is the dropping of the one TSUS
12 number from the list of high-technology items on which the
13 President could negotiate tariff reductions?

14 Senator Danforth. Right.

15 Mr. Gingrich. Yes, sir. Pardon me for a second.

16 Senator Danforth. This is, Mr. Chairman,
17 noncontroversial. It has no objection either from the
18 administration or the high-technology industry.

19 Mr. Gingrich. Senator Danforth, it is our
20 understanding that you would simply delete the TSUS item
21 67652 from the list of tariff schedule items on which the
22 President could otherwise negotiate tariff reductions.

23 The Chairman. Is there any objection to that?

24 Senator Danforth. No. I would like that amendment
25 to be incorporated into the bill.

1 The Chairman. Without objection.

2 As I understand, now, you have agreed on the
3 reciprocity provision, plus this amendment, plus the
4 noncontroversial tariff bills. Do we have a vehicle?

5 Mr. Gingrich. Yes. H.R. 4566, Mr. Chairman.

6 The Chairman. Therefore, I would move that we
7 report H.R. 4566?

8 Mr. Gingrich. Yes, sir, with --

9 The Chairman. Pardon?

10 Mr. Gingrich. -- with the House matter struck
11 and the Senate provisions inserted.

12 The Chairman. That is correct. Is there objection
13 to reporting the bill?

14 [No response.]

15 The Chairman. Without objection, the bill will
16 be reported. Those who had controversial provisions, of
17 course, can offer those on the floor.

18 Is there anything else, Claud, in that area?

19 Mr. Gingrich. Mr. Chairman, in some of these
20 provisions there are some technical drafting corrections
21 which need to be made. Do we understand the staff will have
22 authority to make those?

23 The Chairman. I would ask that the staff be given
24 authority to make technical changes and corrections in
25 drafting. Is there any objection to that? Senator Chafee?

1 Senator Chafee. I have no objection to that, Mr.
2 Chariman. Were you moving away from this area now?

3 The Chairman. Senator Bentsen had a tariff
4 resolution he wanted us to consider.

5 Senator Bentsen. Yes, and there is no controversy
6 on it, I believe.

7 Senator Chafee. I have something when Senator
8 Bentsen is through.

9 The Chairman. All right.

10 Senator Bentsen. Mr. Chairman, if I might, then,
11 I would like to bring up this sense of the Senate resolution.
12 It could stand on its own, I think. I do not know of any
13 controversy on it.

14 You have the Japanese-United States consultations
15 on beef and citrus scheduled for October 20 to the 24th.
16 What this is calling for is a complete liberalization of
17 the quotas on beef and citrus. Let me give you an example
18 of what happens on beef.

19 In the United States the average price of all meat
20 sold is \$2.39 a pound; in Japan it is \$6.93. You take a
21 sirloin steak, in the District of Columbia it is \$3.46 a
22 pound; in Japan it is \$14.35 a pound. If you look at Hong
23 Kong you will see very little difference, probably about
24 50 cents a pound more in Hong Kong than it is here, but in
25 Japan you see this great disparity because of the quota they

1 put on it. What I am urging is that it be the sense of the
2 Senate that we call for the complete liberalization of those
3 quotas, and that we go on record asking for that.

4 Senator Danforth. Mr. Chairman?

5 The Chairman. Yes, Senator?

6 Senator Danforth. I think this is an excellent
7 resolution, and very timely. The beef-citrus negotiations
8 will be taking place in Honolulu on the 20th of October,
9 and I think that this does send exactly the right message
10 to the negotiators at the right time. I complement Senator
11 Bentsen for his leadership.

12 Senator Bentsen. Well, I want to thank Senator
13 Danforth, who is co-author with me on this piece of
14 legislation. I very much appreciate his support.

15 The Chairman. Is there objection to reporting
16 the resolution? Senator Moynihan, no objection? All right,
17 we will report the resolution of Senator Bentsen.

18 I have a resolution I would like to consider at
19 this time. What it does, it expresses the sense of the Senate
20 that the restoration of the U.S. competitiveness in
21 agricultural trade should be pursued through every legitimate
22 means and without reference to political or economic problems
23 in nonagricultural areas. This is aimed fairly much in the
24 same area as the one Senator Bentsen just addressed.

25 Maybe, Claud, you could discuss it very briefly

1 and then you have a matter to discuss for Senator Heinz,
2 I understand.

3 Mr. Gingrich. Yes, sir.

4 The resolution that you just mentioned would call
5 upon the U.S. Government to attempt to improve the
6 competitive position in U.S. agricultural exports, primarily
7 first of all through the General Agreement on Tariffs and
8 Trade, to correct the disparity in treatment between the
9 agricultural and nonagricultural exports, and particularly
10 without reference to the existing political or economic
11 problems in nonagricultural areas.

12 It is our understanding that the GATT ministerial
13 negotiations at this point are somewhat clouded with the
14 steel problem and the pipeline problem, in that they are
15 hindering activity in the agricultural area. This resolution
16 would encourage the Government to move forward in the
17 agricultural area without respect to those problems.

18 It also calls upon the Government to consider whether
19 or not it is necessary to fund U.S. agricultural exports
20 to restore their competitiveness.

21 The Chairman. Well, Senator Long has also just
22 agreed to cosponsor this resolution. What we are saying,
23 in essence, to our negotiators at GATT, is that agriculture
24 is very important to this country and that we see an erosion
25 of agricultural exports, and we see it because of nontariff

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1 barriers and subsidies in the European Community under the
2 common agricultural policy. We just want Ambassador Brock,
3 who is doing a good job, to be on notice that this committee
4 as in the past feels strongly that that we ought to try to
5 protect the agricultural sector in these negotiations.

6 Senator Moynihan. Would you put me on that?

7 The Chairman. Yes, I would be happy to do that.

8 Without objection, the resolution will be agreed
9 to and will be reported.

10 Did you have a matter that Senator Heinz wanted
11 to raise?

12 Mr. Gingrich. Yes.

13 Senator Bentsen. I have one with Senator Heinz
14 at that point, whenever you raise it.

15 The Chairman. Go right ahead.

16 Senator Bentsen. Well, I do not want to interrupt
17 your proceedings here. One that was presented -- as I
18 understand, it was noncontroversial -- I very strongly object
19 to, and that is H.R. 4002, and I understand that so did
20 Senator Heinz.

21 Mr. Lang. Sir, it has an S-number, Senator,
22 the bill you are concerned about, and it is S. 1565.

23 Senator Bentsen. Does it now?

24 Mr. Gingrich. S. 1565 is the same as H.R. 4002.

25 Senator Bentsen. That was one on a reduction of

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1 fish nets.

2 The Chairman. That has not been taken up, has
3 it? I do not think we have discussed it.

4 Mr. Gingrich. No, we have not taken that up yet,
5 Senator.

6 Senator Bentsen. Oh, it has not been taken up?
7 It was withdrawn? Oh, fine. All right. Good.

8 The Chairman. We tried to avoid any of the ones
9 that we knew were controversial, and I do not think that
10 has --

11 Senator Bentsen. Well, that is fine. I am glad
12 to get that understanding.

13 The Chairman. Is that correct, we have not taken
14 it up?

15 Mr. Gingrich. I am sorry. It was my understanding
16 that S. 1565 was being held until Senator Heinz could be
17 present to speak against it.

18 Mr. DeArment. No, I do not think that is correct.
19 I understood that the committee's action was that we took
20 it, noting Senator Heinz's objection.

21 The Chairman. However, that is not the understanding
22 of Senator Bentsen. Is the one on the fish nets?

23 Senator Bentsen. Yes.

24 The Chairman. Well, I suggest that we contact
25 Senator Mitchell while we are discussing the motorcycle matter

1 because I think Senator Mitchell's understanding was that
2 it had been adopted.

3 Senator Bentsen. Well, I think it was. It was
4 apparently done under the assumption -- certainly I was not
5 represented in my objection, and I had asked that I be.

6 Senator Long. Let's just see what the record shows.
7 I was here. Senator Mitchell called the matter up. We
8 discussed it briefly and he was informed that there was at
9 least one Senator who was opposed. He was urged to bring
10 it up later on. Then we went on to other matters, and after
11 a while we came back to it. At that point it was discussed
12 further and it was agreed to. Is that right? Is that our
13 situation? Who is keeping the minutes of this thing?

14 Mr. DeArment. I understood that it was accepted.

15 Senator Long. Well, as I understand it, then,
16 we did not agree to it as noncontroversial. We agreed to
17 it after we had agreed to another amendment to which there was
18 objection. Now you can call the roll on it if you want to
19 but it seems to me that Senator Mitchell made his case for
20 his amendment and he waited for others to show up and express
21 their opposition before it was finally agreed on. Therefore,
22 you cannot really say that he prejudiced anyone but I am
23 just saying that if anyone wants to vote on it, of course
24 they can vote.

25 The Chairman. No, I think the Senator is correct.

1 Senator Mitchell is coming back down. Maybe he can discuss
2 it with Senator Bentsen, but you are right, there was --
3 I was not present when it was discussed but Senator Mitchell
4 asked me as he left if his amendment had been agreed to,
5 and the answer was yes, and that Heinz's opposition had been
6 noted.

7 Senator Bentsen. All right. Let me discuss it,
8 then, with Senator Mitchell. Thank you very much.

9 The Chairman. He is on his way down.

10 Senator Moynihan. Mr. Chairman?

11 The Chairman. Senator Moynihan.

12 Senator Moynihan. We have already adopted S. 1723,
13 I believe that is the number, Senator Matsunaga's bill and
14 yours having to do with the UNESCO convention on cultural
15 property. After more than 10 years before this committee,
16 we have given our unanimous advice to the U.S. ratification.
17 I think this is an important event. I think Senator Matsunaga
18 should be congratulated for his persistence and for his
19 willingness to solve some real problems.

20 One problem does remain, Mr. Chairman, and that
21 is the aftermath of U.S. v. McClain, the 5th Circuit decision
22 which basically held that a property could be defined as
23 "stolen" if some other government had declared that all
24 instances of a particular class of property are by definition
25 stolen. That is just a bit hard. I would like to state

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my understanding that you have been willing very generously to introduce a bill which Senator Matsunaga and I will cosponsor that would basically repeal the McClain decision. The court acted correctly but, I think, in a manner that public policy ought to change. Is that your understanding, sir? I would like to express my appreciation to you, and of course to my colleague, Senator Matsunaga.

The Chairman. Thank you, Senator Moynihan.

Now, as I understand, you were to raise a matter for Senator Heinz?

Mr. Gingrich. Yes, sir. Senator Heinz has written to you asking if the committee would send a letter to the International Trade Commission requesting that a 201 case which has been filed with respect to motorcycles -- these are large motorcycles -- could be expedited by the International Trade Commission. It is our understanding that they feel they can expedite it and meet Senator Heinz's request.

The Chairman. They feel they can expedite it?

Mr. Gingrich. Yes, sir.

The Chairman. Is it necessary to write the letter, then, if we have already determined that?

Mr. Gingrich. He apparently would prefer to have the letter written.

The Chairman. Well, I have no objection, unless

1 somebody objects to writing a letter to confirm what they
2 have indicated to us. Does that also take care of the letter
3 I handed you this morning from Senator Kasten?

4 Mr. Gingrich. Yes, sir, it does.

5 The Chairman. Is there any objection to writing
6 a letter to the International Trade Commission?

7 [No response.]

8 The Chairman. I will be glad to sign it.

9 Senator Chafee, did you have a matter to --

10 Senator Chafee. Yes, Mr. Chairman, this deals
11 with foreign-made cordage products. Problems arise with
12 cordage manufactured from plastic material. We have discussed
13 this with the STR. All I am asking, Mr. Chairman, is that
14 the committee staff and the Office of the STR look into this
15 matter and see if this discrepancy in the tariff treatment
16 of essentially identical imports is warranted, and whether
17 it unnecessarily injures the domestic cordage industry.

18 Are you familiar with that?

19 Mr. Gingrich. Yes, sir. We have talked to them
20 on a preliminary basis about this problem and they have
21 indicated they would be glad to work with us in attempting
22 to find a solution to the problems you have outlined.

23 Senator Chafee. All right, so all I seek is public
24 acknowledgement of that --

25 Mr. Gingrich. Yes.

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1 Senator Chafee. -- and we would ask that you and
2 the Office of STR work on it. If you could report back to
3 the committee and to me, I would appreciate it.

4 Mr. Gingrich. Yes, Senator.

5 Senator Chafee. Thank you.

6 The Chairman. Did that take care of that matter?

7 Senator Chafee. That did. Thank you, Mr. Chairman.

8 The Chairman. Are there any other tariff matters,
9 Claud, or any other --

10 Mr. Gingrich. None that we are aware of, Mr.
11 Chairman.

12 The Chairman. I have discussed -- are you going
13 to object if we go back to --

14 Senator Chafee. No, Mr. Chairman, just one thing:
15 I am interested in that matter that Senator Mitchell brought
16 up, and I would hate to have it drop between the cracks.
17 I know that Senator Bentsen is interested but is that going
18 to get a chance to be resolved?

19 Senator Bentsen. Well, that has apparently been
20 acted on. and what I will probably do is to move to strike
21 on the floor.

22 Senator Chafee. Therefore, that ends it?

23 Senator Bentsen. That is it.

24 The Chairman. What I would like to do now is
25 return to tuition tax credits.

1 Senator Bradley will be here in just a second.
2 When we recessed at 12:30, I announced at that time that
3 Senator Packwood would have voted for the Bradley amendment,
4 which would have made the vote 10 to 9 in favor of the Bradley
5 amendment. Senator Durenberger indicated he did not wish
6 to have his proxy used, and that made the vote 10 to 8, and
7 that is the vote at the present time.

8 I met with a number of interested parties during
9 the noon hour, including those who make up the coalition
10 in support of tuition tax credits, to see if there is some
11 way we might resolve the concerns that Senator Bradley had
12 and the concerns that others had and get this bill reported,
13 so that we might have some chance for Senate and House action
14 this year. During that time I suggested that perhaps
15 representatives of the Justice Department and the Treasury
16 Department, the White House and the Department of Education,
17 might come up with some language of not only have the
18 effective date because of funding reasons but maybe also
19 have an effective date that would take care of any problems
20 that might be addressed depending on how the Supreme Court
21 ruled.

22 That language was quickly drafted. I think we
23 are going to have to give Treasury and Justice and the
24 Department of Education maybe overnight to refine it. I
25 know Senator Bradley has been reviewing it for the past 30

1 to 40 minutes. However, what I wanted to find out from the
2 administration, do you think it is possible that we can work
3 out some resolution of this one remaining problem? There
4 is only one problem that is keeping us, I think, from reporting
5 the bill.

6 Senator Moynihan. Mr. Chairman, why don't you
7 state the solution which you are proposing so we --

8 The Chairman. I am going to have them do that.

9 Mr. Chapeton. Well, as I understand the proposed
10 solution, Mr. Chairman, it is that the entire tuition tax
11 credit amendment would not be effective prior to the time
12 that it were decided by either the Supreme Court or
13 congressional action that a school which follows a racially
14 discriminatory policy is not entitled to tax exemption under
15 section 501(c)(3), so we would just delay the effective date
16 until that is decided. I am not sure whether that is
17 satisfactory to Senator Bradley, and we would like further
18 time to consider that, the effect of that.

19 Senator Byrd. May I ask a question?

20 The Chairman. Yes.

21 Senator Byrd. Do I understand this correctly?
22 It is not a question of deciding it only, but deciding it
23 in a certain way.

24 Mr. Chapeton. I am sorry if I did not make that
25 clear, Senator. It would delay the effective date until

1 it is decided by the Supreme Court or the Congress that a
2 school which follows a racially discriminatory policy is
3 not entitled to tax exemption under --

4 Senator Byrd. What is the Government's position
5 on the pending Supreme Court case?

6 Mr. Chapeton. The position on the pending Supreme
7 Court case is, the law does not now contain such a prohibition
8 but if that position were sustained by the Supreme Court,
9 then we would propose legislation which would have the result
10 of denying tax-exempt status generally to schools which follow
11 a racially discriminatory policy. We have proposed it.

12 Senator Moynihan. If the Senator would yield,
13 I think it is the case that you have proposed legislation.

14 Mr. Chapeton. We have proposed that legislation.

15 Senator Moynihan. It is in a stand-by status.

16 Mr. Chapeton. Correct.

17 Senator Byrd. Well, I think it is also the case
18 that the administration has had so many positions on this,
19 it is difficult to know exactly what the position is. That
20 is why I am asking.

21 Mr. Chapeton. Well, I think, Senator, the confusion
22 has been on the interpretation of existing law as contrasted
23 with the policy. I respectfully submit there has been no
24 question on the policy, that is, no tax exemption for schools
25 which follow a racially discriminatory policy.

1 The Chairman. I will make it clear, so that I
2 do not overstate the case: This has been submitted, as I
3 understand, to other people in the administration for their
4 approval or at least the chance to consider it, because it
5 has only been drafted 30, 40, 50 minutes ago. I am not
6 suggesting this is an administration position; I made the
7 suggestion that we try to find some language that would
8 overcome the opposition. We may not quite have it but it
9 seems to me it might be worth spending overnight trying to
10 put it together. If not, then I think we must make a
11 judgment on whether or not to move ahead on the bill.

12 Senator Moynihan. Mr. Chairman, could I just ask
13 a few questions just to clarify your intention, which I
14 believe I understand perfectly, and if Mr. Chapeton thinks
15 we are wrong or Mr. Reynolds, would you please say so.

16 It is my understanding that the administration,
17 Mr. McNamar, testified to us last winter that the
18 administration did not object to the regulations that had
19 been established by Commissioner Thrower pursuant to
20 instruction from the President in 1970. It is just that
21 the substance of the regulations, that tax-exempt status
22 may not be granted to a school that discriminates in its
23 policies, that the administration agreed with that but they
24 felt that the commissioner did not have the legal authority
25 to do so.

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Mr. Reynolds. That is correct, Senator.

Mr. Chapeton. That is correct.

Senator Moynihan. If the matter was sub judice, it was going to go before the Court. The Court may say, "Yes, it does," in which event the matter is settled, or if the Court says something else, the administration is prepared to have a law that reinstates the previous arrangement.

Mr. Chapeton. That is correct.

Senator Moynihan. Mr. Chairman, I was just told that it was correct, that what the administration desires to do is reinstate the 501(c)(3) regulations that were in existence prior to January 8 or whenever, January 4 or whatever. That is your object.

Mr. Chapeton. I think I want to make it clear here, it is to reinstate the policy --

Senator Moynihan. The policy, not the specific 1978 rules and so forth.

Mr. Chapeton. Right.

Senator Moynihan. Yes, the policy, and if I can say, I had something to do with that policy. I was Counselor to the President in 1970 when it was drawn up. Alex Bickel and other men like that advised us as to the legality but, in any event, that can be resolved and will be by the Court, and the President's statement of July 10, 1970 is sort of

1 where this begins.

2 If that is the case, what I have heard, Mr. Chairman,
3 I would be completely satisfied. I think this would be true
4 of Senator Packwood. I have a feeling that the simpler,
5 the better in these matters. If you have one policy that
6 is located from one place, and one person is responsible
7 for it as it were, not here and there in the statute books
8 about in one precise and orderly assigned responsibility,
9 I think that is best. I know I see no reason why I would
10 not have a responsibility to support this because this is
11 what Senator Packwood asked in our legislation.

12 If you recall, our legislation was very simple
13 on this matter. We simply said the policy of 501(c)(3)
14 applies here. You know, it did not take a long digression.
15 By reference, it just was completely incorporated.

16 I thank you, Mr. Chairman.

17 The Chairman. Senator Byrd?

18 Senator Byrd. Well, Mr. Chapeton, where does this
19 leave the Internal Revenue Service? Does it become involved
20 or not become involved?

21 Mr. Chapeton. Senator, I want to caution that
22 we want to look at this further ourselves. That would simply
23 make it clear that the tuition tax credit provisions do not
24 go into effect until it is clearly in the law that tax
25 exemption is denied to a school that discriminates, that

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1 maintains a racially discriminatory policy. How you implement
2 that would be left to the Supreme Court action or to further
3 congressional action, but it would not happen until that
4 was on the books, and how you implement it would be already
5 on the books.

6 Senator Byrd. Well, the thrust of the Bradley
7 amendment, the original amendment, would or would not be
8 incorporated? It might or it might not be incorporated?

9 Mr. Chapeton. This would be in lieu of it.

10 Senator Byrd. This would be in lieu of that, but
11 what I am getting at is, under this, under this would not
12 the thrust of the Bradley amendment be the situation?

13 Mr. Chapeton. If the Supreme Court said that it
14 were in the law now, then the prior policy would continue
15 and the prior administrative rules would continue. If the
16 Supreme Court said it is not in the law now, then legislation
17 would have to be enacted and you would have to face that
18 question then, but it would be clear that under Internal
19 Revenue code there would be no exemption. Now whether the
20 IRS carried on, I presume the IRS would, but I guess that
21 question could be resolved through a judicial determination
22 or in any way Congress saw fit.

23 Senator Byrd. Do I understand this proposal
24 correctly, that it is not only a question of the Congress
25 acting but the Congress acting in a particular way before

1 the --

2 Mr. Chapeton. Acting in a way that tax exemption
3 is denied.

4 Senator Byrd. That is right. In other words,
5 this is predicated not on what Congress will do but whether
6 Congress does that in the way envisioned by the proponents
7 of the Bradley amendment. Is that right?

8 Mr. Chapeton. Well, I would have to ask Senator
9 Bradley whether it is the way envisioned, but the result
10 would be the same, certainly: The tax exemption would be
11 denied.

12 The Chairman. Senator Bradley?

13 Senator Bradley. Mr. Chairman, could I inquire --
14 I was out -- does the administration have a position on this
15 amendment or are we still talking about it or --

16 The Chairman. I suggested about two o'clock or
17 2:15 that something like this might be possible to break
18 any impasse, and this was the language drafted. The
19 administration has looked at it. It is now being studied
20 by some in the White House and they have not gotten back
21 to us. You have been looking at it.

22 Therefore, what I was going to suggest is that
23 perhaps we meet again at 10:30 tomorrow morning, to give
24 both Senator Bradley and the administration time, and myself
25 time, to see if we can work it out.

1 Senator Bradley. Well, Mr. Chairman, I think that
2 would be a good idea. I think that slowly but surely we
3 are moving. I think that overnight might give us sufficient
4 time to look at it, and I think that would be a good idea.

5 Senator Moynihan. Mr. Chairman, if I could just
6 say, I think that it is even better than that. I think we
7 have clearly the element of the solution and I want to thank
8 you for suggesting it. It puts us right where we were until
9 we got into this little difficulty in January.

10 The Chairman. Well, I must say that informally
11 the coalition has looked at it and they are checking with
12 lawyers but they do not find it objectionable.

13 Senator Bradley. We are all checking with lawyers,
14 Mr. Chairman.

15 The Chairman. Senator Long, did you want to say
16 something?

17 Senator Long. Well, let me just say that, just
18 tentatively, that sounds like a good answer to the problem.
19 Basically we all agree that tax exemptions should not apply
20 to schools that practice racial discrimination. We agree
21 with that position. If the tax exemption should not apply
22 to schools that practice racial discrimination, then the
23 tax credit should not go to students attending schools that
24 practice discrimination, as well. Therefore, it would make
25 the policy consistent and that may be just the answer to

1 it. If so, fine.

2 The Chairman. If we could work this one out, I
3 think the only other amendment that the chairman is aware
4 of is one from the Senator from Iowa, Senator Grassley, again
5 on the \$40,000 to \$50,000 rather than the \$40,000 to \$60,000.

6 Senator Danforth?

7 Senator Danforth. Has Senator Long's amendment
8 been agreed to?

9 The Chairman. That is another one. No, I guess
10 that would be the other one that we have not yet resolved
11 but I think that can be agreed to.

12 Senator Long. It is your amendment, Senator.

13 The Chairman. I have asked them to try to draft
14 something.

15 Senator Long. It is the Long amendment to the
16 Danforth amendment, so it would be the Danforth amendment.

17 Senator Boren. Mr. Chairman, I also will probably
18 have an amendment on the question that I raised that really
19 is a separate issue, about individuals having the right to
20 bring suit, and if an individual prevails against an
21 institution in court, in district court, and there is a finding
22 of discrimination against that institution, that there would
23 be a suspension of the tuition tax credit to that institution
24 on that court finding so it would not be left totally to
25 the Attorney General to bring such suits.

1
2 The Chairman. Right. I wonder if maybe following
3 this meeting, would you have an opportunity to discuss that
4 with Mr. Reynolds and Mr. --

5 Senator Boren. Oh, we have. We started on that
6 this morning and we got off on the IRS and I am not sure
7 anyone understood -- I do not know. Do we have an understanding
8 of the issue that I was raising?

9 The Chairman. Maybe we can discuss it privately.

10 Mr. Reynolds. We understand your concern. I think
11 that it may well be, if we can come to a resolution of the
12 other matter that Senator Bradley was concerned about --

13 Senator Boren. Right.

14 Mr. Reynolds. -- that that would then remove the
15 need to add --

16 Senator Boren, They may have an interlocking
17 effect, once we determined that.

18 Mr. Reynolds. Right. I think that we might then
19 not need to --

20 The Chairman. Let's try to nail that down right
21 after this meeting. We are about to adjourn, and maybe you
22 can discuss that with Senator Boren right now.

23 Does the administration have anything else?

24 Mr. Chapeton. No, sir, not that I know of.

25 The Chairman. Then we will stand in recess until
10:30 tomorrow morning.

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1 [Whereupon, at 3:50 p.m., the committee recessed,
2 to reconvene at 10:30 a.m., on Thursday, September 16, 1982,
3 in room 2221, Dirksen Senate Office Building.]
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