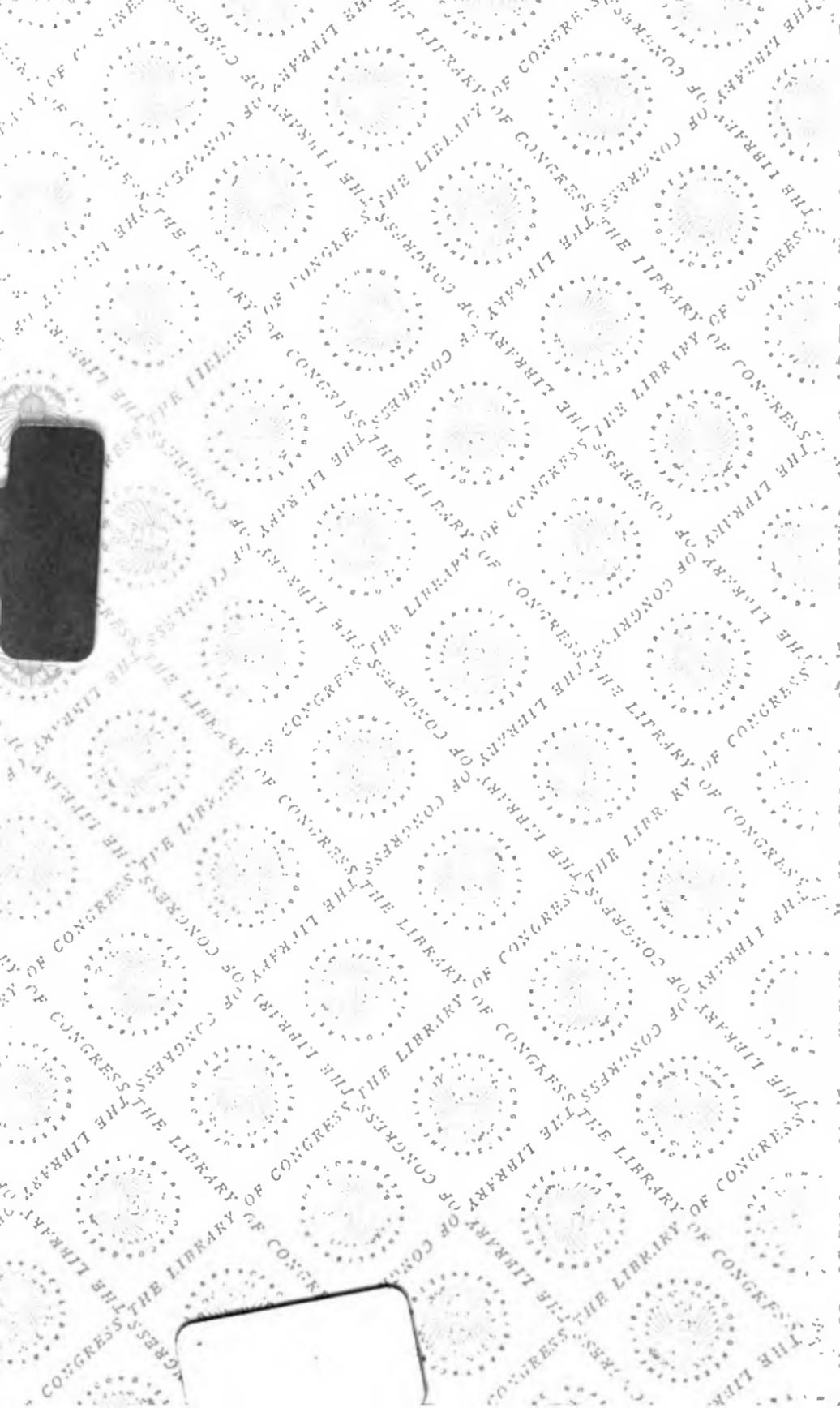
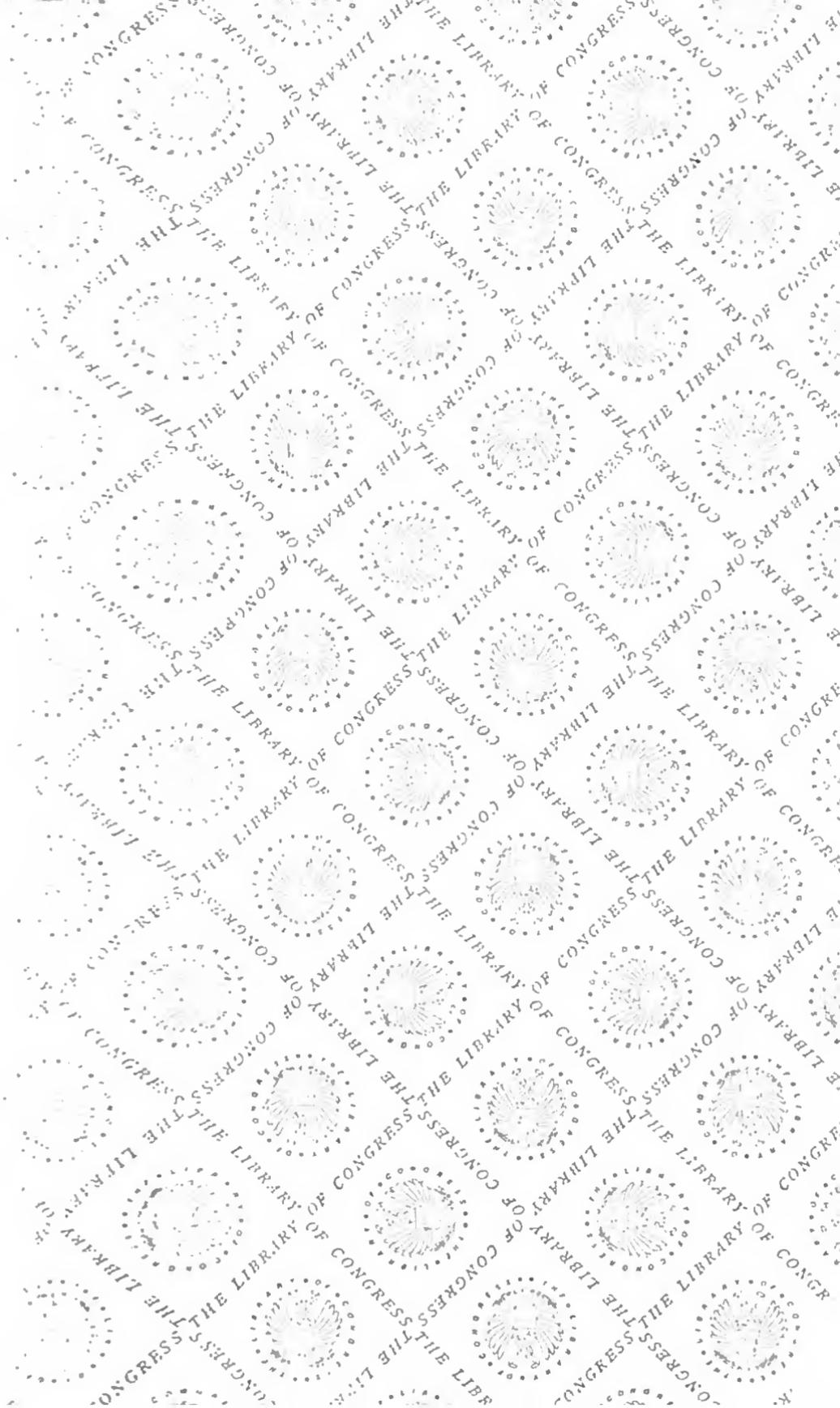


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ENFORCEMENT OF SUPPORT ORDERS IN STATE AND FEDERAL COURTS

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HEARING
BEFORE THE
SUBCOMMITTEE ON
CLAIMS AND GOVERNMENTAL RELATIONS,
United States Committee OF THE
House
COMMITTEE ON THE JUDICIARY,
HOUSE OF REPRESENTATIVES

NINETY-THIRD CONGRESS

FIRST SESSION

ON

H.R. 5405 and Related Bills

TO PROVIDE FOR THE ENFORCEMENT OF SUPPORT ORDERS
IN CERTAIN STATE AND FEDERAL COURTS, AND TO MAKE IT
A CRIME TO MOVE OR TRAVEL IN INTERSTATE AND FOREIGN
COMMERCE TO AVOID COMPLIANCE WITH SUCH ORDERS

OCTOBER 25, 1973

Serial No. 47



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WASHINGTON : 1974

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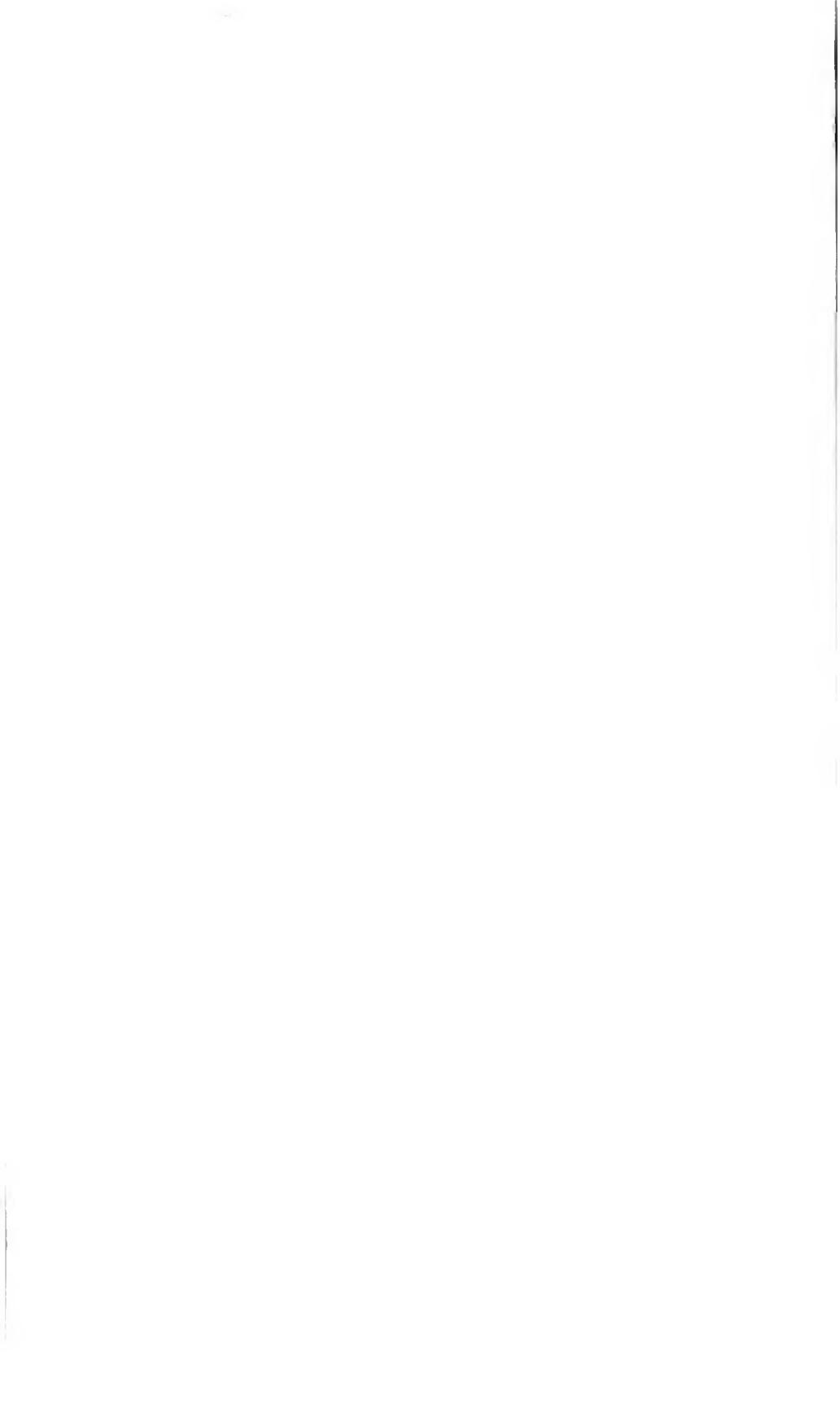
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ENFORCEMENT OF SUPPORT ORDERS IN STATE AND FEDERAL COURTS

THURSDAY, OCTOBER 25, 1973

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CLAIMS AND
GOVERNMENTAL RELATIONS OF THE
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met at 10:20 a.m., pursuant to notice in room 2226, Rayburn House Office Building, Hon. Harold D. Donohue [chairman of the subcommittee] presiding.

Present: Representatives Donohue, Danielson, Jordan, Thornton, Butler, Froehlich, and Moorhead.

Also present: William P. Shattuck, counsel; and Peter T. Straub, associate counsel.

Mr. DONOHUE. The meeting will come to order. The matter that the committee will hear is H.R. 5405 and related bills to provide for the enforcement of support orders in certain State and Federal courts, and to make it a crime to move or travel in interstate and foreign commerce to avoid compliance with such orders.

[The bills referred to follow:]

98^D CONGRESS
1ST SESSION

H. R. 6131

IN THE HOUSE OF REPRESENTATIVES

MARCH 27, 1973

Mr. CLARK introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To provide for the enforcement of support orders in certain State and Federal courts, and to make it a crime to move or travel in interstate and foreign commerce to avoid compliance with such orders.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Federal Family Support
4 Act".

5 SEC. 2. (a) The Congress hereby declares that every
6 individual has a natural, moral, and social obligation to
7 support the members of his immediate family, which obliga-
8 tion transcends the status of debt.

9 (b) The Congress further declares that, while sound

1 national policy requires that migration from State to State
2 be unrestricted, experience has disclosed that in the exercise
3 of the right of migration and travel many persons leave
4 behind them broken homes, dependent and neglected chil-
5 dren, and spouses; that although the courts of the State in
6 which the family resided may have properly ordered an
7 individual to meet his natural, moral, and social obligations,
8 once he has removed himself to another State he has a prac-
9 tical sanctuary against the rightful jurisdiction of the original
10 State of residence.

11 (c) The Congress further declares that experience has
12 also disclosed that in other instances the departure precedes
13 acquisition of jurisdiction over the person by the original
14 State's courts with like result.

15 (d) It is the policy of Congress in enacting this Act
16 to correct the evils outlined above (1) by requiring that
17 orders of State courts directing individuals to meet their
18 natural, moral, and social obligations to child and spouse
19 shall be enforced in Federal and State courts in areas to which
20 such individuals have migrated from the original State, (2)
21 by giving Federal courts in States of which such migrants
22 have become citizens original jurisdiction, in suits brought
23 by citizens of other States, to order such migrants to meet
24 such obligations, to the end that children and spouses will
25 not suffer want or be made the objects of charity and thus

1 or benefit of another, or such beneficiary or his guardian or
2 guardian ad litem.

3 “(4) The term ‘original court’, with respect to a sup-
4 port order, means the court in which it was made.

5 “(5) The term ‘State’ includes the territories, the Dis-
6 trict of Columbia, and the Commonwealth of Puerto Rico.

7 “(6) The term ‘registered’, with respect to a support
8 order, means registered under section 2952.

9 **“§ 2952. Registration of support orders**

10 “Any obligee of a support order may register the order
11 in any district court of the United States for a district, and
12 in any court of a State having jurisdiction of like matters, in
13 which an obligor of the order resides, and which is outside
14 the State in which the support order was made. Registration
15 shall be accomplished by filing with the clerk of such court a
16 certified copy of the support order and of each order of the
17 original court modifying the support order.

18 **“§ 2953. Enforcement**

19 “(a) Any court in which a support order is registered
20 shall entertain contempt proceedings, in the same manner as
21 if the order were an order of such court, against an obligor
22 who fails to comply with the order within thirty days after
23 being served notice that it has been registered.

24 “(b) No proceedings to enforce a support order shall
25 be begun in any court under this section unless a copy of

1 each order of the original court modifying the support order
2 is registered under section 2952.

3 “(c) The cost of enforcement proceedings under this
4 section shall be taxed against the party against whom the
5 issues are resolved. The obligor shall be required to pay a
6 reasonable attorney fee to the obligee if the court finds the
7 proceedings were necessary to compel the obligor to comply
8 with the support order.

9 **“§ 2954. Notice to original court**

10 “When, in any court, any support order is registered
11 or any proceedings are taken under section 2953 to enforce
12 a support order, written notice of such action under the
13 seal of such court shall be sent to the original court.”

14 **SEC. 4.** Section 1332 of title 28 of the United States
15 Code is hereby amended by redesignating subsection (d) as
16 subsection (e) and inserting after subsection (e) the fol-
17 lowing new subsection:

18 “(d) Notwithstanding any jurisdictional limitation with
19 respect to the amount in controversy, each district court
20 located in a State shall have original jurisdiction, concurrent
21 with State courts, of civil actions brought by a citizen of
22 another State to order a citizen of the State in which the
23 court is located to make payments periodically to (or for the
24 support of) his spouse or child (whether the issue of his
25 body, legitimate or illegitimate, or adopted) if under the law

1 of such State a State court is authorized to make such an
 2 order, as an incident to a divorce proceeding or otherwise.
 3 Nothing in this subsection shall authorize any district court
 4 to make a decree of divorce or separation, or to order an
 5 individual to make any payments to (or for the support of)
 6 a spouse who has without legal justification quit the home
 7 of such individual.”

8 SEC. 5. The jurisdiction of the courts upon which juris-
 9 diction is conferred by the amendments made by sections 3
 10 and 4 of this Act shall not be affected by the amount in con-
 11 troversy, and such court shall have the power to enforce its
 12 orders by proceedings against either the person or property
 13 of the obligor, or both.

14 SEC. 6. (a) Part I of title 18 of the United States Code
 15 is hereby amended by inserting at the end thereof the follow-
 16 ing new chapter:

17 **“Chapter 120.—ABANDONMENT OF DEPENDENTS**

“Sec.

“2610. Definitions.

“2611. Abandonment and desertion.

“2612. Prima facie evidence.

“2613. Testimony of wife.

18 **“§ 2610. Definitions**

19 “As used in this chapter—

20 “(1) The term ‘support order’ means an order of a
 21 State court having jurisdiction over an individual directing
 22 such individual to make payments periodically to (or for the

1 support of) his spouse, former spouse, or child (whether
2 the issue of his body, legitimate or illegitimate, or adopted).

3 “(2) The term ‘State’ includes the Territories, the
4 District of Columbia, and the Commonwealth of Puerto Rico.

5 **“§ 2611. Abandonment and desertion**

6 “Any individual who, to avoid compliance with a sup-
7 port order, shall travel or move in interstate or foreign
8 commerce, from the State in which such support order was
9 issued or from any State in which proceedings have been
10 instituted under chapter 177 of title 28 of the United States
11 Code, shall be punished by a fine of not more than \$2,500,
12 or by imprisonment for not more than three years, or by
13 both such fine and imprisonment.

14 **“§ 2612. Prima facie evidence**

15 “For the purposes of this chapter, failure of any indi-
16 vidual to comply with the terms of a support order after
17 travel or movement in interstate or foreign commerce shall
18 constitute prima facie evidence that such individual so trav-
19 eled or moved with intent to avoid compliance with such
20 support order, if personal service (including service by regis-
21 tered United States mail) of a certified copy of such support
22 order has been had on such individual.

23 **“§ 2613. Testimony of wife**

24 “In all criminal proceedings under this chapter a wife
25 may testify against her husband without his consent.”

1 (b) The part analysis of part I of title 18 of the United
2 States Code is amended by inserting at the end thereof the
3 following new item:

 "120. Abandonment of dependents..... 2610".

4 SEC. 7. Section 3237 of title 18 of the United States Code
5 is hereby amended by inserting at the end thereof the follow-
6 ing new subsection:

7 “(c) Any offense under the provisions of chapter 120
8 of this title is a continuing offense and may be inquired of and
9 prosecuted in any district from, through, or into which, such
10 offender so travels or moves, or in the district where the of-
11 fender is found.”.

Mr. DONOHUE. The first witness is Robert G. Dixon, Jr., Assistant Attorney General, Office of Legal Counsel.

Mr. Dixon?

TESTIMONY OF HON. ROBERT G. DIXON, JR., ASSISTANT ATTORNEY GENERAL, OFFICE OF LEGAL COUNSEL, DEPARTMENT OF JUSTICE, ACCOMPANIED BY BRUCE FEIN, ATTORNEY ADVISER, OFFICE OF LEGAL COUNSEL, AND JAMES KELLY, ATTORNEY ADVISER, OFFICE OF LEGAL COUNSEL

Mr. DIXON. Good morning, Mr. Chairman. I would like to introduce on my left Mr. Bruce Fein, attorney adviser from the Office of Legal Counsel and I am also accompanied by James Kelly, sitting back here on my right, attorney adviser, Office of Legal Counsel.

Mr. Chairman and members of the subcommittee, in spite of some recent traumatic events, I am pleased to appear here to present the views of the Department of Justice on H.R. 5405.

The matter is somewhat technical. I would therefore propose to go through my statement in some detail, omitting those parts here and there where possible to expedite our progress this morning that I can. I appreciate fully having the opportunity to appear here and would appreciate having the full testimony appear in the record as having been given.

The bill is primarily designed to enforce payment of support obligations by persons who desert their spouses or children and settle in other States. Such action leaves the deserted family dependent upon welfare payments, primarily payments under the Federal Aid for Dependent Children program. The bill provides for civil enforcement of child or spouse support orders in the appropriate Federal district court of the father's new State of residence, in instances where the State courts of the latter State do not provide an adequate remedy. In addition, the bill would make it a Federal felony to travel in interstate commerce with the intention of avoiding compliance with such a State court support order registered in a second State. Further, there is a prima facie evidence of criminality rule—of certain meaning and constitutionality—flowing from travel in interstate or foreign commerce under certain conditions.

The problems H.R. 5405 seeks to address—enforcement of an important social and moral duty affecting the fiber of the family, and relief from a heavy drain on the Federal Treasury—are serious, and we fully share the sponsor's concern. At the same time the Department of Justice has to oppose enactment of H.R. 5405 because we believe that approaches more promising and less upsetting to the federal system are available to us.

Let me summarize briefly the figures and the background matter given in the next three pages.

Now under the Federal Aid to Families with Dependent Children statute we find that the United States pays about 53 percent of the cost of this program. In regard to numbers of families, we have grown since 1961. In 1961 there were 1 million families receiving such aid under AFDC at a \$1 billion cost to the Federal Government of combined State-Federal costs. Now for fiscal year 1971 the number of

families was up to 2.3 million. The cost was up from \$1 billion to \$6 billion total cost. The projected figures for fiscal year 1974 in terms of costs are \$8 billion. The best evidence of the data indicates the number of families now on the rolls are approximately 3 million. The number of deserting fathers is 2 million. However, in two important categories we do not have figures on or detailed data today and that is the number of deserting fathers crossing State lines, which is unknown and also the number of runaway fathers gainfully employed is unknown. Therefore, we conclude at the bottom of page 4, Mr. Chairman, that this lack of relevant data, the lack of complete and relevant data, in the last two categories especially, does argue against embarking upon a national enforcement program which may not be effective, and which could have serious side effects, for the Federal judicial system. In our judgment, this is a program which cries out for diverse and experimental approaches at the State and local level, encouraged by Federal financial support and technical assistance. Recent initiatives at the State and local level have been promising.

I turn now to general observations beginning at the top of page 5. The overall scheme of the bill to involve Federal enforcement resources in an attempt to insure that adults meet their local family obligations has several serious disadvantages. One is the problem of unnecessary burden on the Federal courts. Another is the problem of unnecessary and undesirable burden on the Department of Justice. We take these up separately.

First in regard to the unnecessary burden on the Federal courts, Federal courts at all levels presently are overburdened with a federally rising caseload and it is undesirable that additional tasks be thrown upon the Federal judiciary unless a strong Federal interest is present.

Now the primary role of the Federal judiciary is the enforcement of constitutional and federally created rights. I am thinking about the Supreme Court in the *Mitchum v. Foster* case in 1972. Traditionally, the Federal judiciary has not accepted jurisdiction over domestic relations cases. The adjudication of support claims arising under State law and claims collection neither need nor desire the attention of the Federal judiciary when its resources are already spread so thin. Although precise statistics are not available, the added burden on Federal courts created by H.R. 5405 would certainly not be de minimis. In fiscal 1973, for example, 138,927 civil and criminal cases were filed in the Federal district courts. Assuming for example that only 1 percent of the "runaway fathers" go to other States and are employed, that would represent a potential burden on the Federal courts of some 20,000 cases, an increase of almost 15 percent.

Chief Justice Burger has urged the Congress to adopt an approach similar to the one it adopted in the National Environmental Policy Act of 1969, analogous to the environmental impact statement concept whereby the Chief Justice has called for a court impact statement also. We in the Department of Justice endorse that concept.

As I indicated, we do not presently have the data for a meaningful court impact statement in regard to runaway fathers and the prospect for effective enforcement through the mechanism proposed in the bill. Therefore, if the figures I have prophesized are anywhere near the mark the "court impact" of H.R. 5405 would appear to be substantial.

Now, I then go on to discuss the problem of a broad cost benefit analysis which I will skip over except for our final conclusion on that on page 7, which is, that based on the information we do have, and reasonable speculation, it appears unlikely that the Federal enforcement required under H.R. 5405 would represent a net gain against weighing the new enforcement expenses against lower AFDC costs which might result.

And then the other general observation goes to the unnecessary and undesirable burden on the Department of Justice. By making it a Federal crime to travel in interstate or foreign commerce for the purpose of avoiding compliance with support orders, H.R. 5405 would involve the Department of Justice and the FBI in the investigation and prosecution of those offenses. We believe that these investigatory and prosecutorial resources could be better spent ferreting out organized crime and political corruption.

We also feel that a need for Federal action is not needed because of the action of the States.

Recent evidence, Mr. Chairman, indicates that the States of California, Michigan, and Washington have achieved notable success in enforcing support obligations. California and Washington are recovering more funds than it costs to collect them, in ratios of 3 or 4 to 1. With a program only partially underway, California has doubled its absent parent contributions in less than 1 year. In 1972, Michigan spent \$1.2 million to collect over \$28 million in support payments.

Part of the success of the States in that under the Uniform Reciprocal Enforcement Support Act, which all States but New York have enacted—New York has a corresponding statute—but under the Uniform Reciprocal Enforcement Support Act the States have information agencies which is mentioned in the testimony presented this morning I believe by the Administrative Office of the U.S. Courts which may be a factor not present in any proposed Federal enforcement takeover.

Thus, the need for the criminal aspects of H.R. 5405 does seem questionable based on the data presently available. Additionally the FBI's experience has been in the area of criminal law enforcement and not in identifying population flow to escape civil obligations.

To effectively enforce this bill, which in a sense relates to a migration concept perhaps of a larger dimension—although the figures are not known—but there would have to be a data bank utilizing various resources, perhaps including social security costs and collection of such information would be another undesirable threat to the ever increasing encroachments on our privacy caused by the massive collection and storage of information related to our personal lives.

I now have a few observations about particular problems. H.R. 5405 permits any obligee of a support order to register that order in a court of any State in which the obligor resides outside the issuing State and which has jurisdiction to issue support orders. If no such State court exists, then the obligee may register the support order in the Federal district court for the district in which the obligor resides. Section 2812. H.R. 5405 also enlarges Federal diversity jurisdiction by giving Federal courts original jurisdiction to hear diversity suits in which support orders are sought without regard to the \$10,000 jurisdictional amount required in other diversity suits provided however only if the

plaintiff has exhausted his available State court remedies and if the State in which the Federal district court is located authorizes a State court to issue support orders.

Now regarding first the need for registration and enforcement provisions, all States today have reciprocal support laws except New York did not adopt the State Uniform Act having an alternative statute as I already mentioned. Now also under 28 U.S.C. 1738, our full faith and credit statute, States and Federal courts are already required to give sister court decisions the same full faith and credit that they receive in the State of origination. Thus, the need for the registration provisions in H.R. 5405 seems questionable. Because all States do have courts that issue support orders, registration in Federal district court would never be available under section 2812, so that providing for such registration seems superfluous. If the registration provisions of section 2812 as provided in the bill are maintained, the second sentence therein should clarify what is meant by "the court" of the State because as it now stands we sense an ambiguity.

The enforcement provisions in section 2812(a) also seem unnecessary because virtually the same rights are already provided for in virtually all States under the Uniform Reciprocal Enforcement of Support Act. The bill would enlarge the jurisdiction of Federal courts in enforcing support orders in diversity cases by removing the \$10,000 jurisdictional amount requirement. Federal courts, however, now have no experience or expertise in applying State law to cases relating to the enforcement of support orders because in the past the \$10,000 jurisdictional amount requirement excluded most such cases. Plus the reluctance of Federal courts to entertain family matters of any sort even though diversity were present. Even if waiving the jurisdictional amount brought more cases into the Federal system, the Federal courts probably would use State courts wherever possible to aid in deciding issues of State law pursuant to uniform certification of questions of law statutes.

We are now on expansion of Federal diversity jurisdiction under 28 U.S.C. 1332 as provided in the bill. Now, giving Federal district courts jurisdiction initially to adjudicate diversity cases concerning support obligations under H.R. 5405 by the elimination of the extent \$10,000 jurisdictional amount requirement is undesirable for the reasons explained above. Even if that expansion is enacted, the proposed section 1332(d) should clarify what is meant by exhaustion of State court remedies as a precondition for Federal action. Because that subsection only applies when State courts in the State of the appropriate Federal district court have jurisdiction to issue support orders, a plaintiff suing thereunder will always have had a prior State court decision in the matters brought before the Federal court as we understand the bill. In that event, 28 U.S.C. 1738, requiring Federal courts to give res judicata effect to State court decisions, would seem to preclude the unsuccessful State court plaintiff from relitigating the suit in Federal court. And, if that proposition is true, then the new proposal would be at that point to that extent a nullity.

On the other hand, is the proposed section 1332(d) intended to give a losing plaintiff in State court a second opportunity to prevail in Federal court? If so, that would seem to be a doubtful propriety and such a statutory revision of the normal rules of res judicata in common

law would be unprecedented and would promote rather than quiet litigation. On the other hand if exhaustion of State court remedies is intended only to permit a successful State court plaintiff to proceed in Federal court if his State court judgment proves uncollectable then it would seem the intent should be clarified. Even as thus clarified, however, section 1332(d) would seem to be or would rather still appear to be bootless because uncollectable State court judgments seemingly will not be rendered more collectable by proceeding in Federal court, in other words, if the runaway father has no wages or other types of property, it will not be rendered more collectable by proceeding in the Federal courts. Another odd feature of section 1332(d) is that under close analysis in one line it creates Federal jurisdiction to hear a support action in the first instance, and then in another line it deprives the Federal court of power to grant relief, that is, issue a payment order, until the possible concurrent State court action or perhaps normally present concurrent State court action has been resolved.

Now does this mean that there could be hundreds of Federal actions pending filed promptly to insure jurisdiction over the defendant spouse and perhaps proceeding up to filing of motions or beyond but then held in abeyance to await exhaustion of State court remedies?

Now, one further troublesome feature, finally, arrives from the proviso in the last sentence of section 1332(d) that the Federal court cannot order support payments in behalf of a spouse who has "without legal justification quit the home," of the defendant spouse. Now again what do the court's quoted words mean, and what law would be applied to resolve disputes? Federal law, the law of the State where the home was "quited" or the law of the State of present residence of the defendant spouse?

Now coming down to the proposed criminal sanction, in the latter part of the bill, that is section 7 of the bill, section 7 of the bill would add a new chapter to the Federal criminal code prohibiting abandonment of dependents. The most important provision, proposed section 22, would make it a crime punishable by a fine of \$2,500 or imprisonment of up to 3 years or both to avoid compliance with a support order by traveling in interstate commerce. We have serious reservations and in fact we do not now believe that this kind of conduct, while reprehensible, should be made a Federal felony, for several reasons.

In the first place, if the bite is to be as big as the bark, this proposed penal sanction would be counterproductive. Obviously, a defaulting father may not meet support payments while he is in a Federal prison. Indeed, the total expense to the Federal Government would be magnified, because it now costs about \$5,000 per year for each incarcerated Federal prisoner. Following his release, the father's criminal record would make it more difficult for him to obtain productive employment. Particularly at a time when long-term incarceration for much more serious offenses is being seriously questioned by corrections experts, we should be slow to propose incarceration for an offense of this nature.

In here I have cited a recent issue of the National Advisory Commission on Criminal Justice entitled Standards and Goals, Report on Corrections which was subsidized and I make reference to that in a footnote. Interstate flight to avoid support payments would be a relatively high volume, low visibility, difficult to detect offense. This means that, despite the best efforts of the Department of Justice and the

U.S. attorneys, it would be quite difficult to obtain fair and uniform enforcement of the law. If the public impression is that enforcement is haphazard in this area, an impression that would be difficult to avoid, it would promote an unfortunate disrespect for the law. A case might nevertheless be made for the proposed criminal sanction if we could anticipate a very broad deterrent effect from a relatively small number of prosecutions. We doubt that such an effect would result. The convictions would be expected to receive little or no publicity. Moreover, convictions may not be easy to obtain.

Here in the statement I have prepared quotes from the American Law Institute's Model Penal Code provisions and the quote is as follows: "Exemplary punishment is of doubtful efficacy in complex family situations, where many forces, psychic, social, and economic, may combine to excuse, if not justify, the behavior * * *" and then so on.

In recognition of just such factors as these, juries may be reluctant to convict, and judges may bend toward a leniency—I should have said "tend" toward a leniency that would undercut deterrent effects.

The last comment I have on proposed criminal sanction relates to the prima facie evidence rule. Proposed section 23 provides that the failure to comply with the terms of a support order, after traveling in interstate commerce, shall constitute prima facie evidence that such travel was to avoid compliance with such order if that order was entered in the presence of the defendant or if he received personal service thereof. The constitutionality of that proposed section under existing precedents may be questionable. Just last June the Supreme Court in the *Barnes v. United States* case reviewed the courts' most recent decisions concerning the validity under the due process clause of criminal law presumptions and inferences. And the Court concluded that at a minimum the case law established that if the evidence necessary to invoke the statutory inference in a criminal case is sufficient for a rational juror to find the inferred facts beyond a reasonable doubt, then it clearly accords with due process.

The Court left open the question of whether due process is satisfied if the evidence needed to invoke a statutory inference was sufficient for a rational juror to find the inferred fact only a "more likely than not" standard.

Under section 23 of the bill, travel interstate commerce with notice of an outstanding support order triggers the statutory inference that is the prima facie provision, however, individuals have innumerable reasons, innocent reasons, for traveling in interstate commerce as listed for example in a Supreme Court case on right of travel back in 1964.

Now since this prima facie ruling area is technical I think I will omit my comments on it and go directly to the conclusion.

H.R. 5405 would require the Federal courts, and the Department of Justice, including the FBI, to use their scarce resources to aid the States in enforcing familial obligations of support. Those Federal resources we feel can be far better spent on other matters national in scope and impact. The States have shown success in enforcing obligations of support when serious attempts are made. No substantial basis exists for believing that the Federal Government could improve on the performance of the States in this regard. Indeed, under section 1332(d) of the bill as we understand it, the Federal courts would simply duplicate State courts. And on the criminal side of the offense we

doubt that the criminal provision in this area would be enforceable easily or effectively because of serious problems of detention and because of serious problems of effective prosecution once detention were accomplished. And at the same time the Department of Justice does recognize that not all States are successfully enforcing familial obligations of support.

This does not mean that there are a large number of uncared for people, because public welfare programs, and especially the Federal AFDC program, fill the gap in most instances. It does mean that employable runaway fathers are imposing a burden on the public. Additionally, quick enforcement of support obligations, or threat thereof, might help to keep families together. The Department, therefore, does support the basic objectives of H.R. 5405—to aid the treatment of these problems. However, to a very large extent the field is now being occupied with an increasing degree of success by the States. We feel the next step therefore is not even more new State laws but for more vigorous enforcement of existing State laws. In this regard the Federal role can be most effective through use of a combination of monetary incentives and sanctions that would stimulate the States to more vigor and innovation in seeking enforcement of familial obligations of support. For example, Congress has enacted legislation requiring States that receive payments under the AFDC program to establish a State program to enforce familial financial obligations of absent parents. The Department of Health, Education, and Welfare has recently begun to place stronger emphasis upon development of more effective collection programs. The Department of Justice concurs heartily in measures of this kind to encourage the States to act, and supports the comparable proposals advanced by Secretary Weinberger in his recent testimony before the Senate Finance Committee concerning S. 2081 and S. 1843. He said there that the Federal program should provide first, adequate incentives to both States and the absent parent; secondly, realistic sanctions for failure to participate or to take part in the program adequately; third, sharing of administrative costs which States incur; and fourth, technical support to State and local personnel.

Mr. Chairman, with this one other comment I would conclude. The runaway father Federal support concept has been around for a long time. I believe it dates back to 1957 but it has consistently seemed to have in it more problems than would be balanced by the benefit to be derived. The Judicial Conference of the United States I believe has consistently raised questions about legislation of this sort despite the serious social need which exists in this area.

Mr. Chairman, thank you.

[The prepared statement of Hon. Robert G. Dixon follows:]

STATEMENT OF ROBERT G. DIXON, JR., ASSISTANT ATTORNEY GENERAL, OFFICE OF LEGAL COUNSEL

Mr. Chairman and Members of the Subcommittee, I am pleased to appear here to present the views of the Department of Justice on H.R. 5405. The bill is primarily designed to enforce payment of support obligations by persons who desert their spouses or children and settle in other States. Such action leaves the deserted family dependent upon welfare payments, primarily payments under

the Federal Aid for Dependent Children program. The bill provides for civil enforcement of child or spouse support orders in the appropriate federal district court of the father's new State of residence, in instances where the State courts of the latter State do not provide an adequate remedy. In addition, the bill would make it a federal felony to travel in interstate commerce with the intention of avoiding compliance with such a State court support order registered in a second State. Further, there is a prima facie evidence of criminality rule (of uncertain meaning and constitutionality) flowing from travel in interstate or foreign commerce under certain conditions.

The problems H.R. 5405 seeks to address—enforcement of an important social and moral duty affecting the fibre of the family, and relief from a heavy drain on the federal treasury—are serious, and we fully share the sponsor's concern. Nevertheless, the Department of Justice opposes enactment of H.R. 5405 because we believe that approaches more promising and less upsetting to the federal system are available to us.

The dimensions of the problems to which the bill is addressed are amply documented by the figures descriptive of the federal AFDC program. The federal government pays about 53 percent of the cost of this program. The numbers of participating families, and corresponding costs, have mushroomed in the past decade. In fiscal 1961, there were only about 1,000,000 families receiving assistance under the program and its total cost—Federal and State—was about \$1 billion annually. By fiscal 1971, recipient families numbered over 2,300,000 and costs had soared to almost \$6 billion. The estimated cost of this program for fiscal 1974 approaches \$8 billion, of which the federal share will be over \$4 billion.

At the present time, there are over 3,000,000 families receiving assistance under the AFDC program. The most recent available statistics indicate that among these families, over 100,000 of the fathers are dead and some 250,000 are incapacitated. There is, of course, no prospect of support, other than welfare payments, for these families. However, in the vast majority of cases where the father is absent from the home, there does appear to be a prospect that the father could provide some support for his children. The latter group includes about 350,000 divorced fathers, 75,000 legally separated fathers, 325,000 fathers separated without court decree, almost 400,000 cases of desertion, and some 700,000 fathers who are not married to the mother.¹ The bill on its face applies to runaway mothers, too; realistically, however, the problem at present centers on runaway fathers.

The foregoing figures suggest that there are approximately two million fathers who have left home and whose children are being supported under AFDC. Presumably, many of these fathers could provide support; the problem is how to bring about that result.

The most relevant data in judging the potential effectiveness of H.R. 5405 in dealing with this problem are not presently available. The necessary premise of the bill is that many "runaway fathers" are crossing State lines. This assumption may be appropriate, but we have no idea how many are involved. There is some evidence that the father usually stays in the same State, particularly in large States.² Unless a very substantial proportion of these fathers are going to other States and are employed, a doubtful assumption, even with highly effective enforcement we could not significantly diminish federal payments.

Another relevant datum would be how many of these "runaway fathers" are gainfully employed. We cannot change the truth of the adage about getting blood from turnips. Most "runaway fathers" are at the bottom of the economic ladder, and it seems reasonable to assume that many are unemployed or marginally employed.

This lack of relevant data argues against embarking on a national enforcement program which may not be effective, and which could have serious side effects for the federal judicial system. In our judgment, this is a program which cries out for diverse and experimental approaches at the State and local level, encouraged by federal financial support and technical assistance. Recent initiatives at the State and local level have been promising.

¹ See "Child Support and the Work Bonus," hearings before the Senate Finance Committee on S. 1842 and S. 2081, 93d Cong., 1st sess. p. 232.

² Hearings at 114.

GENERAL OBSERVATIONS

The overall scheme of the bill to involve federal enforcement resources in an attempt to insure that adults meet their local family obligations has several serious disadvantages.

UNNECESSARY BURDEN ON THE FEDERAL COURTS

Federal courts at all levels presently are overburdened with a steadily rising caseload and it is undesirable that additional tasks be thrown upon the federal judiciary unless a strong federal interest is present. See, H. Friendly, *Federal Jurisdiction: A General View* (1973), Part II. The primary role of the federal judiciary is the enforcement of constitutional and federally created rights, cf. *Mitchum v. Foster*, 407 U.S. 225, 238-242 (1972). Traditionally, the federal judiciary has not accepted jurisdiction over domestic relations cases. See Hart and Wechsler, *The Federal Courts and the Federal System*, pp. 1189-1192 (2d ed. 1973). The adjudication of support claims arising under state law, and claims collection, neither need nor deserve the attention of the federal judiciary when its resources are already spread so thin. Although precise statistics are not available, the added burden on federal courts created by H.R. 5404 would certainly not be de minimus. In fiscal 1973, 138,927 civil and criminal cases were filed in the federal district courts. Assuming, for example, that only one percent of the "runaway fathers" go to other States and are employed, that would represent a potential burden on the federal courts of some 20,000 cases, an increase of almost fifteen percent.

Chief Justice Burger has urged the Congress to adopt an approach similar to the one it adopted in the National Environmental Policy Act of 1969, under which significant federal initiatives affecting the environment must be accompanied by an environmental impact statement. Similarly, the Chief Justice has called for a "court impact" statement whenever the Congress is considering enactment of new legislation that would necessarily add to our already overburdened court dockets. The Department of Justice endorses that concept. As I have indicated, we do not presently have the data for a meaningful "court impact" statement in this instance. However, if the figures I have hypothesized are anywhere near the mark, the "court impact" of H.R. 5405 would be substantial.

In addition to the bill's potential for burdening the courts, the bill as a whole seems questionable in terms of a broad cost benefit analysis. In addition to court time, criminal prosecutions would involve expenditures of time and effort by the FBI, prosecuting attorneys, grand juries, and supporting personnel. It would be conceded, I assume, that the bill should not be enacted unless we have some reasonable expectation that the amount of child support benefits generated through federal enforcement should substantially exceed the out-of-pocket expenses the federal government would have in enforcement efforts plus the savings of its share of AFDC payments. Some of these expenses can be more or less accurately quantified, but we cannot accurately project the cost, for example, of increased court delay. Again, we simply do not have the statistics for a useful cost-benefit analysis. However, based on the information we do have, and reasonable speculation, it appears unlikely that the federal enforcement required under H.R. 5405 would represent a net gain, weighing marginally lower AFDC costs against new enforcement expenses.

UNNECESSARY AND UNDESIRABLE BURDEN ON THE DEPARTMENT OF JUSTICE

By making it a federal crime to travel in interstate or foreign commerce for the purpose of avoiding compliance with support orders, H.R. 5405 would involve the Department of Justice and the FBI in the investigation and prosecution of those offenses. We believe that these investigatory and prosecutorial resources could be better spent ferreting out organized crime and political corruption. Moreover, the criminal responsibilities placed upon the Department of Justice under H.R. 5405 seem especially unwise because it possesses no expertise in that field; States seem capable and best able to handle criminal enforcement problems.

Recent evidence indicates that the States of California, Michigan, and Washington have achieved notable success in enforcing support obligations.³ California and Washington are recovering more funds than it costs to collect them, in ratios of 3 or 4 to 1. With a program only partially instituted, California has doubled its absent parent contributions in less than one year.⁴ In 1972, Michigan spent \$1.2 million to collect over \$28 million in support payments.⁵ There seems to be no obstacle preventing other States from achieving similar successes. Thus, the need for the criminal aspects of H.R. 5405 seems questionable. Additionally, the FBI has had no past experience in this area of criminal law enforcement. To be effective in enforcing H.R. 5405, the FBI would probably need a data bank with names of persons having support orders entered against them. That collection of information would be another undesirable threat to the ever-increasing encroachments on our privacy caused by the massive collection and storage on information related to our personal lives.

PARTICULAR PROBLEMS

H.R. 5405 permits any obligee of a support order to register that order in a court of any State in which the obligor resides outside the issuing State and which has jurisdiction to issue support orders. If no such State court exists, then the obligee may register the support order in the Federal district court for the district in which the obligor resides. § 2812. H.R. 5405 also enlarges federal diversity jurisdiction by giving federal courts original jurisdiction to hear diversity suits in which support orders are sought without regard to the \$10,000 jurisdictional amount required in other diversity suits, if the plaintiff has exhausted his available State court remedies and if the State in which the federal district court is located authorizes a State court to issue support orders. Proposed § 1332(d) and § 5.

NEED FOR REGISTRATION AND ENFORCEMENT PROVISIONS

All States today have reciprocal support laws⁶ and all States have courts that issue support orders. Under 28 U.S.C. 1738, State and federal courts are already required to give sister court decisions the same full faith and credit that they receive in the State of origination. Thus, the need for the registration provisions in H.R. 5405 seems questionable. Because all States do have courts that issue support orders, registration in federal district court would never be available under Section 2812 so that providing for such registration seems superfluous. If the registration provisions of Section 2812 as provisions in the bill are maintained, the second sentence therein should clarify what is meant by "the court" of the State because as it now stands that reference is ambiguous.

The enforcement provisions in § 2812(a) also seem unnecessary because virtually the same rights are already provided for in virtually all States under the Uniform Reciprocal Enforcement of Support Act (see § 40 thereof). The bill would enlarge the jurisdiction of federal courts in enforcing support orders in diversity cases by removing the \$10,000 jurisdictional amount requirement. Federal courts now have no experience or expertise in applying State law to cases relating to the enforcement of support orders because in the past the \$10,000 jurisdictional amount requirement excluded most such cases. Even if waiving the jurisdictional amount brought more cases into the federal system, the federal courts probably would use State courts wherever possible to aid in deciding issues of State law pursuant to Uniform Certification of Questions of Law statutes. See, e.g., Art. 26, §§ 161-172 of the Md. Ann. Code (1973 Replacement Volume).

EXPANSION OF FEDERAL DIVERSITY JURISDICTION UNDER 28 U.S.C. 1332

Giving federal district courts jurisdiction initially to adjudicate diversity cases concerning support obligations under H.R. 5405 by the elimination of the extant \$10,000 jurisdictional amount requirement is undesirable for the reasons ex-

³ See, statements of Caspar W. Weinberger, Secretary, Department of Health, Education, and Welfare, and William Meyer, deputy inspector general, Michigan Department of Social Services. Hearings at 79, 170.

⁴ *Id.* at 80.

⁵ *Id.* at 71.

⁶ Hearings at 236-237 (citations to reciprocal support laws as of July 1971).

plained above. Even if that expansion is enacted, the proposed § 1332(d) should clarify what is meant by exhaustion of State court remedies. Because that subsection only applies when State courts in the State of the appropriate federal district court have jurisdiction to issue support orders, a plaintiff suing thereunder will always have had a prior State court decision in the matters brought before the federal court. In that event, 28 U.S.C. 1738, requiring federal courts to give res judicata effect to State court decisions, would seem to preclude the unsuccessful State court plaintiff from relitigating the suit in federal court, thus making the new proposal a nullity. Is the proposed § 1332(d) intended to give a losing plaintiff in State court a second opportunity to prevail in federal court? That result seems wholly unfair and inconsistent with 28 U.S.C. 1738. Moreover, other than in habeas corpus jurisdiction, such a statutory revision of the normal rules of res judicata would be unprecedented and would promote rather than quiet litigation. On the other hand, if exhaustion of State court remedies is intended only to permit a successful State court plaintiff to proceed in federal court if his State court judgment proves uncollectable, then that intent should be clarified. Even as thus clarified, however, § 1332(d) would seem to be bootless because uncollectable State court judgments seemingly will not be rendered more collectable by proceeding in federal court. Perhaps neither of these interpretations of "exhaustion" is correct. If that is true, the need to clarify the requirement of exhaustion in § 1332(d) would appear obvious.

Another odd feature of § 1332(d) is that in one line it creates federal jurisdiction to hear a support action in the first instance, and in another line it deprives the federal court of power to grant relief, i.e., issue a payment order, until the possible concurrent State court action has been resolved. Does this mean that there could be hundreds of federal actions pending, filed promptly to insure jurisdiction over the defendant spouse, and perhaps proceeding up to filing of motions or beyond, but then held in abeyance to await exhaustion of State court remedies?

One further troublesome feature of § 1332(d) is the proviso in the last sentence that the federal court cannot order support payments in behalf of a spouse who has "without legal justification quit the home" of the defendant spouse. What do the quoted words mean, and what law would be applied to resolve disputes: federal law, the law of the State where the home was "quitted," or the law of the State of present residence of the defendant spouse?

THE PROPOSED CRIMINAL SANCTION

Section 7 of the bill would add a new chapter to the federal criminal code prohibiting abandonment of dependents. The most important provision, proposed section 22, would make it a crime punishable by a fine of \$2,500 or imprisonment of up to three years, or both, to avoid compliance with a support order by traveling in interstate commerce. We do not believe that this kind of conduct, while reprehensible, should be made a federal felony, for several reasons.

In the first place, if the bite is to be as big as the bark, this proposed penal sanction would be counterproductive. Obviously, a defaulting father may not meet support payments while he is in a federal prison. Indeed, the total expense to the federal government would be magnified, because it now costs about \$5,000 per year for each incarcerated federal prisoner. Following his release, the father's criminal record would make it more difficult for him to obtain productive employment. Particularly at a time when long-term incarceration for much more serious offenses is being seriously questioned by corrections experts, we should be slow to propose incarceration for an offense of this nature.¹

Interstate flight to avoid support payments would be a relatively high volume, low visibility, difficult-to-detect offense. This means that, despite the best efforts of the Department of Justice and the United States Attorneys, it would be quite difficult to obtain fair and uniform enforcement of the law. If the public impression is that enforcement is haphazard in this area, an impression that would be difficult to avoid, it would promote an unfortunate disrespect for the law.

A case might nevertheless be made for the proposed criminal sanction if we could anticipate a very broad deterrent effect from a relatively small number of prosecutions. However, it seems doubtful that such a deterrent effect would

¹ See National Advisory Commission on Criminal Justice Standards and Goals, report on corrections.

result. Convictions would receive little or no publicity. Moreover, convictions may not be easy to obtain. As the commentary to the American Law Institute's Model Penal Code provision for persistent nonsupport points out:

... "Exemplary punishment is of doubtful efficacy in complex family situations, where many forces, psychic, social, and economic, may combine to excuse. If not justify, the behavior . . ."

In recognition of these factors, juries may be reluctant to convict, and judges may bend toward a leniency that would undercut deterrent effects.

PRIMA FACIE EVIDENCE

Proposed § 23 provides that the failure to comply with the terms of a support order, after travelling in interstate commerce, shall constitute prima facie evidence that such travel was to avoid compliance with such order if that order was entered in the presence of the defendant or if he received personal service thereof. The constitutionality of that proposed section is questionable. In *Barnes v. United States*, 41 LW 4917 (June 18, 1973), the Supreme Court reviewed their most recent decisions concerning the validity under the Due Process Clause of criminal law presumptions and inferences. The Court concluded that at a minimum the case law established that if the evidence necessary to invoke the statutory inference in a criminal case is sufficient for a rational juror to find the inferred fact beyond a reasonable doubt, then it clearly accords with due process. 41 LW at 4919. In *Barnes*, the Court left open the question of whether due process is satisfied if the evidence needed to invoke a statutory inference was sufficient for a rational juror to find the inferred fact only under a "more-likely-than-not" standard. Under § 23, travel in interstate commerce with notice of an outstanding support order triggers the statutory inference. However, individuals have innumerable innocent reasons for travelling in interstate commerce. It is questionable whether a rational juror could find beyond a reasonable doubt, or even under a more-likely-than-not standard, from evidence of interstate travel with notice of an outstanding support order, that such travel was to avoid compliance with that order.⁹ Thus, the constitutionality of the § 23 statutory inference in light of *Barnes* is uncertain.

The rationality of the inference established in § 23 might also be challenged because of the limited scope of the crime of abandonment and desertion set forth in § 22. That crime covers circumstances only when travel is from the State in which proceedings under proposed chapter 174 have been instituted. Are proceedings under proposed § 1332(d) to be deemed chapter 174 proceedings? Apparently not because § 1332(d) is not listed as a section in chapter 174. Chapter 174 proceedings, therefore, concern only registration and enforcement of support orders outside the State in which that order was made. Thus, no federal felony is committed under § 22 if an individual flees from a State in which a support order was initially entered. What is the reason for this omission in § 22? The lack of any rationality for the scope of § 22 may throw a constitutional cloud over the statutory inference created in § 23.

CONCLUSION

H.R. 5405 would require the federal courts, and the Department of Justice, including the FBI, to use their scarce resources to aid the States in enforcing familial obligations of support. Those federal resources we feel can be far better spent on other matters national in scope and impact. The States have shown success in enforcing obligations of support when serious attempts are made. No substantial basis exists for believing that the Federal government could improve on the performance of the States in this regard. Indeed, under § 1332(d) as we understand it, federal courts would simply duplicate state courts. And we doubt that the criminal provision would be enforceable because of detection and prosecution problems.

However, the Department of Justice does recognize that not all States are successfully enforcing familial obligations of support. This does not mean that

⁹ In *Aptheker v. Secretary of State*, 378 U.S. 500, 511 and n. 10 thereon (1964), the Supreme Court noted several innocent reasons for traveling abroad, including visiting a sick relative, receiving medical treatment, and the study of social, political, and economic conditions in other countries.

⁹ American Law Institute Model Penal Code, Tentative Draft No. 9, pp. 188.

there are a large number of uncared for people, because public welfare programs, and especially the Federal AFDC program, fill the gap in most instances. It does mean that employable runaway fathers are imposing a burden on the public. Additionally, quick enforcement of support obligations, or threat thereof, might help to keep families together. The Department therefore does support the basic objective of H.R. 5405—to aid the treatment of these problems. But effective enforcement of familial obligations of support can be achieved by the States within existing laws. Because of the universal adoption of the Uniform Reciprocal Enforcement of Support Act, or its equivalent, new State laws do not seem to be needed. More vigorous enforcement of existing State laws is needed.

The federal role in this regard can be most effective through use of a combination of monetary incentives and sanctions that would stimulate the States to move vigor and innovation in seeking enforcement of familial obligations of support. For example, Congress has enacted legislation requiring States that receive payments under the AFDC program to establish a State program to enforce the familial financial obligations of absent parents. 28 U.S.C. 602(a) (17) and (18). The Department of Health, Education and Welfare has recently begun to place stronger emphasis upon development of more effective collection programs. The Department of Justice heartily concurs in measures of this kind to encourage the States to act, and supports the comparable proposals advanced by Secretary Weinberger in his recent testimony before the Senate Finance Committee concerning S. 2081 and S. 1843. Paraphrasing Secretary Weinberger, the federal program should provide (1) adequate incentives to both States and the absent parent; (2) realistic sanctions for failure to participate adequately; (3) sharing of administrative costs which States incur; and (4) technical support to State and local personnel.

Mr. DONOHUE. Mr. Danielson?

Mr. DANIELSON. What recommendation could you give us as to an alternative system to reach the problems that we all recognize and which we are trying to reach through this bill? What alternative suggestion do you have?

At the outset, let me just state one concerning a more vigorous enforcement of existing laws. Without any slur upon counsel's statement, that is an old one that we have been beating for a long time and somehow it doesn't work. It probably should work, but it doesn't work. That is why I am reaching for an alternative solution.

Mr. DIXON. Well, let me make two or three comments on that Mr. Danielson. I know of no foolproof certain way to make certain that all States do as good a job as at least California, Michigan and Washington have, as mentioned on page 8 of the testimony; which they appear to be doing right now and on an increasingly effective basis.

Imposing conditions of more vigor on the part of the State before they can receive AFDC moneys is a possibility as mentioned by HEW.

Now there is of course one adverse tradeoff there and that is the AFDC program goes to meet existing needs of the children and a condition which would force States to be more vigorous and if they weren't would result in a reduction in money if the State wasn't as vigorous as the Federal standards require, well that could cause some problems for the very people we want to help. But I do think something could be done in this area. And then further—and this is strictly off the top of my head—we have developing as you know, with some necessity but also with some trepidation, we have developing an increasing body of voluminous criminal data systems and social data systems. The Department of Justice is still working on a broad criminal history data bank as you know and to which State data could be kept, Federal data entered, and so on. The difficult aspect in drafting

that program—and that has not been completed but is nearing completion—the most difficult problem with the so-called criminal history computer program, and most serious difficulty is the one of protection of privacy, that is, protecting against miscellaneous use of the data collected therein. Such a system or similar developments of it which are coming along likewise may provide a basis for identification and a more effective basis of identification of runaway fathers than we now have. And I think the key problem is identification. That seems to be the case anyway. Once that identification were accomplished, hopefully by an adequately safeguarded computerized criminal history program which is about to be expanded the States could then themselves do perhaps the whole job under their existing mechanism, their State mechanism. The State mechanism is on paper very good and in some States works out very well. The Federal mechanism would be duplicative in large part and is not in itself a guarantee of crossing the hurdle of identification.

And of course also no one can get moneys from runaway father who has no resources, but anyway we do think we should try harder because we feel that a fair number of fathers could support their families. I had some figures on that at about page 2 or 3 and that might as you say, this might have the added benefit of bringing the family together again. I might interject one comment here. In my other hat that I used to wear as a professor of law it fell to my lot to teach for a good many years conflicts of law, which touches a little bit on this field but not wholly and it deals there with the question of jurisdiction over absentees from a State and of course choice of law questions to resolve the obligations came under that. And from that perspective I look at this bill also and it does seem that, although it is an honest effort to react to a real problem, I really feel it would not push the matter much further beyond our present Uniform Act in terms of results and it would have the difficult side aspect to adding to the caseload on the Federal docket. I think probably that the safeguarded criminal history program is the thing that we should give some attention to and to explore.

Mr. DANIELSON. Thank you for your observations. I have no other questions, Mr. Chairman.

Mr. DONOHUE. Ms. Jordan?

Ms. JORDAN. Mr. Dixon, I can appreciate your concern about an inordinate caseload or burden being placed on the Federal courts if this act were to become law and also you appreciate the extent of the problem of runaway fathers. You place great faith in the States pursuing whatever its processes are under the Uniform Reciprocal Support Act. I would tell you from firsthand experience that it is very cumbersome to try to get any court order enforced under this act. Now do you see any role for the Federal Government to play in streamlining at least the processes under the Uniform Act? Do we have any role to play in this act?

Mr. DIXON. That I think might be a very progressive suggestion and very productive. I am aware of the strange and complicated nature of the processes under the Uniform Act, that is, the necessity for personal jurisdiction of the father in the responding State, the compilation of records there, the transfer back to the initiating State

for additional evidence and verification and challenge and then back to the responding State for final decision and judgment. It may well be that that is a most fruitful avenue to explore, Congresslady. Federal impetus has not been present normally in the deliberations of the Commissioners to my knowledge. So there might very well be a productive avenue. I wish I were more informed in that area. It also is true that under recent Federal Supreme Court cases a rather broad view of congressional powers has developed in matters affecting interstate commerce or affecting the national economy from the way the commerce clause is now read, the national-county concept, these recent cases developed in civil rights areas to a large extent and some others. So that I think it may not be more a question of policy rather than of ultimate constitutionality.

Now, what kinds of arrangements to be imposed on the States to streamline procedures in hope of solving what is essentially a Federal problem, that question also must be answered. Naturally this observation is much more professional at this point. In the future we have to see the kinds of proposals that might be laid before the uniform commissioners or the kinds of Federal statutes that might be devised in this field to accomplish the result.

Now regarding the complexity of the uniform law, there must be some keys to that that were found recently in the three States of California, Michigan, and Washington so as to make their operations so much more effective but I don't have knowledge of what those keys are.

Ms. JORDAN. Well, I would suggest that you won't find such keys in Texas or perhaps Arkansas or some of the other States that do not have a record of performance comparable to the States you mentioned.

Is it your judgment that the bad effects of this act would far outweigh any benefit which could be derived from it?

Mr. DIXON. That is our conclusion at the present time based on the feeling that on the criminal side that it just doesn't make sense to make this a Federal felony and I don't think it is productive on the civil side either until we have more knowledge of identification problems and more knowledge of those runaway fathers that cross lines because—and this is important—they are the only ones covered by the bill as I recall it and as I understand it. So we have a desire to do something but by doing this we are moving in a way that may load up the Federal courts with some bootless cases and duplicate to an extent the State court system. The bill has in it the exhaustion of State court remedies concept for instance, which I discussed in my testimony and it limits the matter to instances where an action is brought by a citizen of another State coming in from outside another State. Now that is under section 1332(d) which brings in the concurrent Federal jurisdiction concept. I don't think that set of qualifications would accomplish very much in reality.

My colleague here, Mr. Bruce Fein, has gone through this bill very carefully with me in working on the testimony. Bruce, do you have any comment about the question asked by Congresslady Jordan?

Mr. FEIN. Well, I would just say I think in large part the jurisdiction of the Federal courts would just overlap on the jurisdiction of the State courts and it would not give the Federal courts any further

powers or remedies that the State courts now already possess under the Uniform Reciprocal Support Act. So in effect you are just adding another layer on and creating it seems to me an unnecessary burden on the Federal courts since they are not really going to do anything different than the State courts already are empowered to do because the bill doesn't say that the Federal courts will have a larger reach to get assets or will have a larger long arm statute to get jurisdiction over defendants any more than the States cannot already now do.

So to that extent I think it is merely duplicative of the present remedies and powers of the State courts.

Ms. JORDAN. And you don't think that the sheer threat that a U.S. marshal or the FBI might take jurisdiction of a case in which you are involved might serve to deter violations of State court orders?

Mr. FEIN. I don't think that that threat is any different, substantially any greater, than the threat that exists that the State court marshals might do the same. In particular instances there may well be cases where the States are totally in default on their obligations under the Reciprocal Enforcement Act but this seems to me to be a rather broad remedy to meet just those particular instances or perhaps a State court marshal or the State courts do not seem to be carrying out their obligations under the act. I think it is sort of painting it with a too broad brush here.

Ms. JORDAN. Thank you. And thank you Mr. Chairman.

Mr. DONOHUE. Mr. Thornton?

Mr. THORNTON. Thank you, Mr. Chairman. Pursuing for a moment more the alternatives that might develop, I take it that you do agree with the purposes with which this legislation is aimed at correcting?

Mr. DIXON. Yes, most certainly.

Mr. THORNTON. And that there is an ill in our society that with some exceptions—I know some States are making good progress—which is putting a burden on taxpayers and upon the society itself.

Mr. DIXON. Yes, Mr. Thornton. We have two strong motivations to improve our actions in this field—well, maybe even three. One is the burden on the taxpayers would be relieved by court by those runaways who can support their families; second, the deterrent effect of runaways and the result in preservation of the family if the pressure of running away is lessened because he realizes he cannot escape from his obligations; and third, the social need factor on the grounds that that support from the father would be better than the family going on public support; all these are needs and there may well be others. Now in addition to supporting the concept of doing a better job, one additional thought has occurred to me. Just as the Law Enforcement Assistance Administration subsidizes the study I cited in my statement here about the utility of our present penal system, LEAA grants might be available to explore new alternatives in this field including LEAA grants to the Uniform Commissioners. It might well jack up State laws a bit not that I want to denigrate them or indicate they haven't done a good job because some members are good colleagues of mine and as a professor of law I served there on occasion, but I think an LEAA grant brought out on a multiple pronged basis might well be a good thing to consider.

Mr. THORNTON. I think that is a very good suggestion as a possible alternative avenue. I know that in my own State one of the problems

is a failure to understand fully the procedural details, the practical methods of applying the laws. They are very complex as Ms. Jordan indicated and many individuals are not aware that the services which the States could provide are available.

Mr. DIXON. Well, additionally, and along those lines, I don't know to what extent our recent substantial expansion of legal aid to a variety of programs, private programs, may be helpful. I should think it would be quite helpful. There is nothing like an aggressive lawyer to shake most any official out of lethargy, I think, either in the north, south, east, or west. And such aid programs in part subsidized by various Federal agencies might be scrutinized with that particular thought in mind, that is, to what extent is this area being given adequate attention versus some other legal problems of the clientele of the legal aid program? It is not LEAA so much but it is a thing that we can do—

Mr. THORNTON. Right, I agree. Thank you very much, Mr. Chairman.

Mr. DONOHUE. Now, Mr. Dixon, referring to your statement on page 2, you mentioned that the Federal Government paid 53 percent of the costs of the AFDC program, is that correct?

Mr. DIXON. That is the figure that we have received. I believe we received that from HEW in prior testimony in this area.

Mr. DONOHUE. Also in your statement you mentioned that back in 1961 there were about 1 million families receiving assistance under the program and its total cost to the Federal and State Governments was about \$1 billion. Your projected costs for the program to the Federal and State Governments for 1974 will be \$8 billion. Now what is the reason for that great increase over the past approximately 12 years?

Mr. DIXON. Well, Mr. Chairman, in all honesty I must say that we brought this material together as a backstop for our analysis of the bill from the standpoint of the Department of Justice and did not explore the social questions that are underlying that increase. We can make an endeavor by going to the program concerned and HEW sources and sources otherwise available, Mr. Chairman, to try to delineate that in more detail and perhaps we should.

Mr. DONOHUE. You have not done that originally?

Mr. DIXON. We have not done it at the present time.

Mr. DONOHUE. I would suggest that you might do that.

Mr. DIXON. All right.

Mr. DONOHUE. Now, this is a marked increase over the past 12 years and is this in your opinion due to runaway fathers?

Mr. DIXON. I tend to think not.

Mr. DONOHUE. And why not?

Mr. DIXON. Because we do not, well, let me restate that. I have a mental quirk here. I was reacting, Mr. Chairman, to the wrong question; a question not asked about how many runaway fathers cross State lines and therefore might be under this bill.

But on the question to what extent in an overall way in the increase in costs due to runaway fathers, whether they stay in the State or leave the State, well I don't have the answer but we did try to derive some figures on page 3 from HEW sources which I can see a breakdown or an estimated breakdown in terms of divorced fathers, legally separated fathers, fathers separated without court decree, just plain

desertion, unmarried fathers, that is there but we do not have figures on the extent to which the runaway father problem is a 10 percent say or a 75 percent or a 50 percent part of the increase in costs. We just don't know. If a fair number of those runaway fathers are unemployed just young marginally skilled people—and I am not certain that is true—but if a fair number are in that category then the increase was in part due to family increase without a basis for support.

Mr. DONOHUE. Well, as you realize, this bill and other related bills would not become effective unless the parties involved, that is the obligee, had exhausted all of the State remedies under I would assume the State Uniform Reciprocal Enforcement of Support Act. Keeping in mind further that the AFDC program now is costing the Federal Government \$4 billion a year and keeping that in mind don't you think that this might be a helpful adjunct to the existing laws?

Mr. DIXON. Well Mr. Chairman, the Federal courts under the bill would as you indicate certainly be far back in the order of progression of litigation either under the provisions for registration as stated in the bill or it would sit fairly back regarding original jurisdiction because of the exhaustion of State remedy provision. And under those two provisions and because of those two reasons we feel that the role of Federal courts might be rather minimal but even though minimal in the sense of percentage of the total support cases it might well loom rather large in terms of the number of cases in the Federal district courts.

Mr. DONOHUE. Well, isn't it a criminal offense in most States now that a husband who neglects to support his wife and children is guilty of a criminal offense?

Mr. DIXON. I am not up to date on whether there has been some modern revision in some States due to modern theories of criminality but that in general is true in terms of heritage.

Mr. DONOHUE. And if a father abandons his family and goes into another State and the State where he originally resides has a statute making it a criminal offense not to support one's family isn't he guilty under the present laws of traveling interstate to avoid a criminal law?

Mr. DIXON. Well, not unless we fall into a more specialized category. The Criminal Code—and I am speaking from recollection now as I recall it—does not have in it provisions broad enough to make it automatically a Federal offense anytime a potential State defendant, but not a proven State defendant, leaves the State thereby aborting a potential, but not certain, but a potential criminal prosecution.

In my thoughts—well, here I had another thought about the earlier question about why the increase in welfare costs under the AFDC program from 1960 to 1973. As we all know, there have been several Supreme Court cases and lower court cases also—both Supreme Court and lower court cases—challenging and frequently successfully challenging restraints which States imposed on the giving of aid under this federally subsidized program such as the *Shapiro* case nullifying the 1-year residency requirement for migratory families and also challenges to the father in the home rules and also the challenge to the right of the mother rules. So to what extent these court cases was perhaps nonjudicial modification or a relaxation of standards of eligibility

I don't know but it may well contribute to the increase of the roles and I would think it would have some increase in some States. I believe the press made some reports on that regarding States to which persons like to migrate for a variety of reasons such as New York and California and some others.

Mr. DONOHUE. Thank you. Mr. Danielson, would you take over?

Mr. DANIELSON. Surely.

The colloquy has given me a thought. Are our sanctions and incentives as applied to States under the AFDC program also applicable to those States which are called upon to enforce familial support orders, that is to say, the sanctions and incentives apply, do they not, only to the State in which the children or the child resides?

Mr. DIXON. That is true as I recall it.

Mr. DANIELSON. I think that's correct. For example, if California or Arkansas does not make an adequate showing of an effort to enforce familial support then there is a sanction in the form of a reduction in their entitlement to Federal participation. I believe that is the way it works. But does that also apply under existing laws, in the State in which the absconding parent resides? Does that same statute apply to the State where the fleeing parent resides?

Suppose for example, a parent leaves California, leaving children inadequately supported or unsupported, and the State of California commences an action under the uniform law and obtains a judgment accordingly, but the parent has gone to, let's say, Illinois. If Illinois does not use due vigor to enforce that California order in Illinois, is there any sanction applied against Illinois under the present law?

Mr. DIXON. One problem that may arise in enforcing the support order gained in the first State against a person who has fled—and he can flee after judgment for that matter in the second State—is that the *res adjudicata* concept is not thought to apply with full force or perhaps not at all to nonfinal judgments, to modify those judgments. You see, support possesses a problem in that regard because support awards tend to be not finalized sums as in the case of a tort suit or motor vehicle injury or contract claim, but support is really periodic payments. A court in a second State to which is brought judgment from the first State has the power to enforce even a modifiable decree brought in a first State and Illinois does so but it has not been viewed as a mandate of the full faith and credit statute or the constitutional claims implied with the statute. Therefore, as a further suggestion, to toss out about how to make progress in this field, I would like to call attention to the fact that in at least three law review articles discussing this problem the suggestion was made that one avenue Congress might consider following would be to amend the full faith and credit statute which I cited in my testimony and to provide that a support decree finally obtained even if for periodic payments and therefore modifiable would nevertheless have to be recognized in the second State with power of perhaps the second State to modify it appropriately but anyway as modified to enforce it.

And for the record perhaps I should read the citation in these three articles. One is in volume 54 of the Iowa Review, 597, the point I have made being given on page 617; another is in the Cornell Law Quarterly, volume 48, page 541, with the point I have alluded to being on

page 550 and the third is the Kentucky Law Journal, volume 61, page 332. I would read the paragraph on it from page 332:

The answer for the judgment creditor, however a judgment is obtained, is adequate means of enforcement in foreign courts—meaning sister courts in the federal system—and federal legislation under the Full Faith and Credit Clause seems a far better approach than the Uniform Reciprocal Enforcement Support Act. If the Congress can put support judgments in a special class of modifiable judgments that must be enforced in the interest of justice, the attitude of the litigant case—Illinois—could be enforced nationwide. The burden of supporting many children could then be shifted from the public welfare roles to the individual whose responsibility it is to bear that burden.

Well, we don't know for sure that result would necessarily follow but we would hope it would. And the litigant case is one I mentioned, Illinois, and Illinois is one of the States I mentioned that has pioneered in supporting sister State judgments even though they have not yet assumed the form of the traditional common law—

Mr. DANIELSON. Do we have copies of that? I appreciate your added authorities and comments there. It is true these are not final judgments in the sense that they call for periodic payments, and usually those periodic payments go on and on and on, however, most States consider them judgments which are in the nature of final judgments as to payments which have accrued at the time that the order was made, not as to future accruals because they can be modified, but they have already litigated the obligation as of the date that the judgment or the order is made so they are treated as though they were final judgments for the amounts of the order as of the date that the order is issued. I should think that would be enough to get around one of the problems here. It would alleviate one problem at least.

Mr. DIXON. It might well be very helpful.

Mr. DANIELSON. At least we would be partway there. I won't ask another question on that but my thought was this. I am a great believer in incentives and sanctions, that is, financial incentives and financial sanctions. I think these are the greatest motivations that the human race knows. But my point is this. I have seen many a time when the uniform law is brought into play in State A, and they go through the whole procedure and get the judgment but the whole effort is kind of halfhearted. Maybe I should say there is a feeling of frustration, because State A renders the judgment, makes the order but those who obtain it say "What is the difference?" State B isn't going to do anything about it anyway. State B is not going to enforce it. They pay no attention to it in State B. That may well be why we are faced with this concept of doing it through the Federal courts. The State courts sometimes don't seem to want to respond. They could, but they just don't. Maybe the financial sanctions and incentives contained in the Federal contribution to the AFDC program which apply in State A, could be extended to apply in State B so that if State B doesn't want a sanction implied, they had better get along and help enforce these orders. I am just talking that out as a thought. It is not a mature thought. It is just a feeling that it might produce results.

Mr. DIXON. It does make a lot of sense, Mr. Chairman. I am glad you spoke of it as incentives because that avoids the difficulty of a cutback hurting the very group designed to be helped.

Mr. DANIELSON. Maybe we can stratify this so that the States get a certain level of contributions for just being States I guess and they

get the incentive level for enforcing the law, and not just have it apply in State A where the order is obtained, but also State B or State C or State D where you seek to enforce it. I am just suggesting that to you.

Mr. DIXON. I think that would be a very helpful suggestion.

Mr. DANIELSON. You might be able to grind it into the formula here some way.

Mr. FEIN. I think under 28 U.S.C. 602 (a) (17) for States to qualify under AFDC that States are required to have a State program which would pursue enforcement of familial obligations of support but in that statute there is no specification as to how broad or how narrow or how limited the program shall be in order to qualify and HEW does have the power to set regulations pursuant to establishing with more specificity exactly what a State program might include. I would think that HEW at the moment doesn't have any specifications that a State in order to have a program qualifying under the legislation has to agree to vigorously cooperate with other States in enforcing judgments entered in those States and that HEW could pursue by regulation within the existing statute, requirements that a State program enforcing familial obligations would have to include some sort of cooperation or perhaps on-going contact and sharing of information and vigorous support with States who enter support judgments and then are required to try to enforce them against persons residing in different States because of flight across the interstate lines.

Mr. DANIELSON. You feel that the HEW could through regulations expand its cooperation requirement so that it would apply to the sister State as well as to the originator State?

Mr. FEIN. That is correct. That would be part of their total program. It would not only be enforcing obligations against persons within their own State but the same program could also be extended to require cooperation with other States to help them enforce judgments against persons who are now residing in their own States.

Mr. DANIELSON. Do you know whether they have taken this approach?

Mr. FEIN. The latest look that I had at the regulations indicated that their regulations were not that specific. I spoke to one gentleman in the General Counsel's Office at HEW just the past week and they said there were proposed regulations in the hopper which of course have to have a 30-day notice. The person to whom I spoke did not state whether that would be part of the proposed regulations, that is, this aspect of requiring the State program to include cooperation with other States.

Mr. DANIELSON. I would like respectfully to suggest that the next time you call this counsel on the phone over at HEW that you might try this out on him. There really is a feeling—I know this from personal experience—that there is a great feeling of futility oftentimes in the originating State, why go through all of these charades when they are not going to do anything in the sister State anyway. Clearing that up might not solve the problem, but it might put a few more teeth in it where it counts. You know, enforcement of a law means not just where you get the first judgment but execution, execution is the only important part of enforcement that really counts.

Ms. Jordan?

Ms. JORDAN. Mr. Chairman, since we do have another witness I think I will decline further questions.

Mr. DONOHUE. Thank you. Mr. Thornton?

Mr. THORNTON. Thank you, no questions.

Mr. DONOHUE. I believe we are done. Thank you very much for your contribution.

Mr. DIXON. Mr. Chairman, I appreciate being here on behalf of my colleague, Mr. Bruce Fein on my left, and Mr. Kelly on my right and I thank you for your courtesy and for this, what I think, will be a helpful dialog for all of us.

Mr. DANIELSON. Fine. This is a serious problem. I hope we are not just dealing in terms here. Thank you very much. We are honored this morning to have with us a very distinguished Member of the House from California, the Honorable Glenn Anderson, who is one of my colleagues, and a former Lieutenant Governor of the State of California and a man who really has the public interest at heart.

Well, we welcome you and would appreciate your suggestions.

TESTIMONY OF HON. GLENN M. ANDERSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. ANDERSON. Thank you, Mr. Chairman and distinguished members of the Judiciary Committee.

I first want to thank you for the opportunity to speak to you this morning concerning a matter I believe crucial to each of us.

Part of our responsibility as the elected spokesmen of our constituents is to save the taxpayers unnecessary expenses and to correct inequities of the present law.

I believe that my bill which we are considering this morning serves both these purposes. By adoption of H.R. 9395, we will have an opportunity to correct a flaw in our present Aid to Families with Dependent Children program which could save the taxpayers billions of dollars annually.

As you know, under current law, families may receive Federal Aid to Families with Dependent Children if the father is dead, incapacitated, unemployed, or absent from the home. However, according to recent studies of the Health, Education, and Welfare Department, three out of four recipients do not have a father in the home.

Therefore, when this situation exists it is the taxpayer who must assume the financial responsibility of these children. In my own State of California, the growing cost of AFDC is incredible.

In 1969 there was over \$531.3 million, in 1970, over \$707.4 million, in 1971, \$775.8 million; in 1972, \$1.145 billion, it has been estimated that this bill could save up to \$400 million in the State of California alone.

However, this situation is made worse when tied into the estimate that as high as 85 percent can be attributed to absent fathers. In California alone between 230,000 and 250,000 absent fathers are not contributing to the support of their families.

If we could find a means to force the father to assume his responsibility to his family, the taxpayer in California alone could save hundreds of millions a year in payments to welfare recipients.

Under present law, the State welfare agencies are required to secure support for the child from the deserting parent; however, many fathers escape simply by moving out of State. When this happens the burden of support shifts to the taxpayer.

Present means of correcting this inequity are inadequate. While State welfare agencies are required to enter into cooperative arrangements with the courts and with law enforcement officials to carry out this program, while they are able to utilize any reciprocal arrangements adopted with other States to obtain or enforce court orders for support, and while they are able to utilize any reciprocal arrangements adopted with other States to obtain or enforce court orders for support, and while they are even able to have access to both social security and Internal Revenue Service records in locating deserting parents, these provisions remain insufficient. It is our experience in California, at least according to the president of the California District Attorney's Family Support Council that these voluntary agreements are frequently not worth the paper that they are written upon. Further, it has been our experience in California that the mother deprived of support does not want voluntary agreements. She goes to court, pays dearly for an attorney for a divorce order, fights for that order, gets a sum that is fair and equitable by the court, then all too often finds the welfare department, by voluntary agreement, has undercut her right to the amount the court ordered.

What is needed is to give the local officials the means necessary to recover payment from the absent father. This is precisely what my bill proposes to do: to make it a Federal crime for a father to cross State lines in order to avoid his family responsibilities:

There are three main purposes stated in this necessary bill:

By requiring that orders of State courts directing individuals to meet their natural, moral, and social obligations to child and spouse shall be enforced in Federal and State courts in areas to which such individuals have migrated from the original State.

By giving Federal courts in States of which such migrants have become citizens original jurisdiction in suits brought by citizens of other States, to order such migrants to meet such obligations, to the end that children and spouses will not suffer want or be made the objects of charity and thus become an unnecessary burden to the general public and be themselves thereby humiliated.

By providing criminal penalties for persons who move or travel in interstate or foreign commerce to avoid compliance with support orders.

In order to implement this bill a few amendments must be added to present United States Codes; my bill also provides for these changes. Basically I propose a new chapter to part VI of title 28 of the United States Code for Judiciary and Judicial Procedures; as chapter 177 "Enforcement of State Court Support Orders." This new chapter basically states that the person to whom the proceeds of a support order are payable—the obligee—may register the order in any district court of the United States for a district, and in any court of a State having jurisdiction of like matters, in which the obligor—the individual who is directed to make payment * * * the deserted father—now resides, which is outside the original State. Provisions are also made regarding the necessity of registering with both the original court and with the

new State issuing a support order. Provisions are also made to pass the cost of enforcement proceedings back to the person who had originally sought to escape his financial responsibility.

In California it is estimated that 70 percent of deserting fathers are capable of complying with support orders. I believe that suitable punishment should be levied to the individual who is capable of financially complying with the terms of a support order but who deliberately leaves the State to avoid compliance with the support order.

I believe that this punishment will help correct some of our present inequities. If found guilty, his punishment primarily will be a fine of the amount he already owes his family but not more than \$2,500. However, the judge does have the discretion of imprisonment of not more than 3 years or both fine and punishment. Often it is the potential administration of punishment which helps encourage some individuals to comply with the law.

I might say right here that one of the main differences between my bill and some of the other bills being considered is that I do limit the situation to the father who is financially capable of complying with the order.

I believe that it should be clear by the procedures by which I hope to correct these present inequities that I do not intend to halt free travel between the States for the deserting father. Nor do I wish to make him a "criminal" through his imprisonment. I am merely attempting to make it more advantageous for him to live up to his natural, moral, and social obligations to support the members of his immediate family. I believe that his past responsibilities of not meeting his debt have too long been placed on his neighbors in the form of higher taxes.

I hope that once this inequity is resolved through passage of this bill that the deserting father will feel no need in leaving his home State to flee his family financial responsibilities, and perhaps once he realizes that he cannot escape these responsibilities that he will realize that he and his family will be better off if he were to return home.

Mr. DANIELSON. Thank you very much for your statement, Mr. Anderson.

Ms. Jordan?

Ms. JORDAN. Mr. Anderson, I am wondering how under your proposal you would test the financial capability of the father to meet his financial obligations?

Mr. ANDERSON. That would have to be determined I would believe in the second court. It would be my understanding, as Mr. Danielson's example a while ago showed, if the mother knew that she had a father who had left and gone to another State, in this case Illinois she would go to her own local court—that would be the district court in Los Angeles—and under the present uniform procedures you now have she could find out where he is located. If he was in Illinois, then it would be the responsibility of that district attorney in Los Angeles, working with her, to bring the proceedings before that court, according to this law, and they in that State would determine if he was financially able to comply with the court order. If he is not, if he doesn't have the money, then there is no use pushing it.

Ms. JORDAN. They would adduce testimony from him?

Mr. ANDERSON. Yes. They would have to, I would assume, bring him in and find out why he wasn't living up to the court's order.

Ms. JORDAN. No further questions Mr. Chairman.

Mr. DANIELSON. Mr. Thornton?

Mr. THORNTON. I have no questions but I would like to express my appreciation to Mr. Anderson for submitting this statement to us. It is a very persuasive and sound statement and addresses itself to a significant problem that all of us are concerned about.

Mr. ANDERSON. Thank you very much.

Mr. DANIELSON. I thank you too, again, Mr. Anderson. One thing that brings this home very substantially is the cost figures that you have set out for 1969, 1970, 1971, and 1972 for just one State, California. California has an AFDC cost of \$1.145 billion in 1 year. People can get an idea of the magnitude of this thing from that. It is not something that we can ignore. It is overwhelming.

Mr. ANDERSON. I might add I was the author of the Aid to Dependent Children in California and sometimes I wonder if I want to admit that. They changed the name to AFDC but it was originally Aid to Dependent Children.

Mr. THORNTON. Mr. Chairman, if I may ask one question? One question occurred to me as a result of the last colloquy and that is whether you heard the suggestion by the previous witness that perhaps LEAA funding in support of existing reciprocal agreements might be a useful avenue?

Mr. ANDERSON. Yes; I listened to all of the questions and I thought that sounded like a very good suggestion and I also liked the suggestion of yours, Mr. Danielson that there might be some incentive on the second stage too to carry out their enforcements similar to the original enforcement.

Mr. DANIELSON. Well, thank you. I hope something like that does occur. You know, there is no point in obtaining a judgment in one State if the second State doesn't do anything about it.

Mr. ANDERSON. I talked to the people and they are very discouraged about the whole procedure and just feel frustration as I think somebody mentioned with it.

[The prepared statement of Hon. Glenn M. Anderson follows:]

STATEMENT OF HON. GLENN M. ANDERSON, A REPRESENTATIVE FROM THE STATE OF CALIFORNIA

Mr. Chairman and Distinguished Members of the Judiciary Committee.

I want to first of all thank you for the opportunity to speak to you this morning concerning a matter I believe crucial to each of us. Part of our responsibility as the elected spokesman of our constituents is to save the taxpayers unnecessary expenses and to correct inequities in present law.

I believe that my bill which we are considering this morning serves both these purposes. By adoption of H.R. 9395, we will have an opportunity to correct a flaw in our present Aid to Families with Dependent Children program which could save the taxpayers billions of dollars annually.

As you know, under current law, families may receive Federal Aid to Families with Dependent Children if the father is dead, incapacitated, unemployed or absent from the home. However, according to recent studies of the Health, Education, and Welfare Department, three out of four recipients do not have a father in the home.

Therefore, when this situation exists it is the taxpayer who must assume the financial responsibility of these children. In my own state of California, the growing cost of AFDC is incredible: 1969—\$531.3 million; 1970—\$707.4 million; 1971—\$775.8 million; 1972—\$1.145 billion.

However, this situation is made worse when tied into the estimate that as high as 85% can be attributed to absent fathers. In California alone between 230,000 and 250,000 absent fathers are not contributing to the support of their families.

If we could find a means to force the father to assume his responsibility to his family, the taxpayers could save in California alone, hundreds of millions a year in payments to welfare recipients.

Under present law, the State Welfare Agency, are required to secure support for the child from the deserting parent; however, many fathers escape simply by moving out of state. When this happens the burden of support shifts to the taxpayer.

Present means of correcting this inequity are inadequate. While state welfare agencies are required to enter into cooperative arrangements with the courts and with law enforcement officials to carry out this program, while they are able to utilize any reciprocal arrangements adopted with other states to obtain or enforce court orders for support, and while they are even able to have access to both social security and Internal Revenue Service records in locating deserting parents, these provisions remain insufficient. It is our experience in California, at least according to the President of the California District Attorney's Family Support Council, that these voluntary agreements are frequently not worth the paper that they are written upon. Further, it has been our experience in California that the mother deprived of support does not want voluntary agreements. She goes to court, pays dearly to an attorney for a divorce order, fights for that order, gets a sum that is fair and equitable by the court, then all too often finds the Welfare Department, by voluntary agreement, has undercut her right to the amount the court ordered.

What is needed is to give the local officials the means necessary to recover payment from the absent father. This is precisely what my bill proposes to do: to make it a Federal crime for a father to cross state lines in order to avoid his family responsibilities:

There are three main purposes stated in this necessary bill: by requiring that orders of state courts directing individuals to meet their natural, moral, and social obligations to child and spouse shall be enforced in Federal and state courts in areas to which such individuals have migrated from the original state; by giving Federal courts in states of which such migrants have become citizens original jurisdiction in suits brought by citizens of other states, to order such migrants to meet such obligations, to the end that children and spouses will not suffer want or be made the objects of charity and thus become an unnecessary burden to the general public and be themselves thereby humiliated; by providing criminal penalties for persons who move or travel in interstate or foreign commerce to avoid compliance with support orders.

In order to implement this bill a few amendments must be added to present United States Codes; my bill also provides for these changes. Basically I propose a new chapter to Part VI of Title 28 of the United States Code for Judiciary and Judicial Procedures; as Chapter 177 "Enforcement of State Court Support Orders." This new chapter basically states that the person to whom the proceeds of a support order are payable (the obligee) may register the order in any district court of the United States for a district, and in any court of a state having jurisdiction of like matters, in which the obligor (the individual who is directed to make payment . . . the deserted father) now resides, which is outside the original state. Provisions are also made regarding the necessity of registering with both the original court and with the new state issuing a support order. Provisions are also made to pass the cost of enforcement proceedings back to the person who had originally sought to escape his financial responsibility.

Furthermore, I have proposed to amend Part I of Title 18 of the United States Code for Crime and Criminal Procedures by adding a new Chapter 120, "Abandonment of Dependents." Here I believe that the enforcing officials must have some means of encouraging the deserted father to fulfill his responsibility. I believe that suitable punishment should be levied for the individual who is capable of financially complying with the terms of a support order, but who deliberately leaves the state to avoid compliance with the support order. I believe that this punishment will help correct some of our present inequities. If found guilty, his punishment primarily will be a fine of the amount he already owes his family, but not more than \$2,500. However, the judge does have the discretion of imprisonment of not more than three years or both fine and imprisonment. Often it is the potential administration of punishment which helps encourage some individuals to comply with the law.

I believe that it should be clear by the procedures by which I hope to correct these present inequities that I do not intend to halt free travel between the states for the deserting father. Nor do I wish to make him a "criminal" through his imprisonment. I am merely attempting to make it more advantageous for him to live up to his natural, moral, and social obligation to support the members of his immediate family. I believe that his past responsibilities of not meeting his debt have too long been placed on his neighbors in the form of higher taxes.

I hope that once this inequity is resolved through passage of this bill that the deserting father will feel no need in leaving his home state to flee his family financial responsibilities, and perhaps once he realizes that he cannot escape these responsibilities that he will realize that he and his family will be better off if he were to return home.

Mr. DANIELSON. Well thank you very much. We have a number of other witnesses who have been invited to be here. Have others filed a statement?

Mr. Pettis has filed a statement. Here is the statement of the Honorable Jerry L. Pettis relative to H.R. 896 which is a comparable bill. It will, without objection, be made a part of the record.

[The prepared statement of Hon. Jerry L. Pettis follows:]

STATEMENT OF HON. JERRY L. PETTIS, A REPRESENTATIVE FROM THE STATE OF CALIFORNIA

Mr. Chairman, distinguished Committee Members, I am going to make this short and, I trust, convincing.

For the past two Congresses, I have introduced legislation to make interstate flight or foreign travel to avoid court ordered child support payments a Federal crime. My bill, H.R. 896, and the similar measures you are considering, were prompted by a distressing situation which has become all too common.

I have received, as I'm sure each of you have, numerous letters from mothers with young children who have been divorced or separated; have been awarded support payments by the courts to help them feed and clothe their children; and then, have had to cope with this staggering responsibility alone when the fathers skip town.

This flight from responsibility can cause grave repercussions on the family of a fugitive father. Many of the women would have to find jobs anyway to supplement support payments. But, trying to be the sole breadwinner of a family unit, as well as the sole parent is a terrible strain. Some are forced to seek some type of public assistance to keep their families together.

Recourse through the civil courts is "iffy" to say the least. Even if a fugitive father is located in another state, reciprocal enforcement agreements on civil issues like child support receive very low priority. In fact, I have been told by a number of attorneys and women who have tried to obtain interstate support enforcement, that they receive little if any assistance or action in response to their efforts.

It is clear something should be done to remedy this situation.

Although I know full well it is impossible to legislate responsible individual behavior, I think we can lend incentives. Right now, those who flee to avoid support orders do so with relative impunity. Enactment of H.R. 896 would raise the ante.

It's a long step from avoiding a civil court order to becoming a Federal criminal. I think my bill offers an effective enough deterrence to stop the fugitive father syndrome almost entirely. I urge your favorable action on this legislation.

Thank you.

Mr. DANIELSON. Are there any other statements?

Mr. STRAUB. Mr. Froehlich expected to be able to present testimony at some future time, Mr. Chairman, and asked that the record be made open for several days for that.

Mr. DANIELSON. Fine. If there is no objection we will have the record remain open for a 10-day period following the hearing.

Would you please come forward, Mr. Spaniol?

We have with us the Honorable Joseph F. Spaniol, Jr., Assistant Director for Legal Affairs of the U.S. Administrative Office of the U.S. Courts. Please come forward. You have another gentleman with you?

**TESTIMONY OF JOSEPH F. SPANIO, JR., ASSISTANT DIRECTOR FOR
LEGAL AFFAIRS, ADMINISTRATIVE OFFICE OF THE U.S. COURTS,
ACCOMPANIED BY JEOFFREY ROBINSON**

Mr. SPANIO. Thank you, very much, Mr. Chairman, and members of this committee. I have with me Jeffrey Robinson from our Office who is my colleague. I would like to introduce him at this time.

I have a prepared statement. It is very short and I think perhaps I could read the statement if that would be fine?

Mr. DANIELSON. That would be agreeable.

Mr. SPANIO. I must say at the outset it is not frequently that the judiciary comes up here to oppose something that is being proposed and I am at a disadvantage this morning and we do not want to be negative about these problems but we have a point of view we would like to express.

Mr. DANIELSON. I would say this is my own personal opinion but I always feel the judiciary makes a mistake along that line. Nobody knows your position and the problems as you see them unless you speak out. So proceed.

Mr. SPANIO. Thank you, Mr. Chairman.

I appear this morning on behalf of the Judicial Conference of the United States to express the Conference's disapproval in principle of the proposals contained in H.R. 5405, and the various other bills under consideration this morning, which would provide for the enforcement of support orders in certain State and Federal courts and make it a Federal crime to move or travel in interstate or foreign commerce to avoid compliance with such orders.

The Judicial Conference of the United States was first asked to express its views on similar proposals back in 1957, 16 years ago. At that time two bills, S. 183 and H.R. 285 introduced in the 85th Congress, would have authorized a support order made by a duly empowered State court to be registered in the U.S. district court of another State to which the defaulting individual had removed himself, and would have provided for the enforcement of the registered order by the district court. These bills also proposed to make it a Federal criminal offense for one liable under a support order to travel in interstate commerce from the State in which the order was issued to any other State or country to avoid compliance with the order.

At the September 1957 session of the Judicial Conference, that was the first year the bill was considered, the Committee on Revision of the Laws, under the chairmanship of Judge Albert B. Maris, reported to the Judicial Conference "that it is unnecessary and it would be unwise to provide for the registration of support orders in, and their enforcement by, the Federal district courts in view of the widespread adoption of the States of the Uniform Reciprocal Enforcement of Support Act." Upon receiving this report the Conference expressed its disapproval of the provisions of these bills which would provide

for the registration and enforcement of such orders by the Federal district courts, but expressed no opinion on the other features of the bills.

These same bills, or similar bills, have been introduced in every Congress since the 85th Congress. Uniformly the Judicial Conference has reaffirmed its disapproval of these bills and at 2-year intervals, from 1957 to 1971. The bills under consideration today have not specifically received the attention of the Judicial Conference this year. However, they are substantially the same bills as have been introduced in previous years and disapproved in principal by the Conference.

Mr. Chairman, domestic relations cases—in particular, matters of divorce, custody of children, and support and maintenance—have traditionally been treated as problems falling exclusively within the legal province of the States and not the Federal Government. It would appear that this dichotomy is not a result of an abdication of authority in this area by the Federal Government; rather it is firmly grounded in the mandate of the 10th amendment to the Constitution, which reserves to the States all powers not specifically delegated to the Federal Government. The Supreme Court, when confronted with a case involving domestic relations law, held “The whole subject of the domestic relations of husband and wife, parent and child belongs to the laws of the States and not to the laws of the United States.” The 1958 amendments to the Uniform Act, which contain provisions for the registration of support orders entered in courts of other States, are in force in 31 States.

As I'm sure you are aware, Mr. Chairman, the Uniform Reciprocal Enforcement of Support Act is a comprehensive law encompassing both civil and criminal remedies to aid in the collection of support from an individual whose person or property is outside the State where the support obligee is located. As promulgated by the National Commissioners on Uniform State Laws, and adopted by the various States, the act provides detailed procedures whereby an individual or a State agency can (1) request the issuance of a support order in the courts of another State or (2) register a support order in a foreign State where the obligor is located or where he owns property. This order may then be enforced by the courts of the responding State. The law further provides for the use of various agencies in the initiating State both to assist and to represent the obligee in pursuing rights under the act, it sets out the duties of the initiating court prescribes a simplified procedure for initiation of suits by minors, and establishes a State information agency to aid in the location of obligors and to act as a clearinghouse for information on foreign State laws and courts. In addition, the act defines the duties of the courts and officials in the responding State, sets out a standardized procedure for the interstate transfer and filing of funds and documents, and consistent with due process, requires a hearing upon notice to the obligor.

Mr. Chairman, the Uniform Reciprocal Enforcement of Support Act provides an efficacious and comprehensive solution to the problem of interstate enforcement of support orders. Our inquiries indicate that the act, presently operating successfully in the 50 States, is effectively achieving the ends for which it was designed.

The Philadelphia County Court Report of 1966 stated, "With the operation of the Uniform Reciprocal Enforcement of Support Act persons in default of payment cannot escape responsibility and obtain immunity by leaving the Commonwealth." A 1973 publication by the Council of State Governments reports that the act "has proved highly successful in achieving its purpose and has enabled the States to collect millions of dollars for family support from absconding husbands and fathers." Commentators have also been very enthusiastic about the success of the act. An authoritative work entitled *Interstate Enforcement of Family Support*, originally published in 1960 with a second edition in 1971, just 2 years ago, observes that the "widespread adoption—of the Uniform Act—by the several States and territories is due in part, no doubt, to the merits of the act in meeting the need for this kind of legislation; but probably its phenomenal success can be explained only by the fact that it holds out a promise of tax effects."

Although we do not at this time have complete figures on the extent to which interstate support problems are presently being litigated at the State court level, between July 1, 1971 and June 30, 1972, 15,724 petitions under the New York uniform support of dependents law were filed.

I might add, Mr. Chairman, that of that 15,000 petitions, these are 15,000 petitions involving only the interstate aspects. And the Federal district courts in the State of New York last year, in their, there were filed approximately 9,000 actions.

In conclusion, Mr. Chairman, State courts have the personnel, the resources, the experience and the necessary laws to deal effectively with the interstate enforcement of support orders. Indeed, it is in their own interest that they do so, since the proper enforcement of such support orders may have a significant impact on State welfare roles. As I have pointed out, not only do these bills appear to violate the spirit of the 10th amendment to the Constitution but they would unwisely create duplicating procedures involving the Federal courts in domestic relations problems. Adequate State remedies now exist. The Judicial Conference opposes in principle the enactment of bills authorizing the registration and enforcement of State support orders in Federal courts, or making it a Federal crime to move to another State to avoid payment of support. Thank you for according us the opportunity to testify.

Mr. DANIELSON. Thank you very much, Mr. Spaniol, for your very informed report and recommendations.

Ms. Jordan?

Ms. JORDAN. Mr. Spaniol, the law that we now have regarding the prosecution of people in interstate flight to avoid prosecution, well, is there any applicability of that statute to a person who would flee a State to avoid complying with the State court order?

Mr. SPANIO. Ms. Jordan, I am not fully informed, but my impression is that the Federal Fugitive Felony Act is available and if there is a prosecution in a State and if that defendant in that prosecution skips the court I believe that he is liable to prosecution under the Federal Fugitive Felony Act assuming the State prosecution is a felony.

Ms. JORDAN. Assuming the State prosecution is a felony?

Mr. SPANJOL. Yes, ma'am.

Ms. JORDAN. So if failure to obey a court order of support were made—and I am talking about the State now—and the State were to make it a felony then that law would have the same applicability to that State as it has to situations now with regard to a fleeing felon?

Mr. SPANJOL. I believe it would.

Ms. JORDAN. Thank you. That is all, Mr. Chairman.

Mr. DANIELSON. Thank you. Mr. Thornton?

Mr. THORNTON. Pursuing that general line for a moment more, I believe you were here and heard Mr. Dixon's testimony earlier?

Mr. SPANJOL. Yes, sir.

Mr. THORNTON. I was interested in his concern about the constitutionality of the presumption created in the bill which would provide that a person's movement in interstate commerce that would create a prima facie presumption that it was for the purposes of avoiding payment and thus allowed you to go to criminality immediately. Now do you agree with the statement he made in general about there is a significant constitutional question there?

Mr. SPANJOL. My colleague, Mr. Robinson brought that question to me earlier this week. He thought there was a constitutional problem. Would you like him to respond to your question?

Mr. ROBINSON. My inquiries have revealed the Supreme Court has spoken to this. I was not aware of the *Barnes* case I believe which was cited in the testimony of the Justice Department, however, there was a case which was *United States v. Leary* dealing with a presumption of possession of marihuana. And in that case the court struck down the presumption because they could not draw a logical conclusion from the presumption to the stated facts in the case. There is a very heavy presumption in a criminal case that there be a logical basis for the presumption because of the natural weight that the presumption is given by the jury. And so I think this does raise substantial questions because of the number of reasons an individual may flee in interstate commerce and a number of questions would be raised as to whether the individual really fled with the intention not to pay the support which he had been adjudged owing. So there are just a large number of ancillary problems that go to proving an individual's intention at any point in time of fleeing. And I would think that if this presumption were not upheld and the prima facie evidence provision were not allowed, that prosecution under this statute would be extremely difficult if not impossible.

Mr. THORNTON. Like you I was familiar with the *Leary* case and familiar with the efforts to create a presumption that with possession above a specialized amount of controlled substances, that there was then an intention to distribute or to sell and this does appear to me to be significant in this area.

Mr. DANIELSON. Well, I have no questions. I do want to add one observation on the last comment.

We have had on our books in title 18 for many years a criminal statute which makes it unlawful to flee in interstate commerce to avoid prosecution which is known as the "Unlawful Flight to Avoid Prosecution Statute" and the way it works, as I now recall it, is that if a person flees in interstate commerce after an indictment, after a charge is filed against him, it is presumed that he has done so to avoid prose-

cution. I think that that has been contested in the Supreme Court and found to be a valid presumption in that type of case.

Well, I have no other questions and it appears that the other members do not either.

We thank you very much for your attendance and for the assistance you have given us.

Mr. SPANIOL. Thank you, for the opportunity to appear.

Mr. DANIELSON. There being no other business, the committee will now stand adjourned, subject to the call of the Chair.

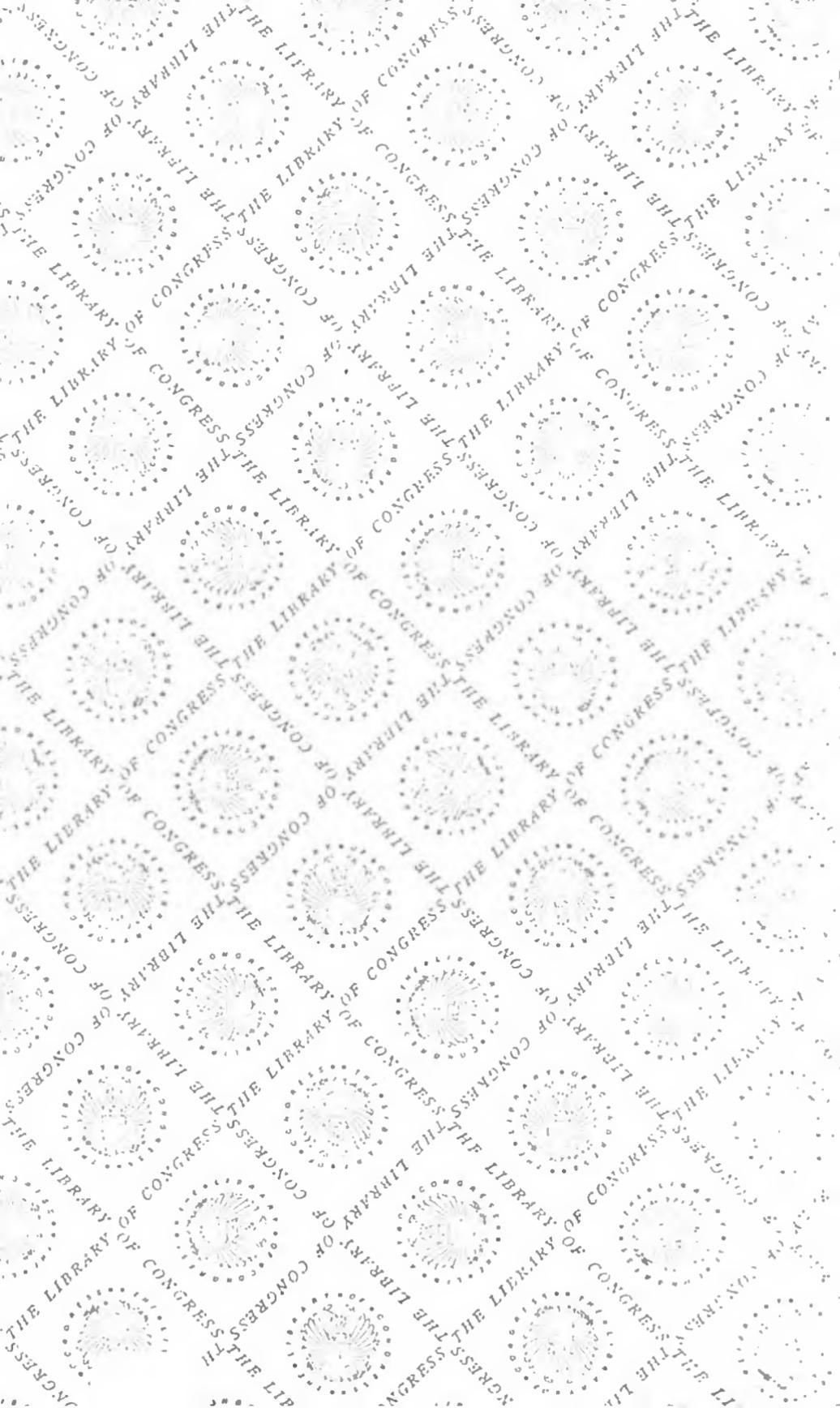
[Whereupon, at 12 noon the subcommittee recessed, subject to the call of the Chair.]

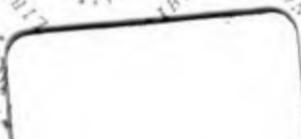


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