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the 1964 Civil Rights Act, if there is a violation of the 14th amendment to the Constitution of the United States. It says that, in the discretion of the court, if a mandate comes down, if a judgment is rendered, and if it was necessary to bring the action to see to it that the act was enforced, they could allow the cost and a reasonable fee for time expended. That is the extent of it.

I yield the floor, and I am ready to vote.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that I may be allowed to proceed for not to exceed 2 minutes, to make certain announcements to the Senate.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

#### ORDER FOR ADJOURNMENT UNTIL 10 A.M. MONDAY, APRIL 26, 1971

Mr. MANSFIELD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 10 o'clock Monday morning next.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

#### PROGRAM

Mr. GRIFFIN. Mr. President, If the distinguished majority leader will yield for an inquiry, I should like to ask whether he can tell us what the program is for the remainder of the day.

Mr. MANSFIELD. Yes. When the pending amendment is disposed of, the distinguished Senator from North Carolina will offer an amendment, and he has agreed to a 20-minute limitation, 10 minutes to a side. I would assume that, on that basis, there would be another roll-call vote.

Mr. ERVIN. That is correct.

Mr. MANSFIELD. Furthermore, at the request of the minority side, I intend to speak to the chairman of the Committee on Appropriations to see if it would be possible, because of the time factor, to get the supplemental appropriation bill through this afternoon. What will happen beyond that, if we get that far, I do not know.

Mr. GRIFFIN. I thank the majority leader.

#### EMERGENCY SCHOOL AID AND QUALITY INTEGRATED EDUCA- TION ACT OF 1971

The Senate continued with the consideration of the bill (S. 1557) to provide financial assistance to local educational agencies in order to establish equal educational opportunities for all children, and for other purposes.

The PRESIDING OFFICER. All time on the amendment having expired, the question is on agreeing to the amendment of the Senator from Kentucky. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll. Mr. MANSFIELD (after having voted in the negative). On this vote I have a

pair with the senior Senator from Massachusetts (Mr. KENNEDY). If he were present and voting, he would vote "yea"; if I were at liberty to vote, I would vote "nay." I withdraw my vote.

Mr. BYRD of West Virginia (after having voted in the negative). On this vote I have a pair with the distinguished senior Senator from West Virginia (Mr. RANDOLPH). If he were present and voting, he would vote "yea"; if I were at liberty to vote, I would vote "nay." I withdraw my vote.

Mr. BYRD of West Virginia. I announce that the Senator from Indiana (Mr. BAYH), the Senator from North Dakota (Mr. BURDICK), the Senator from Nevada (Mr. CANNON), the Senator from Idaho (Mr. CHURCH), the Senator from Missouri (Mr. EAGLETON), the Senator from Mississippi (Mr. EASTLAND), the Senator from Arkansas (Mr. FULBRIGHT), the Senator from Georgia (Mr. GAMBRELL), the Senator from Alaska (Mr. GRAVEL), the Senator from Indiana (Mr. HARTKE), the Senator from North Carolina (Mr. JORDAN), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Washington (Mr. MAGNUSON), the Senator from Utah (Mr. MOSS), the Senator from Maine (Mr. MUSKIE), the Senator from Wisconsin (Mr. NELSON), the Senator from West Virginia (Mr. RANDOLPH), the Senator from Connecticut (Mr. RIBICOFF), the Senator from Alabama (Mr. SPARKMAN), and the Senator from Missouri (Mr. SYMINGTON) are necessarily absent.

I also announce that the Senator from Florida (Mr. CHILES), the Senator from Oklahoma (Mr. HARRIS), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Illinois (Mr. STEVENSON), and the Senator from Georgia (Mr. TALMADGE) are absent on official business.

On this vote, the Senator from Connecticut (Mr. RIBICOFF) is paired with the Senator from Mississippi (Mr. EASTLAND).

If present and voting, the Senator from Connecticut would vote "yea" and the Senator from Mississippi would vote "nay."

On this vote, the Senator from Maine (Mr. MUSKIE) is paired with the Senator from Georgia (Mr. GAMBRELL).

If present and voting, the Senator from Maine would vote "yea" and the Senator from Georgia would vote "nay."

On this vote, the Senator from Illinois (Mr. STEVENSON) is paired with the Senator from Georgia (Mr. TALMADGE).

If present and voting, the Senator from Illinois would vote "yea" and the Senator from Georgia would vote "nay."

I further announce that, if present and voting, the Senator from Oklahoma (Mr. HARRIS), the Senator from Indiana (Mr. BAYH), and the Senator from Missouri (Mr. SYMINGTON) would each vote "yea."

On this vote, the Senator from Washington (Mr. MAGNUSON) is paired with the Senator from North Carolina (Mr. JORDAN).

If present and voting, the Senator from Washington would vote "yea" and the Senator from North Carolina would vote "nay."

Mr. GRIFFIN. I announce that the Senator from Colorado (Mr. ALLOTT) is

absent by leave of the Senate on official business.

The Senator from Kentucky (Mr. COOPER) is absent on official business.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The Senator from Massachusetts (Mr. BROOKE), the Senator from New York (Mr. BUCKLEY), and the Senator from Colorado (Mr. DOMINICK), the Senators from Arizona (Mr. FANNIN and Mr. GOLDWATER), the Senator from Florida (Mr. GURNEY), the Senator from Oregon (Mr. PACKWOOD), the Senator from Nebraska (Mr. HRUSKA), the Senator from Iowa (Mr. MILLER), the Senator from Illinois (Mr. PERCY), the Senator from Ohio (Mr. SAXBE), the Senator from Pennsylvania (Mr. SCOTT), the Senator from Alaska (Mr. STEVENS), the Senator from Ohio (Mr. TAFT), the Senator from South Carolina (Mr. THURMOND), and the Senator from Texas (Mr. TOWER) are necessarily absent.

On this vote the Senator from Massachusetts (Mr. BROOKE) is paired with the Senator from Texas (Mr. TOWER). If present and voting, the Senator from Massachusetts would vote "yea" and the Senator from Texas would vote "nay."

On this vote, the Senator from Pennsylvania (Mr. SCOTT) is paired with the Senator from South Carolina (Mr. THURMOND). If present and voting, the Senator from Pennsylvania would vote "yea" and the Senator from South Carolina would vote "nay."

On this vote, the Senator from Ohio (Mr. TAFT) is paired with the Senator from South Dakota (Mr. MUNDT). If present and voting, the Senator from Ohio would vote "yea" and the Senator from South Dakota would vote "nay."

The result was announced—yeas 30, nays 24, as follows:

[No. 47 Leg.]		
YEAS—30		
Beall	Hughes	Mondale
Bellmon	Humphrey	Pastore
Boggs	Inouye	Pearson
Case	Jackson	Prouty
Cook	Javits	Proxmire
Cranston	Mathias	Schweiker
Dole	McGee	Smith
Griffin	McGovern	Tunney
Hart	McIntyre	Welcker
Hatfield	Metcalf	Williams
NAYS—24		
Aiken	Byrd, Va.	Long
Allen	Cotton	McClellan
Anderson	Curtis	Montoya
Baker	Ellender	Pell
Bennett	Ervin	Roth
Bentsen	Fong	Spong
Bible	Hansen	Stennis
Brock	Jordan, Idaho	Young
PRESENT AND GIVING LIVE PAIRS, AS PREVIOUSLY RECORDED—2		
Byrd of West Virginia, against.		
Mansfield, against.		
NOT VOTING—44		
*Allott	Goldwater	Packwood
Bayh	Gravel	Percy
Brooke	Gurney	Randolph
Buckley	Harris	Ribicoff
Burdick	Hartke	Saxbe
Cannon	Hollings	Scott
Chiles	Hruska	Sparkman
Church	Jordan, N.C.	Stevens
Cooper	Kennedy	Stevenson
Dominick	Magnuson	Symington
Eagleton	Miller	Taft
Eastland	Moss	Talmadge
Fannin	Mundt	Thurmond
Fulbright	Muskie	Tower
Gambrell	Nelson	

So Mr. Cook's amendment was agreed to.

Mr. MONDALE. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. COOK. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

#### AMENDMENT NO. 48

Mr. ERVIN. Mr. President, I call up amendment No. 48 and ask unanimous consent that the reading of the amendment be dispensed with and that I be permitted to explain the amendment in lieu of having it read.

The PRESIDING OFFICER. Is there objection to the request of the Senator from North Carolina? The Chair hears none, and it is so ordered. The amendment will be printed in the RECORD.

The amendment ordered to be printed in the RECORD reads as follows:

#### AMENDMENT No. 48

On page 11, line 13, insert the word "or" after the semicolon.

On page 11, line 14, strike out through line 19.

On page 11, line 20, strike out "(D)" and insert in lieu thereof "(C)".

On page 12, line 3, strike out "(C), or (D)" and insert in lieu thereof "or (C)".

On page 12, line 18, strike out "(C), or (D)" and insert in lieu thereof "or (C)".

#### UNANIMOUS-CONSENT AGREEMENT

Mr. MANSFIELD. Mr. President, I ask unanimous consent that on the pending amendment there be a time limitation of 20 minutes, the time to be equally divided between the sponsor of the amendment and the manager of the bill or whomever he designates.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

#### YEAS AND NAYS

Mr. ERVIN. Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. ERVIN. Mr. President, I assure all Senators that I believe they can vote for this amendment, even though it is offered by a southerner and even though it is an amendment to a bill that has racial overtones, if they understand the amendment.

Mr. President, I have been constrained to say on several occasions that the constant agitation for the forced integration of races in this country has impaired our national sanity. There is no stronger proof of this assertion than the provision which my amendment seeks to strike from the bill.

Mr. President, I invite the attention of the Senate to pages 10 and 11 of the bill and to these words:

No local educational agency shall be eligible for assistance under this act if it has, after the date of enactment of this act—

(C) in conjunction with desegregation or the conduct of activity described in section 5, had in effect any procedure for the assignment of children to or within classes which results in the separation of minority group from non-minority group children for a substantial portion of the school day;

My amendment would strike from the bill the words which appear in subsection (C).

Mr. President, I submit that school days are ordinarily 4 or 5 hours in length and that 15 or 30 minutes or 1 hour is a substantial part of a school day.

This provision is designed to make minority and nonminority children as inseparable as the Siamese twins. School boards cannot separate them for even a few minutes. That is a rank insult to intelligence. It is rank discrimination against all schoolchildren whether they be advantaged or disadvantaged.

Under the words of this provision a school board cannot receive any benefits under the bill if it separates for a substantial part of a day bright or diligent students for the purpose of enabling them to learn more than is taught the dull or lazy students. We cannot separate disadvantaged black children from the ghettos for the purpose of giving them remedial training.

Mr. BYRD of West Virginia. Mr. President, may we have order in the Senate?

The PRESIDING OFFICER. There will be order in the Senate. The Senator from North Carolina may proceed.

Mr. ERVIN. Mr. President, I believe that every American child whether he belongs to a minority or nonminority group has an inalienable right to make of himself everything which God Almighty gave him any possibility of being. And this provision which I seek to strike says that Congress will deny bright children and dull children equally this inalienable right if it results in a separation for only a few minutes of minority and nonminority groups of children.

I say that is an insult to intelligence because it says as far as the bright or diligent children are concerned that if they separate minority and nonminority children for a few minutes during school days, the bright or diligent children cannot be taught anything more than the school board attempts to teach the dull or lazy children.

More than that, it says that the school board cannot arrange to have remedial teaching done for the benefit of disadvantaged black children from the ghettos if such action results in their separation for only a few minutes during the school day from advantaged white children.

Surely, in any bill for education Congress ought not to set limitations upon the capacity of a child to acquire knowledge. Especially, Congress ought not to put limitations upon the capacity of school boards to give remedial training to disadvantaged black children from the ghettos. And that is what the provision that I seek to strike does.

Let the Senate be intelligent on this. Let the Senate vote to accord to every child, black or white, of any origin, an opportunity to make of himself everything which God Almighty gave him any possibility of being.

This section would say that a school would be forbidden, if it wanted any of these funds, to afford bright and diligent students the opportunity to learn anything more than the school would teach dull or lazy students. Under this section a school could obtain no funds unless that it agreed that it would not separate the disadvantaged black chil-

dren from the ghettos from advantaged white children in order to give them remedial education to overcome their handicaps.

Notwithstanding the fact that this amendment is offered by a southerner to a bill which has racial overtones, I am confident that the Senate will overlook that fact and vote to strike this provision from the bill.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. PELL. Mr. President, I have listened to the comments of the Senator from North Carolina, and have studied his amendment. I have been trying to see worked out some language to bring about a compromise, and that is why I was not in the Chamber when the Senator concluded his remarks.

I speak as one who believes in a degree of ability grouping. I see nothing wrong with it. Our Nation will progress primarily because those who are gifted children will be better equipped to fulfill their capacities. Therefore, I have no argument with the concept.

This language in the bill seeks only to avoid ability grouping which is used as a guise or cover for segregation. To be specific, the amendment offered by the Senator from North Carolina very properly raises a question about the interpretation of some language in the bill. I have heard several lawyers arguing about what it does say. They do not seem to agree.

As I understand it, the language on lines 14 through 15 of page 11 does not prohibit special classes for gifted children or, for that matter, special classes for disadvantaged children. The clause which the Senator proposes to strike out must be read as a whole. The clause is introduced with the phrase "in conjunction with desegregation"; therefore, the following language simply prohibits procedures which are used to separate children on the basis of race. The language does not prohibit a legitimate use of ability grouping if it inadvertently results in a separation of minority group children from nonminority group children.

As a Senator who would be a conferee on this bill, if I found that this language was being used to prevent ability grouping, per se, I would be opposed to it. For instance, if there was a school in suburbia with three sections, an advanced section, a medium section, and a slow section, and if there were minority children in only the slow section, and it appeared that ability grouping was being used as a means of segregating children, then I would be opposed; but if it were a coincidence and had happened merely as the normal outcome of standard educational practice, then I would not be opposed.

Mr. ERVIN. The easiest way to determine what a law means is to read it, and the easiest way to determine what it means after reading it is to say that it means exactly what it says.

Section 5 deals with segregation. Here is what the statute states:

(C) In conjunction with desegregation or the conduct of an activity described in section 5,

No school can receive funds under this act if it has at any time after enactment:

any procedure for the assignment of children to or within classes which results in the separation of minority group from non-minority group children for a substantial portion of the school day;

That means, Mr. President, that a school board cannot separate bright students or disadvantaged students from the rest of the school to get extra or remedial training, no matter how righteous its conduct may be, if it results in the separation of minority or nonminority group children for a substantial portion of the school day.

Notwithstanding my good friend's assurance that he would try to keep it from meaning that in a conference committee, that is the construction the Court would have to place on it, because that is what this says and nothing more. It cannot be construed out of existence.

Mr. JAVITS. Mr. President, will the Senator yield to me?

Mr. PELL. I yield 3 minutes to the Senator from New York.

Mr. JAVITS. Mr. President, I am very sympathetic to the problem. I believe, however, with the legislative construction that the Senator from Rhode Island (Mr. PELL) placed upon this and the legislative construction that I, as the ranking minority member, will now place upon it, it will be brought into focus.

The Senator is correct when he stated that a statute means what it says. However, the provision states in the first clause:

In conjunction with desegregation or the conduct of an activity described in Section 5,

Now, the activities described in section 5 are activities relating to desegregation. That is what this is for. Therefore, if the tracking system is used as an effort to defeat desegregation which, in my judgment, is the clear intent of the paragraph, then I would naturally be against it and I would want this provision in the bill. On the other hand, I do not want to interfere with the normal pedagogical practice of ability grouping for selected subject instruction.

I have before me the guidelines which were being used in these matters by the Department of Health, Education, and Welfare. That is exactly what they said. I would like to read the language for the RECORD:

(G) that no practices or procedures, including testing, will be employed by the local educational agency in the assignment of children to classes, or otherwise in carrying out curricular or extracurricular activities, within the schools of such agency in such a manner as (1) to result in the isolation of minority and nonminority group children in such classes or with respect to such activities; or (2) to discriminate against children on the basis of their being members of a minority group;

As so construed, I could in good conscience accept this provision without feeling I was striking down the pedagogical concept of ability grouping. That is

what the Senator from Rhode Island had in mind and it is what I have in mind.

Mr. ERVIN. I am astounded that as able and distinguished a lawyer as the Senator from New York would suggest that the courts, when they interpret this, would interpret it to mean not what it says but what is said in an inapplicable regulation of the Department of Health, Education, and Welfare which is especially designed to prevent racial isolation as a permanent thing in school classes or, as it is expressly said, to make a discrimination on racial grounds.

This provision outlaws tracking systems, no matter how innocent they are, if they result in separation of minority and nonminority groups for any part of a day, which may well mean for only 15 minutes. Everything in this bill is connected with desegregation. This provision in its present form, as I said in the beginning, ties the minority and the non-minority children as close together as Siamese twins, and the school board cannot separate them even to give the bright students superior education or the disadvantaged students of a minority race remedial education.

Mr. President, I hope the Senate agrees to my amendment.

Mr. PELL. Mr. President, I yield to the Senator from Minnesota for 2 minutes.

Mr. MONDALE. Mr. President, the provision found in the pending bill which would be amended by the amendment proposed by the Senator from North Carolina is a provision which was recommended by the administration. In fact, it is less strong than the regulations on this subject promulgated by the administration with respect to the use of the first \$75 million under the emergency school assistance program. Despite the existence of those regulations for the expenditure of that first money, the report of six civil rights groups last November, based on 295 districts, found over 100 cases of classroom segregation.

In other words, in the name of ability grouping, children were separated on the basis of race and continued to be segregated. They did not call it racial discrimination; they called it ability grouping. The white class was the bright class, and the black class was the dumb class. If anything, this kind of discrimination is more insidious, more insulting, and more discriminating than the old kind of discrimination, which just recognized that children were to be separated on the basis of race. The bitterness of minority group students who, finding themselves in segregated classrooms, discover that desegregation has proved a fraud, is easy to understand. Moreover, we cannot expect the benefits of integrated education to accrue to any child unless classrooms, as well as schools, are operated on an integrated basis.

If the amendment by the Senator from North Carolina is adopted, the word is out that what was done traditionally in the old dual school systems in the name of racial segregation can be done now in the name of what is called tracking. Whether they call it tracking or racial

segregation, the effect on children is the same—failure, bitterness, division, a divided community.

The provision found in the pending bill is an administration-supported proposal. I support it strongly. I think it is essential to a balanced, strong measure, and I oppose the amendment offered by the Senator from North Carolina.

Permit me to say one final thing about that amendment—

The PRESIDING OFFICER. All time of the Senator from Rhode Island has expired.

Mr. PELL. Mr. President, I ask unanimous consent that we may have an additional 10 minutes, to be equally divided.

Mr. ERVIN. Mr. President, I object. The PRESIDING OFFICER. Objection is heard.

Mr. BYRD of West Virginia. Mr. President, I hope the Senator will not object.

Mr. ERVIN. Mr. President, my position is this: If this were done for discriminatory purposes, with intent to separate the races, it would be invalid under about 25 separate provisions of the bill. So nothing is necessary to outlaw discrimination. I think we ought to go ahead and vote.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the time may be extended for 1 minute.

The PRESIDING OFFICER. Is there objection?

Mr. ERVIN. Mr. President, the reason why I am going to object is that I have agreed to a 10-minute limitation, and if they come in here with some effort to change this, I have no time to discuss it. I do not think any discussion is necessary, because this says exactly what it means—that minority and nonminority students cannot be separated.

The PRESIDING OFFICER. Is there objection? All time has expired.

Mr. BYRD of West Virginia. Mr. President, I offer a substitute amendment.

The PRESIDING OFFICER. The clerk will read the substitute amendment.

Mr. BYRD of West Virginia. Mr. President, under my substitute, section 5(d) (1) (C) would remain as it appears in the bill, but following the semicolon on line 19, I would delete the "or" and insert the following language:

*Provided, however, the foregoing does not enjoin the use of bona fide ability grouping by a local education agency as a standard pedagogical practice; or*

Mr. President, I ask unanimous consent for 10 minutes, to be equally divided, for the purpose of discussing my substitute amendment.

The PRESIDING OFFICER. Will the Senator from West Virginia send his amendment to the desk?

Mr. ERVIN. Mr. President, I would like to have a copy of it. I do not understand it.

The PRESIDING OFFICER. The clerk will read the amendment.

Mr. COTTON. Mr. President, has the unanimous-consent request been agreed to?

Mr. BYRD of West Virginia. Mr. Pres-

ident, I modify my unanimous consent to allow for 5 minutes, equally divided.

The PRESIDING OFFICER. Is there objection? The Chair hears none—

Mr. ERVIN. Mr. President, just a moment. I do not know what the amendment is.

The PRESIDING OFFICER. The Chair requests the Senator from West Virginia to withhold his request until the clerk can read the amendment.

The legislative clerk read the amendment of Mr. BYRD of West Virginia as follows:

On page 11, line 19, before the word "or" insert the following language:

*Provided, however,* the foregoing does not enjoin the use of bona fide ability grouping by a local agency as a standard pedagogical practice; or

The PRESIDING OFFICER. Is there objection to the request?

Mr. COTTON. Mr. President, what was the request?

Mr. BYRD of West Virginia. The request was for 5 additional minutes, to be equally divided between the author of the substitute amendment and the distinguished Senator from North Carolina (Mr. ERVIN).

#### THE URGENT SUPPLEMENTAL APPROPRIATIONS BILL

Mr. COTTON. Mr. President, reserving the right to object—and I shall not object—the Senator from New Hampshire has to say that he regrets that he has to leave the floor. It was the intention and the hope of the Senator from New Hampshire to stay until the urgent supplemental appropriation bill was taken up, because of the fact that the distinguished Senator from Washington (Mr. MAGNUSON), as well as the Senator from New Hampshire, made a promise when the funds were not included in the earlier Urgent Supplemental Bill that we would see to it that the money for the new occupational safety legislation would be appropriated by April 28. We kept that promise. I anticipate we have not kept it in sufficient quantity to be satisfactory to the Senator from New York, and I anticipate that he will have some comments.

In the absence of the Senator from Washington, I had hoped to be here to cover it on behalf of our Subcommittee. I cannot do it, because I have to leave at once. I wanted to get that statement in the Record. I regret that I shall not be able to remain here and vote on it.

Mr. JAVITS. Mr. President, I ask unanimous consent that I may speak for 30 seconds.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. JAVITS. Mr. President, I wish to say I may not be able to be here, either. I did not intend to block the bill, but to record the inadequacy of the provision for occupational health and safety administration. My purpose is remedying that in the regular supplemental bill which will come up soon.

Mr. COTTON. Mr. President, I wish to say that the Senator from Washington and the Senator from New Hampshire realize that fact. We did keep our promise to get the part of the money needed to get the program going by April 28. We can now monitor and watch, their program with the idea that it will be taken care of when the Subcommittee shortly considers the regular 1972 bill.

#### CANCELLATION OF WHITE HOUSE TOURS TOMORROW

Mr. MANSFIELD. Mr. President, I have just received a message from the office of the Vice President.

It has been requested by the White House Tour Office to have an announcement made on the Senate floor today.

All special public and any other tours at the White House are canceled for Saturday, April 24, 1971. All people holding passes for that day may come to the White House on Tuesday morning, at which time they will be admitted for a tour.

#### EMERGENCY SCHOOL AID AND QUALITY INTEGRATED EDUCATION ACT OF 1971

The Senate continued with the consideration of the bill—S. 1557—to provide financial assistance to local educational agencies in order to establish equal educational opportunities for all children, and for other purposes.

The PRESIDING OFFICER. Is there objection to the request of the Senator from West Virginia for 5 minutes, to be equally divided? Without objection, it is so ordered.

Mr. BYRD of West Virginia. Mr. President, I have listened to the Senator from North Carolina as he has explained his amendment. He seeks to provide a way by which local education agencies may allow for bona fide ability groupings, so that bright students will not have their progress impaired by being forced to study with students who are slow learners.

I have listened to the objection that was expressed to the Senator's amendment. The opposition accepts the viewpoint, apparently, that ability grouping should be permitted where there is justification, but the opposition is fearful that such might be used as a subterfuge for segregation on the basis of race.

Mr. President, my substitute language would reach the objective which the able Senator from North Carolina seeks, while, at the same time, guarding against the kind of thing the opposition fears. It would allow, not for the discriminatory separation of students on the basis of race, color, and so on, but for bona fide ability groupings by a local education agency which feels that such is justified and in accordance with good pedagogical practice.

Mr. PASTORE. Mr. President, will the Senator yield?

Mr. BYRD of West Virginia. I yield. Mr. PASTORE. As I understand this

situation, which has led to a lot of confusion, the point is that both sides have the same objective in mind, but because of the ambiguity of the language, they drive in separate directions, and this clarifies the whole situation and brings them all together.

Mr. BYRD of West Virginia. Precisely. The PRESIDING OFFICER. The Senator's time has expired.

Mr. ERVIN. Mr. President, if the Senator from West Virginia will withdraw his proposed amendment to my amendment, I will modify my amendment to provide that the semicolon on line 19 of page 11 be changed to a colon and that the following be added thereafter: "Provided, however, that nothing contained in this paragraph shall be construed to prevent any school board from adopting a system of ability groupings for any class of students, whether bright, average, or dull, if such ability grouping is not designed to promote discrimination."

Mr. BYRD of West Virginia. Mr. President, will the Senator yield?

Mr. ERVIN. I yield. Mr. BYRD of West Virginia. Mr. President, will the Senator permit the clerk once again to read my amendment so that it will be clearly understood by all Senators? I would be glad to withdraw my name from the amendment and substitute the name of the distinguished senior Senator from North Carolina, because my language does precisely what the Senator wishes to achieve.

Mr. ERVIN. I think the name of the Senator from West Virginia adds dignity and luster to the measure.

The legislative clerk read as follows:

In lieu of line 3 of the Ervin amendment, insert the following: "*Provided, however,* That the foregoing does not enjoin the use of bona fide ability groupings by a local educational agency as a standard pedagogical practice; or"

Mr. BYRD of West Virginia. I think that is what the Senator wants.

Mr. ERVIN. Read it again, please. The PRESIDING OFFICER. The clerk will read it.

The legislative clerk read as follows:

*Provided, however,* That the foregoing does not enjoin the use of bona fide ability groupings by a local educational agency as a standard pedagogical practice; or

Mr. ERVIN. Will the Senator change the word "enjoin" to "prohibit"?

Mr. PELL. Mr. President, will the Senator yield 30 seconds to me?

Mr. BYRD of West Virginia. I yield.

Mr. PELL. The manager of the bill having followed this debate closely, and the ranking minority member of the committee having the same view, we would accept the amendment of the Senator from West Virginia, and recommend that our colleagues accept the amendment, but would not be opposed to the suggestion the Senator from North Carolina has just made.

The PRESIDING OFFICER. Does the Senator from West Virginia so modify his amendment?

Mr. BYRD of West Virginia. I believe the Senator misspoke.

Mr. PELL. We are supporting the amendment of the Senator from West Virginia, and would not oppose the amendment of the Senator from North Carolina.

Mr. ERVIN. Mr. President, I construe the amendment offered by the Senator from West Virginia to permit ability groupings for instructional purposes if such ability groupings do not—

Mr. BYRD of West Virginia. Mr. President, if the Senator will yield, I modify my amendment—in accordance with his wishes—to substitute the word "prohibit" for the word "enjoin."

The PRESIDING OFFICER. The amendment is so modified.

Mr. ERVIN. That is satisfactory to me.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from West Virginia to the amendment of the Senator from North Carolina, as modified,

The amendment, as modified, was agreed to.

Mr. ERVIN. Mr. President, I ask unanimous consent that the order for the yeas and nays on the original amendment be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The question now is on agreeing to the amendment of the Senator from North Carolina, as amended.

The amendment, as amended, was agreed to as follows:

On page 11, line 19 of the bill insert:

Provided, However, the foregoing does not prohibit the use of bona fide ability grouping by a local education agency as a standard pedagogical practice; or

Mr. MONDALE. Mr. President, where genuine, pedagogically motivated ability grouping is conducted, where it does result in separation of students—as for bilingual education, or for special classes in arithmetic—but not for most of the school day, or where bona fide ability grouping does not result in separation of the races, as in most cases it should not, it should be permitted. The amendment of the Senator from West Virginia clarifies this point.

As I understand it, the amendment of the Senator from North Carolina does not change the meaning of the provision of the committee bill, and on that basis I am happy to accept it.

Mr. MANSFIELD. Mr. President, it is now the intention of the joint leadership—

Mr. BYRD of West Virginia. Mr. President, will the Senator yield?

Mr. MANSFIELD. I yield.

Mr. BYRD of West Virginia. I want to express appreciation to the Senator from North Carolina for the amendment that he offered, and for his cooperation. He has achieved the objective he sought, and I think that his efforts have served a very good purpose today. I also want to thank the distinguished manager of the bill for the cooperation and understanding that he and the Senator from New York (Mr. JAVITS) and other Senators on both sides of the aisle have shown with respect to the amendment offered

by the able senior Senator from North Carolina, Mr. ERVIN.

Mr. PELL. If the Senator will yield for 1 more minute, I would like to add my words of thanks to the Senator from North Carolina for the contribution he has made here. What he was seeking to do was to spell out what we had intended to be the language of the bill.

I also thank the Senator from Minnesota and the Senator from New York, whose basic amendment this was originally, for their cooperation in working with the Senator from North Carolina.

Mr. JAVITS. I think we all thank, if the Senator will yield, the Senator from West Virginia, who came up with the right answer.

Mr. PELL. I join in that sentiment.

#### URGENT SUPPLEMENTAL APPROPRIATIONS, 1971

Mr. MANSFIELD. Mr. President, on behalf of the joint leadership—and we hope we have cleared this matter with all concerned—we would like at this time to call up House Joint Resolution 567, the urgent supplemental appropriation bill for 1971. I ask that it be laid before the Senate and made the pending business.

The PRESIDING OFFICER. The bill will be stated by title.

The legislative clerk read as follows:

A joint resolution (H.J. Res. 567) making certain urgent supplemental appropriations for fiscal year 1971, and for other purposes, reported with amendments.

The PRESIDING OFFICER. Without objection, the Senate will proceed to its consideration.

Mr. MANSFIELD. Mr. President, I would say the chances are about 98 out of 100 that there will not be a rollcall vote on the pending measure. Of course, there is always the chance that something might happen. But the legislation being considered in this appropriation bill is statutory. There is a time limitation to be considered, and I would not anticipate that the consideration of this bill would take more than 10 minutes.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ELLENDER. Mr. President, some of the items in the pending urgent supplemental were included in the request from the administration for consideration in connection with the supplemental considered a few weeks ago; but, because they were not urgent at that time, we did not include them. Under a new procedure that was adopted by the Committee on Appropriations this year, each subcommittee considered the items under its jurisdiction, so that we had at least four subcommittees of the Appropriations Committee consider these various

items prior to action by the full committee.

The Committee on Appropriations met in executive session this morning for the purpose of considering this urgent appropriation bill, which was reported by the House Committee on Appropriations yesterday morning and was passed by the other body yesterday afternoon. In this morning's meeting of the Senate committee, I was authorized to present this bill to the Senate today.

Budget estimates in the total amount of \$1,042,294,000—contained in House Documents Nos. 92-60, 92-72, and 92-73—have been considered in connection with this urgent supplemental appropriation bill, and the committee recommendations total \$1,037,872,000, a reduction of \$4,422,000 in the estimates. Specifically, the committee considered eight budgeted items:

One request in the amount of \$13 million, to be derived by transfer for "claims, defense." This item was not included in the House bill. However I have every reason to believe it will be accepted by the House so that a conference will be unnecessary.

Two requests in the amount of \$433,779,000 and \$302,200,000, which relate to veterans' compensation and pensions, and readjustment benefits.

Three line items totaling \$16,315,000 for occupational safety and health activities; \$265,000,000 for the disaster loan fund administered by the Small Business Administration.

Twenty-five million dollars for Disaster Relief, administered by the Office of Emergency Preparedness.

The committee has amended the bill by inserting a new chapter—Chapter 1—for "Claims, Defense," which provides \$13 million, by transfer, as requested in House Document 92-73. The Department of Defense advised the committee that preliminary reports for the month of March indicate that the Department has obligated \$35.7 million of the \$39 million provided by Congress for fiscal year 1971 for this purpose. The remaining unobligated balance of \$3.3 million will not finance adjudicated claims pending at the end of March, valued at \$7.6 million notwithstanding the current policy of the Department to obligate only those claims involving personal hardships.

This additional \$13 million, to be derived by transfer, will not increase the total amount of new budget authority recommended in the bill.

With respect to chapter II, Veterans' Administration, the committee recommended the full budget estimate of \$433,779,000 for compensation and pensions. For compensation, \$275,348,000 is recommended, of which \$269,187,000 is for veterans and \$6,161,000 is for survivors. Public Law 91-367, which became effective July 1, 1970, retroactively, increased most rates of disability compensation, on the average, by approximately 11 percent and, in addition, Vietnam era veterans continue to come on the rolls at a greater-than-anticipated rate.

For pensions, a total of \$158,431,000 is provided. Of this sum, \$100,186,000 is for veterans, \$45,705,000 is for survivors, \$4,-