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TAX REFORM, 1969

HEARINGS

BEFORE THE

COMMITTEE ON WAYS AND MEANS

HOUSE OF REPRESENTATIVES

NINETY-FIRST CONGRESS

FIRST SESSION

ON THE

SUBJECT OF TAX REFORM

FEBRUARY 18, 19, 20, 21, 24, 25, 26, 27, 28; MARCH 3, 10, 11, 12, 14,
17, 18, 20, 21, 24, 25, 26, 27, 28; APRIL 1, 2, 3, 14, 22, 23, AND 24, 1969

Part 1 of 15

(February 18, 19, and 28, 1969)

Principal Subject:

Tax Exempt Organizations:

Foundations and Treasury Report on Foundations

Printed for the use of the Committee on Ways and Means

91-172

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TAX REFORM, 1969

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² Elected to committee Mar. 5, 1969.

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TAX REFORM, 1969

TUESDAY, FEBRUARY 18, 1969

HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
Washington, D.C.

The committee met at 10 a.m., pursuant to notice, in the committee room, Longworth House Office Building, Hon. Wilbur D. Mills (chairman of the committee) presiding.

The CHAIRMAN. The committee will please be in order.

The committee is today beginning public hearings on the general subject of tax reform, in accordance with the announcement which was issued on January 29, last. These hearings will cover 17 major subjects set forth in detail in the announcement.

The first of these subjects covers tax-exempt organizations. This includes the recommendations contained in the Treasury Department Report on Foundations of February 2, 1965, which was published by the Committee on Ways and Means and on which the committee later received written comments.

This subject also includes: (a) matters related to the so-called *Clay-Brown* case; (b) possible extension of unrelated business income tax to organizations such as fraternal beneficiary societies, social clubs, social welfare organizations or community welfare organizations and churches; (c) the tax treatment of advertising income in the case of magazines and other periodicals published by tax exempt organizations; (d) possible changes in the classification of tax-exempt organizations; (e) possible changes in the treatment of organizations denied exemption; and (f) other suggestions related to the entire general topic.

Without objection, a copy of the press release announcing the hearing will be included in the record following this statement. The Chair hears no objection.

Witnesses appearing on the first 4 days of the hearing will be testifying primarily on the subject of tax-exempt foundations.

The testimony which will be received on the fifth day, February 24, will relate not only to this subject but also to the broader subjects, such as an extension of unrelated business income tax, and so forth, as well as the tax treatment of advertising income in the case of tax-exempt organizations. We will, also, hear testimony on that subject on February 25.

The second major subject to be covered in the hearing will be that of charitable contributions. The schedule of witnesses for this subject has not yet been completed, but will be announced as soon as it is available.

The schedule of appearance of witnesses on the subsequent principal subjects is being developed and cannot be announced now, but will be announced later from time to time.

Witnesses desiring to testify on a substantial number of topics are being classed as "general" witnesses; witnesses desiring to testify on just one or two topics will be scheduled under the topic of their primary interest.

It is expected that the Administration at some point will be sending its tax recommendations to the Congress and it is the current plan of the committee to receive testimony from officials of the administration later in the hearing after those proposals have been submitted.

In view of the broad scope of the subject matter covered by this hearing and the fact that the committee does not have an unlimited time in which to receive this verbal testimony, the Chair strongly urges all individuals and organizations having a similar point of view to consolidate their testimony to the greatest extent possible and to make their oral presentation brief, with the understanding that more detailed statements can be submitted for the printed record.

It is the hope of the Chair that these hearings can be completed as quickly as possible consistent with receipt of the information which is needed.

(The press release referred to follows:)

COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES

PRESS RELEASE

ANNOUNCING PUBLIC HEARINGS TO BE
CONDUCTED

BY THE

COMMITTEE ON WAYS AND MEANS ON
THE SUBJECT OF TAX REFORM
BEGINNING FEBRUARY 18, 1969



JANUARY 29, 1969

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1969

NINETY-FIRST CONGRESS

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JOHN C. WATTS, Kentucky
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OMAR BURLESON, Texas
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JOHN M. MARTIN, Jr., *Chief Counsel*
J. P. BAKER, *Assistant Chief Counsel*
WILLIAM H. QUEALY, *Minority Counsel*

FOR THE PRESS

FOR IMMEDIATE RELEASE

WEDNESDAY, JANUARY 29, 1969

COMMITTEE ON WAYS AND MEANS PR NO. 2
U.S. HOUSE OF REPRESENTATIVES
1102 LONGWORTH HOUSE OFFICE BLDG.
WASHINGTON, D.C.

**CHAIRMAN WILBUR D. MILLS (DEMOCRAT, ARKANSAS),
COMMITTEE ON WAYS AND MEANS, ANNOUNCES
PUBLIC HEARINGS ON THE SUBJECT OF TAX REFORM
TO BEGIN ON TUESDAY, FEBRUARY 18, 1969**

Chairman Wilbur D. Mills (Democrat, Arkansas), Committee on Ways and Means, today announced that the Committee will conduct public hearings on the broad subject of tax reform beginning at 10 a.m. on Tuesday, February 18, 1969. A complete outline of the subjects covered is set forth below.

The first subject on which testimony will be received is Tax Exempt Foundations, as specified in Topic I of the outline below; the second subject will be tax Treatment of Charitable Contributions (Roman Number II below). The cut-off date for requests to be heard on the subject of Tax Exempt Foundations is *February 11, 1969*. The cut-off date for requests to be heard on *all other items* is *Monday, February 17, 1969*. All requests to be heard should be submitted to John M. Martin, Jr. Chief Counsel, Committee on Ways and Means, 1102 Longworth House Office Building, Washington, D.C. 20515.

SUBJECT MATTER OF HEARING

I. TAX-EXEMPT FOUNDATIONS

Testimony will be received—

1. *On prior Treasury Department foundation recommendations.*—On February 2, 1965, the Treasury Department made a series of proposals to Congress with respect to private foundations. Written comments on these recommendations were requested and were published by the Committee on Ways and Means. These proposals were concerned with six general areas of tax reform designed to prevent self-dealing between the foundation and the grantor, to prevent the use of a foundation as a means of maintaining family control of a corporation or other property, to prevent a foundation from engaging in financial speculation or other similar financial transactions, and to prevent a foundation from remaining indefinitely under the control of the grantor or related parties.

2. *Clay-Brown case*.—As to whether a tax-exempt organization through the use of its tax-exempt privilege should be able to acquire a business or business property solely or largely out of the tax-free earnings of the business or business property acquired.

3. *Extension of unrelated business income tax*.—As to whether the tax on unrelated business income should be extended to organizations such as fraternal beneficiary societies, social clubs, social welfare organizations or community welfare organizations, and churches.

4. *Advertising income*.—As to whether advertising income should be characterized as unrelated in the case of magazines and other periodicals published by exempt organizations where the editorial matter of the publication is related to its exempt function.

5. As to whether changes should be made in the classification of exempt organizations.

6. As to whether changes should be made in the treatment of organizations denied exemption.

7. As to other suggestions related to this general topic.

II. TAX-TREATMENT OF CHARITABLE CONTRIBUTIONS

Testimony will be received—

1. *Maximum contributions*.—As to whether the unlimited charitable contribution deduction should be retained and if so, for how long, and also whether the general charitable contribution limitation of 30 percent in the case of individuals should be increased.

2. As to whether the deduction for charitable contributions should be limited to the amount of the cost or other basis of the taxpayer in the property contributed or, conversely, whether if there is appreciation in value, such appreciation at the time of the contribution should be included in income at that time.

3. As to whether the charitable contribution deduction should be taken out of the area of the standard deduction and treated as a separate deductible item with its own 2% or 3% minimum amount above which deductions would be available (both to those claiming a standard deduction and those itemizing their deductions under present law).

4. *Charitable trusts*.—As to whether the so-called two-year charitable trust provision should be continued.

5. As to other suggestions relating to this same topic.

III. OTHER DEDUCTIONS

Testimony will be received—

1. *Farm losses*.—As to whether, and to what extent, farm losses should continue to be allowed as deductions against nonfarm income.

2. *Moving expenses*.—As to whether additional moving expenses (above the categories allowed by existing law) for such items as temporary living quarters, expenses for house-hunting trips and expenses of selling a former residence should also be allowed.

3. *Gasoline taxes*.—As to the desirability of maintaining the deduction for gasoline taxes which are not business expenses.

IV. STANDARD DEDUCTION

Testimony will be received—

1. *The regular standard deduction.*—As to whether the regular standard deduction (presently 10 percent of adjusted gross income, not to exceed \$1,000) should be increased. Such increase could take the form of either increasing the 10 percent or of increasing the maximum allowable amount about \$1,000, or both.

2. *Minimum standard deduction.*—As to whether the minimum standard deduction (presently \$300 for first exemption and \$100 for additional exemptions) should be increased.

3. As to other suggestions bearing on this same topic.

V. MINIMUM AND MAXIMUM INCOME TAX ON INDIVIDUALS

Testimony will be received—

1. *Minimum tax.*—As to whether an individual's income (if above some specified level such as \$10,000 or \$20,000) should be taxed at least at some specified low rate on a broad tax base, including many items in the tax base excluded or deductible under present law (such as tax-exempt State and municipal bond interest, one-half of long-term capital gains, the excess of percentage of cost depletion, etc.).

2. *Maximum tax.*—As to whether, as a corollary to the minimum tax, the maximum tax payable by an individual should be limited to some specified rate on the same broader tax base referred to in connection with the minimum tax.

3. Other suggestions bearing on this same topic.

VI. TAX TREATMENT OF THE ELDERLY

Testimony will be received—

1. On the prior Treasury Department proposal (incorporated in its 1967 Social Security recommendations) that a special deduction for those over age 65 be made available in place of the retirement income credit, the Social Security and Railroad Retirement exclusion, and the extra \$600 exemption for those over age 65. Provision was also made in these proposals for public retirees under age 65 who now also receive a retirement income credit. Under the proposal the special deduction would be decreased above specified income levels but not below one-third of the Social Security benefits received.

2. As to whether a tax credit should be made available to the elderly in lieu of the present retirement income credit, Social Security and Railroad Retirement benefit exclusion and extra \$600 exemption.

3. As to other suggestions related to this topic.

VII. DEFERRED EXECUTIVE COMPENSATION

Testimony will be heard—

1. *Stock options and restricted stock plans.*—As to whether the present tax treatment of qualified and non-qualified stock options and restricted stock plans should be modified.

2. As to the tax treatment of other deferred compensation arrangements for executives.

3. As to other suggestions related to this topic.

VIII. INCOME AVERAGING

Testimony will be received—

1. As to whether the restriction in present law limiting income averaging to those cases where there is an increase of one-third above the average income of the four prior years should be modified.

2. As to whether the present income averaging provision should be simplified and made available for capital gains and certain other types of income.

3. As to whether income averaging should be available where the income in the current year is below, instead of above, the average income in the four prior years.

4. As to other suggestions related to this topic.

IX. TAXATION OF SINGLE PERSONS

Testimony will be received—

1. As to whether head-of-household treatment should be extended to single persons above some specified age who maintain their own households (as well as younger widows and widowers).

2. As to other suggestions relating to this topic.

X. CAPITAL GAINS

Testimony will be received—

1. As to whether the categories of items which presently receive capital gains treatment should be revised.

2. As to whether the length of the holding period for long-term capital gain should be revised.

3. As to other suggestions related to this topic.

XI. FOREIGN TAX CREDIT

Testimony will be received—

1. As to whether the "deemed credit" in the case of a corporation receiving dividends from a foreign subsidiary should be revised.

2. As to possible modifications in the overall limitation.

3. As to other suggestions related to this topic.

XII. MULTIPLE TRUSTS

Testimony will be received—

1. As to whether multiple trusts, where the same beneficiaries are involved, should be consolidated for tax purposes.

2. As an alternative to one, as to whether a more generally applicable "throw back" rule should be applied to trusts to deal with the multiple trust problem.

3. As to other suggestions bearing on this same topic.

XIII. TAX TREATMENT OF BUSINESS INCOME

Testimony will be received—

1. As to whether multiple surtax exemptions should be eliminated, perhaps over a period of years, in the case of a related group of corporations.

2. As to possible revision in the tax treatment of depletable resources, including the tax treatment of such items as production payments, intangible drilling expenses, exploration and development expenditures, and percentage depletion generally.

3. As to possible modification in the tax treatment of real estate where accelerated methods of depreciation is used, both in the case of individuals and corporations.

4. In the case of mutual savings banks, as to whether the special three percent reserve deduction should be eliminated and as to whether other changes should be made to more closely equate the tax treatment of mutual savings banks with that of savings and loan institutions.

5. As to whether the tax treatment of Subchapter S corporations, that is where the shareholders have elected treatment which is somewhat similar to partnership treatment, should be modified to more closely equate their treatment with that of partnerships and partners, to extend this treatment to corporations with investment income, to make other simplifying changes, and to limit retirement benefits for employee-shareholders in the same manner as in the case of self-employed persons generally.

6. As to whether bank bad debt reserve treatment should be modified.

XIV. TAX TREATMENT OF STATE MUNICIPAL BONDS

Testimony will be received—

1. As to whether States and municipalities should be granted the option to issue taxable bonds and have the Federal government pay to the State or local governments somewhat more than the additional interest cost attributable to making these bonds taxable.

2. As to whether States and municipalities should be permitted to borrow, at rates somewhat lower than they could borrow from the public, from a fund set up by the Federal government which in turn would borrow from the general public on a taxable basis. In this case, the additional cost of the Federal borrowing over the rate at which the States and municipalities could borrow in the case of tax exempt bonds would be covered from the Federal treasury.

3. As to other suggestions bearing on this same topic.

XV. POSSIBLE REVISIONS OF TAX PROVISIONS RELATING TO CORPORATE MERGERS

Testimony will be received—

1. As to the extent to which net operating loss carryovers should be available where one corporation is acquired by another.

2. As to the tax treatment of bonds or debentures received for stock in a merger.

3. As to the desirability of providing a longer time for the payment of estate taxes where the principal assets left are closely held businesses or properties which the heirs do not desire to sell.

4. As to other suggestions related to this general topic.

XVI. ESTATE AND GIFT TAXES

Testimony will be received—

1. As to the adequacy of the present marital deduction.
2. As to the desirability of imposing some type of additional tax where, through the use of trusts, generations are skipped for estate tax purposes.
3. As to the desirability of combining the estate and gift tax in determining exemptions and rates.
4. As to the desirability of lowering the level of estate tax rates.
5. As to the desirability of taxing capital gains at death or, alternatively, making provision for the carryover to the heirs of the decedent's basis for property included in the estate.
6. As to the desirability of increasing the Federal estate tax credit for State inheritance and other death taxes.
7. As to other suggestions related to this general topic.

XVII. TREATMENT OF TAX DEPRECIATION BY REGULATORY AGENCIES

Testimony will be received—

As to whether regulatory commissions in determining costs of regulated companies for rate purposes should be allowed to treat the companies as if they had taken fast depreciation for tax purposes even though they did not do so, or alternatively to deny companies the right to set up a deferred tax account for ratemaking purposes.

DETAILS OF THE SUBMISSION OF REQUESTS, ETC.

Requests to be Heard.—The cut-off date for requests to be heard on the subject of Tax-Exempt Foundations (Roman Numeral I) is *Tuesday, February 11, 1969*. The cut-off date for requests to be heard on *all other items* (Roman Numerals II through XVII) is not later than the close of business *Monday, February 17, 1969*. All requests should be submitted to John M. Martin, Jr., Chief Counsel, Committee on Ways and Means, 1102 Longworth House Office Building, Washington, D.C. 20515. Individuals and organizations desiring to testify on most or all of the subjects listed will be heard in the latter part of the hearing.

Witnesses will be advised as promptly as possible after the cut-off date as to when they have been scheduled to appear. After receipt of all requests to be heard, an attempt will be made to organize the hearings so that persons requesting to be heard on the same subject will be scheduled during the same time period.

Coordination of Testimony.—In view of the broad scope of the hearings, the Committee requests that all persons and organizations with the same general interest designate one spokesman to represent them so as to conserve the time of the Committee and the other witnesses, prevent repetition and assure that all aspects of the proposals can be given appropriate attention.

The Committee will be pleased to receive from any interested organization or persons a written statement for consideration for inclu-

sion in the printed record of the hearing in lieu of a personal appearance. These statements will be given the same full consideration as though the statements had been presented in person. In such cases, a minimum of three (3) copies of the statement should be submitted by a date to be specified later.

Contents of Requests to be Heard.—In order to eliminate repetitious testimony and to properly schedule witnesses, it will be necessary for the request to be heard to specify:

Important

- (1) the name, address, and capacity in which the witness will appear;
- (2) the list of persons or organizations the witness represents and in the case of associations or organizations, their total membership and where possible a membership list;
- (3) the amount of time the witness desires in which to present his *direct oral testimony* (not including answers to questions of Committee Members);
- (4) an indication of whether or not the witness is supporting or opposing any specific proposal or proposals on which he desires to testify; and
- (5) a *topical outline* or *summary* of the comments and recommendations which the witness proposes to make.

If the prospective witness has already in the past submitted a request to be heard on any of the subjects covered by this hearing, the request should be re-submitted furnishing the above information and otherwise conforming to the rules set forth for conducting this hearing.

Written Statements. In the case of those persons who are scheduled to appear and testify, it is requested that 75 copies of their written statements be submitted 24 hours in advance of their scheduled appearance, if possible. If it is desired, an additional 75 copies may be submitted for distribution to the press and the interested public on the witness' date of appearance.

Persons submitting a minimum of three written statements in lieu of a personal appearance may also, if they desire, submit an additional 75 copies of their statements for distribution to the Committee Members and the interested departmental and legislative staffs, pending the printing of the public hearings, which will include such statements along with the oral testimony of those persons who appear in person. An additional 75 copies may be submitted for the press and the interested public, if it is desired.

Format of All Written Statements. To more usefully serve their purpose, *all* written statements (those for the purpose of personal appearance and those submitted in lieu of a personal appearance) should contain—

- (1) a *summary of comments and recommendations*, and
- (2) *subject headings* in their main body.

The CHAIRMAN. Our first witness today is our distinguished colleague from the State of Texas, the Honorable Wright Patman, chairman of the House Banking and Currency Committee and who has also served as chairman of the House Select Committee on Small Business.

Mr. Patman in his capacity as chairman of a subcommittee of that Select Committee on Small Business has done a great deal of work in investigating certain aspects of tax-exempt foundation activity and has issued a number of reports.

Because of his experience in this field and the information which he has developed over a period of 6 or 8 years in this capacity, Congressman Patman has been scheduled as our first witness in this hearing on tax-exempt organizations.

Mr. Patman, we appreciate very much having you here today and you may proceed to present to the committee whatever observations and recommendations you may have on this important subject. You are recognized, sir.

Subject I. TAX EXEMPT ORGANIZATIONS:

Foundations and Treasury Report on Foundations

STATEMENT OF HON. WRIGHT PATMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS AND CHAIRMAN OF SUBCOMMITTEE ON FOUNDATIONS, HOUSE SELECT COMMITTEE ON SMALL BUSINESS; ACCOMPANIED BY H. A. OLSHER, STAFF DIRECTOR

Mr. PATMAN. Mr. Chairman, thank you very much for the introduction. I have accompanying me today the director of the staff of the Foundations Subcommittee, Mr. H. A. Olsher. I greatly appreciate your invitation to testify before this committee on the important subject of privately controlled tax-exempt foundations.

Today, I shall introduce a bill to end a gross inequity which this country and its citizens can no longer afford: The tax-exempt status of the so-called privately controlled charitable foundations, and their propensity for domination of business and accumulation of wealth.

Put most bluntly, philanthropy—one of mankind's more noble instincts—has been perverted into a vehicle for institutionalized, deliberate evasion of fiscal and moral responsibility to the Nation.

This has been accomplished by tax immunities granted by the U.S. Congress. The use of the tax-free status, as I shall amply document, reveals the continuing devotion of some of our millionaires to greed, rather than conversion to graciousness.

Mr. Chairman, when a privilege is abused, it should be withdrawn. And the onerous burdens on 65 million taxpayers demand that Congress curb the tax-exempt foundations which, in unwitting good faith, it helped to create.

Did the Congress intend that foundations use their tax-exempt status to finance the recruiting of college football players? To pay the bills for several years of gay living and partying by twin sisters who befriended an aging millionaire? The foundations fiddle while the small businessman, the farmer, the individual citizen, pay the tax

bills—and burn. If the rich care to fritter away their dollars in senseless frivolity, that is certainly their privilege—but Congress has no obligation to give them tax-free dollars at the expense of the rest of the country.

Mr. Chairman, my bill is by no means a vindictive measure; indeed, by encouraging the foundations to return to the original purpose for their existence—that is, philanthropy—they should emerge stronger, not weaker.

This new vigor I do not fear, so long as it is exercised in the proper area. Their pained outcries of persecution notwithstanding, I do not seek to destroy the foundations, but to reform them. And I do not single out the foundations for harsh regulation—I simply propose that they be subject to the same economic rules as the rest of America.

Equal treatment under the law is perhaps a painful contemplation for some of them, but equal treatment under the law is really what America is all about.

My bill has three features, each of which is directed at a shortcoming discovered during the continuing study which the Subcommittee on Foundations of the House Small Business Committee has conducted since 1962:

(1) Every privately controlled, tax-exempt foundation would pay a tax in the amount of 20 percent of its gross income, including capital gains. Gross income would be comprised of the following: Gross profit from business activities, interest, dividends, gross rents, gross royalties, gain or loss from sale of assets, excluding inventory items, and other income, excluding contributions, gifts, grants, et cetera, received.

(2) A privately controlled, tax-exempt foundation would not be permitted to own more than 3 percent of the outstanding shares of any class of stock of a corporation or to own more than a 3-percent interest in the capital or profits of a partnership.

(3) The net income of every privately controlled, tax-exempt foundation would have to be disbursed annually for the purposes for which it was organized.

According to the Internal Revenue Service, there are 30,262 private, tax-exempt foundations in the Nation. The Internal Revenue Service is responsible for regulating the foundations, but it has been a singularly ineffectual watchdog.

For instance, despite the multitude of computers and data-retrieval systems with which it watches the individual taxpayers, the Internal Revenue Service cannot tell the Congress the assets and income of all the foundations it is supposed to supervise. But an indication of the foundations' economic girth comes from the study of 596 foundations by our Subcommittee on Foundations.

In 1966 these foundations had a gross income of \$1,079,627,732, including capital gains. A 20-percent tax on this income alone would yield the U.S. Treasury some \$200 million. Income from the other 20,666 foundations known to the IRS would add to this figure; but, lacking firm data, the exact amount cannot be computed.

Yet, the amount of the tax revenue, significant though it may be, resolves only part of the problem. Another issue before the Congress is the astounding amount of wealth which foundations have managed to spirit away behind the protective walls of tax exemption. And the figure is increasing rapidly, both in terms of income and assets.

The value of the assets of the 596 foundations covered by our subcommittee's study was 50 percent greater at the close of 1966 than it had been 6 years earlier, at the end of 1960—\$15.1 billion, compared to \$10.2 billion. The \$15.1 billion valuation is 41 percent greater than the \$10.7 billion capital funds (capital, surplus, and undivided profits) of the 50 largest banks in the United States. This massive, systematic diversion of assets into tax-exempt status erodes our Nation's tax base, and forces millions of individual citizens and small businessmen to carry a still heavier tax burden.

The statistics on foundation receipts are even more sobering.

The 596 foundations reported total receipts of \$559.7 million during the first accounting period for which they submitted data to the subcommittee (usually 1951). By 1966 the total receipts had increased to \$1.3 billion.

The foundations will suffer no injustice from my proposed reforms. Instead, they will finally share with all of us the burden of maintaining our society. If foundations pay their share of taxes, the burden on 65 million taxpayers can be somewhat lessened—the most welcome charity of all.

One of the questions that turns up frequently in the mail I receive is, "What are the Ford and Rockefeller Foundations, the two biggest foundations in the country, really up to?"

This question usually stems from the following type of expenditures and is reason for mounting concern over foundation operations:

In fiscal years 1966 and 1967, the Ford Foundation paid out \$360,351.26 to four outside law firms. Of this amount, \$159,633.73, or 44 percent, was paid to Ginsburg & Feldman, 1700 Pennsylvania Avenue, Washington, D.C.

The Ford Foundation paid out \$446,262.46 for public relations in fiscal year 1967.

The Rockefeller Foundation paid \$31,546.53 to Earl Newsom & Co., Inc., New York public relations counsel, in 1967.

The Ford Foundation spent \$210,037.38 for outside printing in fiscal year 1967.

As of September 30, 1967, the Ford Foundation had 357 employees in the United States and 920 in foreign countries.

As of December 31, 1967, the Rockefeller Foundation had 211 employees in the United States and 112 in foreign countries, excluding nationals hired locally. The Rockefeller Foundation sent 75 percent more money out of the country in 1966 than it spent here. It spent \$17.8 million for the benefit of foreign institutions or persons, while individuals and institutions in this country received only \$10.9 million.

The Rockefeller Foundation spent half as much just running its New York office—\$5.4 million—as it spent throughout the entire Nation in 1966. It spent more just running its New York offices—in salaries and the like—than it spent on "benevolence" in New York State and California combined. The foundation spent \$1,693,762 in India, but not a penny in Arkansas. It spent half a million dollars in Uganda, but not a cent in Idaho. It spent more than \$1 million in Nigeria, but it could bring itself to spend only \$1,000 in Kentucky.

It spent nearly \$2 million in Colombia, but it spent nothing at all in South Carolina, or Wyoming, or Maine, or Delaware.

More than \$5 million went into the upkeep of its elegant offices in New York, but only \$2,374 of its money went into West Virginia.

In fiscal years 1966 and 1967, the Ford Foundation lost \$92,496.92 and \$100,119.58, respectively, in the operation of its cafeteria and dining room and of course, the taxpaying restaurant owners in New York City lost over 300 potential customers.

In 1966 and 1967 the Rockefeller Foundation lost \$45,456 and \$47,176, respectively, in the operation of its lunchrooms, and the taxpaying restaurant owners in New York City lost over 200 potential customers here.

I am hopeful that this committee will agree that there is an urgent need to redefine the role of the privately controlled charitable foundation. Are the giant foundations on the road to becoming political machines?

An article in the New York Times of September 23, 1968, says "Ford grants have gone lately for widening voter registration in Cleveland's slums," and are said "to have aided the election of Carl B. Stokes in November 1967."

The Ford Foundation had gross income of \$252 million in 1967, \$385 million in 1966, and has assets valued at \$3 to \$3½ billion. The Rockefeller Foundation had gross income of \$53 million in 1967, \$42 million in 1966, and has assets valued at \$736 million. I need not tell you gentlemen what can happen in a local, State, or National election where this kind of money is turned loose, directly, or indirectly, in behalf of their favorite candidates.

This committee would do well to scrutinize closely the ventures of the foundations in politics. The Honorable John J. Rooney of Brooklyn, N.Y., can tell you quite a good deal about that. It is alleged that the Ford Foundation's grants for experimental school decentralization in New York helped ignite New York City's longest teachers' strike.

Have the giant foundations made or do they plan to make grants that will aid certain candidates to run for National, State, and local office? Does the Ford Foundation have a grandiose design to bring vast political, economic, and social changes to the Nation in the 1970's? Is this what Congress had in mind when it granted tax exemption to privately controlled foundations?

It has been reported that the Ford Foundation, the Rockefeller Foundation and others have made grants to public servants. This committee should consider the effect on public servants when they are subjected to foundation grants.

Will the grantees be critical of their benefactors? Do you want the foundations to make grants to public servants in police department, health, or sanitation departments? Do you want city employee unions to receive foundation grants?

On July 10, 1968, a story in the Washington Post said:

The Ford Foundation has offered generous travel grants to various members of Kennedy's Senate staff, including three of the young writers and intellectuals who were important influences on the Senator's philosophical development—Peter Edelmann, Adam Wallinsky and Tom Johnston.

The grants are provided under a Foundation program of long standing that seeks to ease the transition from public to private life. They provide up to a year of leisure and freedom from immediate financial concerns.

Subsequently, the Ford Foundation advised us that the following aides of the late Senator Robert F. Kennedy received travel and study awards from the Ford Foundation aggregating \$131,069.50:

Name:	Amount
Jerry Bruno.....	\$19,450.00
Joseph Dolan.....	18,556.00
Peter Edelman.....	19,091.00
Dall Forsythe.....	6,390.00
Earl Graves.....	19,500.00
Thomas Johnston.....	10,190.00
Adam Walinsky.....	22,200.00
Frank Mankiewicz.....	15,682.50
Total	131,069.50

I have the most heartfelt sympathy for the late Senator Kennedy's associates, but again I ask this committee, Is this what the Congress had in mind when it granted tax exemption to charitable foundations? Were aides of Vice President Humphrey, Senator McCarthy, and Governor Wallace offered similar awards by the Ford Foundation?

As you know, a foundation is exempt from taxation today under section 501(c) (3) of the code, provided it is "organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or education purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office."

In coming weeks, the foundation lobbyists will be emitting predictable cries that they can't "afford" taxation because it would divert funds from their "vital activities" in public welfare, educational and other fields.

Let us dispense with this nonsense in a hurry, for the bloated foundations would benefit greatly from forced attendance at a financial weight watchers' class. If their managements have trouble deciding which "vital" programs should be abandoned because of the 20-percent tax, I direct their collective attentions to several gross examples of foundation foolishness discovered during our subcommittee's study.

While our cities decay, and while those of us not fortunate enough to merit the tax-exempt status of the foundations pay a 10-percent surtax to keep the Nation more or less solvent, the Bollingen Foundation of New York City, a creation of the Mellon banking family of Pittsburgh, spends tax-free dollars on such esoteric research subjects as—

The works of Hugo von Hofmannsthal.

The phenomenology of the Iranian religious consciousness.

The origin and significance of the decorative types of medieval tombstones in Bosnia and Herzegovina.

While the Congress and the administration searched feverishly for funds to finance essential urban rebuilding programs, the Richard King Mellon Foundation sent \$50,000 to Ireland for the "preservation of historical buildings."

While thousands of Puerto Rican youngsters drop out of New York schools because they can't master English, the Agricultural Development Council, Inc., of New York, one of the 13 Rockefeller-controlled foundations in our study, sends \$311,280 to Japan to "improve English language teaching in Japanese schools."

The list is seemingly endless—one could call the examples ironic, but I think "tragic" is the better adjective. The shortage of physicians in America is critical, so the Commonwealth Fund of New York sends \$208,141 to Canada for medical education.

The fore-mentioned Bollingen Foundation, an organization that seems to specialize in sending thousands of dollars abroad for the development of trivia into nonsense, disbursed \$212,113 in foreign grants during the period January 1, 1965–November 15, 1967, including grants for the following—

Archaeological research and preparation for publication of a study relating to the remains of rural chthonic traditions which existed in Europe during the Middle Ages, \$4,500.

Completion of study of a Roman mystery cult of the second and third century A.D., \$5,000.

Acquisition of data on important proto-historic entrepôts and on maritime activities of peoples of Southeast Asia in proto-historic times, \$3,000.

Congress certainly cannot complain if the entire Mellon banking family assembles in one of their Pittsburgh mansions each evening for a roundtable discussion on the origin and significance of the decorative types of medieval tombstones in Bosnia and Herzegovina.

If the Mellons are more interested in medieval tombstones than in Pittsburgh poverty, and care to spend their money studying 12th and 13th century church construction, that is the Mellons' affairs. However, there is no obligation upon either the Congress or the American citizenry to give the Mellons tax-free dollars to finance their exotic interests.

In sum: The foundation programs contains ample fat that could and should be trimmed, and the Federal Government can find better uses for the money than studies of medieval tombstones.

Grants to governments by U.S. foundations are not without precedent. The Ford Foundation, for example, made direct grants—in U.S. dollars—to at least 25 foreign governments during the period January 1, 1965–September 30, 1967: United Arab Republic, Government of Jordan, Government of Lebanon, Republic of Zambia, Government of Northern Nigeria, Federal Republic of Nigeria, Government of Mid-western Nigeria, Government of Eastern Nigeria, Government of Pakistan, Government of West Pakistan, Government of East Pakistan, Government of India, Republic of the Ivory Coast, Syrian Arab Republic, Republic of Iraq, United Republic of Tanzania, United Mexican States, Government of Kenya, Republic of Tunisia, Government of Antigua, Federal Republic of Cameroon, Government of West Bengal, Republic of Chile, United States of Brazil, and the Government of Nepal.

Thus far, the relationship between the tax-exempt foundations, and the U.S. Government has been a one-way street—with the foundations doing all the "gittin'." For example, three of the Rockefeller-controlled foundations have received Federal funds totaling at least \$16

million during the past 13 years, in part from the Agency for International Development.

Our review of the records of 25 of the 586 foundations under study shows that 22 of those 25 foundations disbursed grants abroad, in dollars, totaling \$70.4 million, purchased foreign securities costing \$91 million, and sent \$15.2 million to foreign branch offices during the period January 1, 1965–November 20, 1967.

Translating this into hardships imposed on our tourists, the aggregate outlay of \$176.6 million is equal to the amount of duty-free goods that 1,766,000 Americans would be permitted to bring into this country at \$100 a person.

The second part of my reform bill is directed at the use of foundations to dominate businesses and to escape estate taxes. Through their domination of numerous corporations, the foundations wield a significant—and unchecked—weight in the American economy.

The progressive development of thousands of foundations through gifts of corporate stock illustrates the increasing flow of formerly taxable income into these cozy tax shelters. In the hands of the foundations, the dividends of course, go untaxed, and our tax base is further eroded.

The tax-exempt foundation has long been used by many of our millionaires as a loophole which enables them to avoid Federal estate taxes and thus keep their businesses and large fortunes intact.

The late Secretary of the Treasury Andrew Mellon used a charitable foundation to avoid estate taxes on his multimillion dollar estate. The Ford Foundation was created to reduce the taxable estates of Henry and Edsel Ford, and to enable their heirs to avoid having to sell Ford Motor Co. stock to meet estate taxes. Thus the Ford Foundation was given more than 90 percent of the equity in Ford Motor Co.

Substantial portions of the great fortunes of men who profited by the enormous expansion of American business continue to find their way into tax-exempt foundations. These foundations have already passed and will continue to pass—by right of inheritance—to the control of heirs or their trustees. This enables a few individuals to control ever increasing tax-exempt wealth.

Here are a few conspicuous examples of prominent Americans who have died in recent years and whose personal foundations will receive at least \$293.4 million, which will, of course, escape estate taxes:

(In millions of dollars)

Donor	Donee	Approximate amount that will pass to the foundation, valued as of date of death
Archibald G. Bush, St. Paul, Minn.	The Bush Foundation, St. Paul, Minn.	\$118
Henry R. Luce, New York, N.Y.	Henry Luce Foundation, Inc., New York, N.Y.	68
Arthur Vining Davis, Pittsburgh, Pa.	Arthur Vining Davis Foundation No. 2, Pittsburgh, Pa.	15
Do.	Arthur Vining Davis Foundation No. 3, Miami, Fla.	30
George Gund, Cleveland, Ohio	The George Gund Foundation, Cleveland, Ohio	20
Mr. and Mrs. Stephen Currier, New York, N.Y.	Tacenic Foundation, New York, N.Y.	20
Billy Rose, New York, N.Y.	Billy Rose Foundation, Inc., New York, N.Y.	20
Walt Disney, Los Angeles, Calif.	The Disney Foundation, Los Angeles, Calif.	2.4
Total		293.4

The trend to shift the wealth of America's richest families into tax-exempt foundations and trusts represents a gigantic loophole in our tax laws. This is an area urgently needing reform.

Stanley S. Surrey, former Assistant Secretary of the Treasury for tax policy, is reported to have said in a speech on February 23, 1967: "The present resort of tax and business planners to the creation of a private foundation to hold the stock of a business enterprise so as to perpetuate the family control of that enterprise is a complete distortion of the policies and philanthropic motivations that underlie the tax benefits granted charitable contributions and charitable institutions."

I agree emphatically with Mr. Surrey's statement, and urge that Congress put an end to this distortion.

Increasing numbers of foundations hold substantial interests in commercial enterprises. Of the 596 foundations under study by our subcommittee, 136 held stock in 288 corporations at the close of 1966, in amounts ranging from 5 to 100 percent of the outstanding shares of at least one class of stock.

The carrying value of those shares was \$2.5 billion, the estimated market value \$4.9 billion. Even the latter figure is most likely an understatement, however, because in many instances the securities were in closely-held companies that are not traded.

A prime example is the James Irvine Foundation of San Francisco, which owns 53 percent of the Irvine Co., which in turn owns 88,000 acres in suburban Los Angeles, almost one-fifth the land area of Orange County. The land is reportedly valued at \$1 billion—but the foundation carries the Irvine Co. stock at \$2.

Here is a sampling of some nationally-known companies that had substantial links with tax-free foundations at the end of 1966:

- B. Altman & Co. (New York) — 85 percent of the capital voting stock owned by Altman Foundation, New York City.
- American Chain & Cable Co., Inc. — 17 percent of the capital voting stock owned by Wm. T. Morris Foundation, New York City.
- American National Insurance Co. — 35 percent of the common voting stock owned by the Moody Foundation, Galveston, Tex.
- Cannon Mills Co. — 16 percent of the common voting stock owned by the Cannon Foundation, Inc., Concord, N.C.
- Coca-Cola International — 16 percent of the common voting stock owned by Emily & Ernest Woodruff Foundation, Atlanta, Ga.
- Dana Corp. — 17 percent of the common voting stock owned by the Charles A. Dana Foundation, Greenwich, Conn.
- Duke Power Co. — 57 percent of the common voting stock owned by Duke Endowment, New York City.
- Federal Cartridge Corp. — 100 percent of the common voting stock and 100 percent of the preferred nonvoting stock owned by Olin Foundation, Inc., New York City.
- Ford Motor Co. — 100 percent of the class A nonvoting stock owned by the Ford Foundation, New York City.
- W. T. Grant Co. — 10 percent of the common voting stock and 8 percent of the preferred nonvoting stock owned by the Grant Foundation, Inc., New York City.
- Grant Atlantic & Pacific Tea Co., Inc. — 34 percent of the common voting stock owned by John A. Hartford Foundation, Inc., New York City.
- H. J. Heinz Co. — 17 percent of the common voting stock owned by the Howard Heinz Endowment, Pittsburgh, Pa.
- Hughes Aircraft Co. — 100 percent of the common voting stock owned by the Howard Hughes Medical Institute, Miami Beach, Fla.
- Hunt Foods and Industries, Inc. — 8 percent of the common voting stock owned by the Norton Simon Foundation, Fullerton, Calif.

Irvine Co.—53 percent of the common voting stock owned by the James Irvine Foundation, San Francisco, Calif.
 Kaiser Industries Corp.—15 percent of the common voting stock owned by the Henry J. Kaiser Family Foundation, Oakland, Calif.
 Kellogg Co.—approximately 51 percent of the common voting stock owned by W. K. Kellogg Foundation Trust, Battle Creek, Mich.
 S. S. Kresge Co.—22 percent of the capital voting stock owned by Kresge Foundation, Detroit Mich.
 Eli Lilly & Co.—24 percent of the common stock owned by Lilly Endowment, Inc., Indianapolis, Ind.
 McDonnell Aircraft Corp.—7 percent of the common voting stock owned by the McDonnell Foundation, Inc., St. Louis, Mo.
 Merrill Lynch, Pierce, Fenner & Smith, Inc.—17 percent of the common voting stock owned by the Charles E. Merrill Trust, New York City.
 Miller Brewing Co.—47 percent of the common voting stock owned by De Rance, Inc., Milwaukee, Wis.
 Ralston Purina Co.—20 percent of the common voting stock owned by the Danforth Foundation, St. Louis, Mo.
 Rohm and Haas Co.—19 percent of the common voting stock owned by the Phoebe Waterman Foundation, Philadelphia, Pa.
 Sahara Coal Co., Inc.—36 percent of the preferred nonvoting stock and 24 percent of the common voting stock owned by Woods Charitable Fund, Inc., Lincoln, Nebr.
 Sun Oil Co.—22 percent of the common voting stock owned by the Pew Memorial Trust, Philadelphia, Pa.
 Timken Roller Bearing Co.—10 percent of the common voting stock owned by the Timken Foundation of Canton, Ohio.
 United States Sugar Corp.—48 percent of the common stock owned by Charles Stewart Mott Foundation, Flint, Mich.
 Wieboldt Stores, Inc.—91 percent of the 6 percent cumulative preferred voting stock owned by Wieboldt Foundation, Chicago, Ill.

My bill, by limiting foundation holdings to no more than 3 percent of any class of shares, would make it more difficult for our millionaires to bypass the tax collector by handing their intact estates over to tax-free captive foundations.

The estate tax—was a congressional declaration of public policy—the use of tax-exempt foundations to avoid estate taxes is a violation of that public policy, and should be halted.

My constituents in east Texas have a bitter truism: "Them that has, gits." When speaking of the foundations, one can add two more words: "Them that has, gits, and keeps."

And it is to the proclivity of some foundations for hoarding money, rather than distributing it, as they are supposed to do, that the third section of my reform bill is directed. The tax returns of the 596 foundations under study by our subcommittee indicate they had accumulated (meaning unspent) income of \$1.9 billion at the end of 1966.

At the end of the first accounting period for which they submitted data to our subcommittee (usually 1951), their unspent income totaled only \$364 million.

My solution is straightforward, and simple: The foundations were created to spend, not to hoard and grow—thus Congress should require them to spend, annually, their net income, and for the purposes for which they were organized.

The foundation problems are far more numerous and serious than Treasury officials have been willing to admit publicly. During our subcommittee's 1964 hearings, I made the following statement, in part:

The Secretary of the Treasury has testified that it is the Treasury's duty to be alert to all possible violations of law. The Secretary also says (1) he does not consider it proper for a foundation to engage in insider's stock deals, stock price manipulations, short sales, margin trading, speculation in commodity futures, or to act as an unregulated source of stock market credit, and (2) the

SEC should be alerted to the possibility of a foundation's involvement in insider deals and stock price manipulations.

Yet, testimony before this subcommittee indicates the following:

The IRS does not examine foundations to determine whether they are violating any Federal securities laws—including those relating to insider's stock deals, stock price manipulations, and unregulated sources of stock market.

The IRS has not collected any information as to the extent that foundations are involved in speculation and trading on margin.

The IRS has not collected any data on the involvement of foundations in corporate proxy fights.

The IRS does not examine foundations to determine whether their foreign operations may be in conflict with Government policies.

The IRS does not examine foundations to determine whether the foundations are channeling income and corpus in a direction that may hurt competitors and investors.

The IRS does not examine foundations to determine whether they are being used as a device for engaging in various trade practices which might be in violation of certain statutes administered by the Federal Trade Commission or the Antitrust Division.

Few of the persons in the IRS who examine foundation tax returns would be sufficiently familiar with the antitrust law to know whether the practices as cited may violate section 5 of the Federal Trade Commission Act or the Sherman Act.

The IRS does not examine foundations to determine whether there is a conflict of interest between the duties of a foundation's directors or trustees and their interests as officers, stockholders, and employees of business corporations whose stock is controlled by the foundation.

The Acting Commissioner does not know of any cases where compensation of officers, directors, or trustees among the large foundations has been unreasonable or unjustified. Yet, Mr. Benson Ford received \$15,000 for attending three meetings of the Ford Foundation.

The IRS does not receive a foundation's individual charitable donations.

The IRS has no rule of thumb regarding the percentage of income that a foundation must spend for the purpose for which it was granted tax exemption.

The IRS does not examine foundations to determine whether contributions are being made to the foundations by persons or organizations that supply goods or services to companies interlocked with the foundations.

The IRS does not know how much money was spent overseas by U.S. foundations in 1963.

The IRS does not examine foundations to determine whether they are making loans overseas that may be contributing to our balance of payments problem.

This is the most impressive record of do nothing that I have seen in my 36 years in Congress.

I regret to say that those observations are just as pertinent today as they were in 1964.

The fact that foundations are exempt from taxation does not mean that they are exempt from other Federal laws. Hence, antitrust law, FTC law, SEC law, et cetera, are applicable to foundations.

It is, of course, possible for a foundation to be used as a device for engaging in various trade practices which may be a violation of certain statutes administered by the Federal Trade Commission or the Antitrust Division.

For example, contributions may be made to a foundation by (1) persons or organizations that supply goods or services to companies interlocked with the foundations, or (2) from persons or organizations that buy goods or services from companies interlocked with the foundation.

The point is that, if the company that is interlocked with a foundation is doing business and by a contribution to the parent foundation they get the business because of that interlock, they are obviously getting an advantage. This is one of the things that the Ways and Means Committee should consider in drafting a self dealing law.

In other words, a contribution can be made to a foundation for a business purpose rather than an eleemosynary purpose. For example, under the Robinson-Patman Act, business concerns are prohibited from making disproportionate discriminatory discounts to particular buyers if the effect might be to substantially lessen competition or tend to create a monopoly.

Hence, contributions to a foundation can be a method of getting around this provision of law.

Also, there is the business practice known as reciprocity, which may violate the antitrust laws. It involves tacit or actual agreement to do business with a firm if it reciprocates and gives business in return.

Foundations may be parties to reciprocity arrangements. For example, a business affiliated with a foundation may say to one of its suppliers, "I will buy from you if you will contribute to such and such a foundation" or, "if you buy from me, such and such foundation will make you a business loan at favorable terms."

Our study indicates that many business suppliers and buyers have made sizable contributions to foundations controlled by customers. For example, we know that a number of suppliers of the Hilton Hotel chain are contributors to the Conrad N. Hilton Foundation of Los Angeles. Mr. C. N. Hilton, Jr., secretary of the Conrad N. Hilton Foundation, has acknowledged that, during the fiscal years ending February 28, 1952 through February 28, 1963, 29 donors—who were suppliers of goods or services to Hilton Hotels Corp. or its subsidiaries—made contributions to the Conrad N. Hilton Foundation in the amount of \$61,695.18.

Does not this kind of situation appear to raise the specter of business reciprocity—we will buy from you if you contribute to our foundation?

If so, does it not raise a number of serious antitrust problems? Specifically, may it not involve a possible violation of the Robinson-Patman Act because it involves the inducement of discriminatory prices?

Or may it not involve a violation of section 5 of the FTC Act as have other instances of business reciprocity because they involve "unfair methods of competition"?

Here is another case that we discussed in our hearings. The Rogosin Foundation of New York City is controlled by the Rogosin family. The Rogosin family has also dominated Beaunit Corp. (formerly Beaunit Mills, Inc.), Rogosin Industries, Ltd., and Skenendon Rayon Corp.

At December 31, 1952, the foundation held 33½ percent of the non-voting preferred stock of Beaunit Mills, Inc., (carrying value \$2.7 million) as well as 5 percent of the common voting stock of the same corporation (carrying value \$1.9 million.).

Beaunit Mills, Inc., manufactures synthetic yarn, knits and weaves fabrics, and manufactures intimate apparel. The Goodyear Tire & Rubber Co. of Akron, Ohio, has been a buyer of tire-cord yarn from Beaunit Corp.

In March 1952, Goodyear made a cash donation of \$150,000 to the Rogosin Foundation. Additionally, on March 10, 1952, Goodyear loaned \$2.5 million to the Rogosin Foundation at 4 percent interest. The loan was to be paid off in installments due January 3-August 15, 1953, January 3-August 15, 1954, and January 3-August 15, 1955. Ac-

cording to the foundation, payments on the loan were made on August 15, 1953, August 15, 1954 and August 15, 1955.

The foundation states that it used the \$2.5 million loan to purchase from Beaunit Mills, Inc., 30,000 shares of the latter's preferred stock. An identical number of shares of Beaunit Mills, Inc., preferred stock was pledged by the foundation as collateral for the loan.

So, here we have the question as to whether this arrangement involves a price discount from Rogosin to Goodyear, for which Goodyear, the buyer, compensated Rogosin by making a contribution to the Rogosin Foundation. If this were the case, would it not seem to raise both tax and antitrust problems?

First, is it a method whereby the buyer compensates the seller by making a tax-deductible contribution to the Rogosin Foundation? Second, would not this practice, at best, be a distortion of the pricing and exchange process in a free enterprise economy?

Third, might not this practice actually involve (a) a violation of the Robinson Patman Act because it involved discriminatory pricing, or (b) a violation of section 3 of the Federal Trade Commission Act because it is an unfair method of competition?

Additionally, of course, Goodyear was acting as a source of unregulated credit.

Then there are the possible antitrust problems—actual or potential conflict-of-interest situations—that may stem from situations where board members of foundations also sit on the boards of business firms that compete with each other.

As we all know, section 8 of the Clayton Act provides that no person shall be a director of two or more competing corporations. Now, that act does not apply to indirect interlocks, such as when a foundation has two board members, one of whom is also a board member of corporation A and the other member is on the board of corporation B—a competitor of A.

While there is nothing illegal about such an arrangement under section 8, there could be a special public interest problem when a foundation established for eleemosynary purposes becomes a vehicle for such indirect interlocks which might affect competition.

Here is another area that the panel should explore. Does a businessman in Government pose a greater potential conflict of interest than the officials of foundations in Government—such as, for example, McGeorge Bundy, president of the Ford Foundation, whose overlords, the Ford family, have immense commercial interests throughout the world, including the Middle East?

It seems to me a bit inconsistent for the Congress to require a businessman to completely eliminate potential conflict of interest when, at the same time, it permits Mr. Bundy to wander in and out of the Government while retaining his \$65,000 annual salary from the Ford Foundation.

This was the case in June 1967 when Mr. Bundy became Executive Secretary to the National Security Council Committee on the Middle East.

Now, to turn to the stock market there is ample evidence that many foundations are actively trading in the market with substantial portions of their funds. Judging from the content of their portfolios and the frequency of turnover, many foundations are concerned less

with equity yields and inflationary trends than they are with the lure of capital gains to swell their principal funds.

I might add that former Secretary Dillon testified that he shares my view that speculative gains for charity are not worth the risk of speculative losses, and that he knew of no case where directors or trustees of a foundation have reimbursed the foundation for losses incurred in speculation.

One of the operations that should be subjected to the close scrutiny of this committee is that of the private pooling of investments by some foundations—in other words, the pooling of capital to trade in the stock market.

For example, some of the 13 Rockefeller Foundations have informed us that they have a joint investment staff of 16 persons, not including secretarial, headed by Mr. J. Richardson Dilworth, which provides investment services with the cost shared by the various Rockefeller participants.

Does this not raise some potential problems—the possibility of speculative tactics, the possibility of a conflict of interest, the possibility of huge buying power that will have a strong impact on the prices of stock they deal in?

Secretary Dillon also testified that a foundation can be a source of unfair competition arising from active use of foundation assets by donors or trustees for private business ends, and that there are an infinite number of ways in which foundation assets or income can be used for the preferment of one set of private persons over another.

The Secretary agreed that (1) foundations' money lending activities put them into unfair competition with private lenders and also give the foundations an element of influence over a wide range of business ventures, and (2) such activities may present problems, such as preferential rates of interest.

All this is made possible by the fact that, at present, the only restraint on a foundation's moneylending appears to be that loans must carry a "reasonable" rate of interest and adequate security, and that nothing prevents the foundation from making loans to its founder or his family, the businesses under his control, or a donor.

I conclude with this thought: There is something fundamentally wrong in conditions which make such acquisition of economic power possible and which tolerate its continuation. And it is the responsibility of Congress to correct those conditions.

I am indeed grateful for the opportunity to appear before this distinguished panel. Thank you very much. You may be assured that our subcommittee will do everything possible to cooperate with the Committee on Ways and Means.

I have informed Chairman Mills that we will be delighted to loan our records and our staff to the Committee on Ways and Means whenever it wishes.

Mr. Chairman, I should like to insert here for the record breakdowns of certain Ford Foundation and Rockefeller Foundation payments and other data which I mentioned earlier.

The CHAIRMAN. Without objection that material will be included in the record at the appropriate place.

Mr. PATMAN. Thank you very much.

(The material referred to follows.)

THE FORD FOUNDATION

TRAVEL AND STUDY AWARDS

to members of the legislative staff of the late
Senator Robert F. Kennedy

Jerry Bruno: Mr. Bruno received a seven-month Travel and Study Award of \$19,450, approved August 6, 1968, for a study of the methods and styles of national political campaigning in the United States, with special attention to use of mass-media, travel, and face-to-face public appearances, as these alternatives are affected by factors of cost and logistical efficiency. He will spend most of his time within the United States, and will also visit Canada to compare the recent Canadian election with the American election. Expansion of the knowledge and techniques of national political campaigning is significant in the granting programs of the Foundation's Office of Government and Law.

Joseph Dolan: Mr. Dolan received a six-month Travel and Study Award of \$18,556, approved on August 13, 1968, for a study of the teaching methods, text materials and other writings used in university and law school courses which deal with the lawyer's role in the legislative processes. He plans to include the law schools of Yale, Harvard, Columbia, the University of Chicago, the University of California, Stanford, and several other institutions in California and Colorado. This project is significant in the granting programs of the Foundation's Office of Government and Law.

Peter Eliaman: Mr. Eliaman received a five-month Travel and Study Award of \$19,091, approved on July 9, 1968, to study community development and social programs in various countries, with special emphasis on the degree to which the participation of individual citizens is encouraged in planning and policy making and to which the processes of government have been successfully decentralized. His itinerary will include selected countries in Scandinavia, Eastern Europe, the Middle East and Africa, India, Singapore, and Japan. Where appropriate he and his wife will be looking into school systems and methods of teaching, job training programs, systems of income maintenance, health service delivery systems and sources of unrest and alienation among students and other groups. The award covers maintenance, travel expenses, field trips, and secretarial assistance. Expansion of knowledge about community organization of governmental processes is significant in the granting programs of the Foundation's Office of Social Development.

Dall Forsythe: Mr. Forsythe received a four-month Travel and Study Award of \$6,390, approved on August 13, 1968, for a study of the changes that have occurred in participation by citizens in political processes, especially in the nominating processes of the Democratic Party. He will compare voting patterns in Presidential primary states in 1964 and in 1968, study the qualifications and backgrounds of staff members, examine the aims of and responses to advertising and stumping techniques, and do a biographical survey of lower and middle-level workers to determine the nature of past political involvement among those who worked in those campaigns. This will be done through questionnaire, personal interviews, or some combination of both. He will then study and observe such other events of political significance as peace marches, student protests, and demonstrations. These investigations will require about a month of travel around the United States, mostly in the primary states and in states where local organizations conducted campaigns in district caucuses. They are significant in the granting programs of the Foundation's Office of Government and Law.

Earl Graves: Mr. Graves received a six-month Travel and Study Award of \$19,500, approved on July 22, 1968, for the purpose of studying opportunities for black citizens to engage in small private enterprise business in the United States. He will begin his study in the Bedford Stuyvesant area, but will also spend time in the Watts area of Los Angeles, and in numerous other areas across the country, including a term at the Potomac Institute in Washington, D.C. He will survey the kinds of business opportunities available to black people and the means by which they can secure business capital. The award includes a trip to Barbados to study and assess their business development efforts. Expansion of the knowledge and techniques of entrepreneurship among minority groups is significant in the granting programs of the Foundation's Office of Social Development.

Thomas Johnston: Mr. Johnston received a three-month Travel and Study Award of \$10,190, approved on August 22, 1968, for a study of the feasibility of a national and/or international newspaper transmitted through the medium of television. He will discuss the concept with journalists and other communications specialists in Europe, Asia (particularly Japan and India), and the United States. His exploration will include the character and substance of such a newspaper, attendant legal questions in the U.S., political and technical obstacles in sovereign nations, and such problems as the number and kind of languages in which such a publication should appear. Expansion of knowledge and techniques involved in the better utilization of technology and organization in mass communications is significant to the granting programs of the Foundation's International Division and Office of Public Broadcasting.

Adam Walinsky: Mr. Walinsky received a six-month Travel and Study Award of \$22,200, approved on August 13, 1968, for a study of community self-determination, self-control, and self-improvement based on an examination of the successes and failures of various community development programs, beginning with the Bedford-Stuyvesant program and including East Columbus (Ohio) Community Organization, Watts Labor Action Council, and cooperative programs in the Mississippi Delta. For comparison, he will study the experiments now underway in certain Eastern European countries. These studies are significant in the granting programs of the Foundation's Office of Social Development.

Frank Mankiewicz: Mr. Mankiewicz has applied for a three month Travel and Study Award for the purpose of evaluating the extent of change in the rural and urban Peace Corps community development projects for which he was responsible while with the Peace Corps from 1961 to 1966 in the Latin American and Caribbean countries (mainly in Peru). He wishes to study the effects of these efforts in terms of any increase in the number of people participating in the decision making processes of community development as well as the benefits which might have derived from the establishment of these projects (e.g. roads, bridges, judicial systems, human development). The material thus derived would form the basis for publication of substantial articles or a book. Mr. Mankiewicz's salary while Press Assistant to Senator Robert Kennedy was \$29,500 per year. The amount of the award will be fixed after his exact itinerary and expense needs have been determined in discussion with Miss Symington.

ITINERARIES

PETER EDELMAN

International Travel

London	Addis Ababa
Mallorca	Nairobi
Madrid	Dar es Salaam
London	Bombay
Copenhagen	New Delhi
Stockholm	Katmandu
Warsaw	Calcutta
Prague	Rangoon
Budapest	Bangkok
Bucharest	Pnom Penh
Sofia	Singapore
Belgrade	Djakarta
Athens	Hong Kong
Istanbul	Tokyo
Tel Aviv	Honolulu

EARL GRAVES

Domestic Travel

New York - Washington	(7 trips)
New York - Chicago	(5 trips)
New York - Madison, Wis.	(4 trips)
New York - Los Angeles	(3 trips)

International Travel

New York - West Indies

THOMAS JOHNSTON

International Travel

Paris	Pnom Penh
London	Hong Kong
Berlin	Singapore
Moscow	Perth
Kiev	Esperance
Leningrad	Adelaide
New Delhi	Melbourne
Calcutta	Canberra
Bangkok	Sydney
Siem Reap	Tokyo

ITINERARIES (Continued)

FRANK MANKIEWICZ

International Travel

Lima
London

ADAM WALINSKY

Domestic Travel

Washington - Los Angeles (4 trips)
Washington - Miami (3 trips)
Washington - Madison, Wis. (5 trips)

International Travel

Yugoslavia
Czechoslovakia

JERRY BRUNO

Local Travel \$ 400.00

For bus fares, rented cars, etc.

Domestic Travel - approximate / 15-20 trips 2900.00

Syracuse-Los Angeles	(5 trips @ \$278.00)	\$1390.00
Syracuse-Miami	(5 trips @ \$150.00)	750.00
Syracuse-Madison	(5 trips @ \$100.00)	500.00
Syracuse-Chicago	(3 trips @ \$ 76.00)	228.00
Syracuse-Montreal	(1 trip @ \$ 50.00)	50.00
		<u>\$2918.00</u>

JOSEPH DOLAN

Local Travel \$ 700.00

For bus fares, rented cars, etc.

Domestic Travel 1,000.00

Washington-Denver-Washington	\$186.90
Washington-Los Angeles-Washington	286.70
Washington-Buffalo-Washington	71.40
Washington-Denver-Los Angeles-Washington	286.70
	<u>\$831.70</u>

TUESDAY, FEBRUARY 18, 1968

THE FORD FOUNDATION
320 EAST 43RD STREET
NEW YORK, NEW YORK 10017

HOWARD R. DRESSNER
SECRETARY

September 18, 1968

Dear Mr. Patman:

Mr. David Bell's letter to you of August 29, 1968, answered certain questions you had asked in a previous letter dated July 19, 1968, in connection with Travel and Study Awards we are making to some members of the staff of the late Senator Robert F. Kennedy. In response to one of those questions, Mr. Bell listed the names of those to whom such awards had been made as of that date and the amounts of each award. He indicated in that same letter that one or two cases had not yet been settled; these have now been resolved, with the result that one additional award has been made, as follows:

Frank Mankiewicz \$15,692.50

At a meeting with Mr. Osher at the Foundation on September 10, I furnished him with a description of the proposed Mankiewicz award, including the itinerary.

Respectfully,



The Honorable Wright Patman
Select Committee on Small Business
3328 Rayburn Building
Washington, D. C. 20515

THE FORD FOUNDATION
TRAVEL AND STUDY AWARD AUTHORIZATIONAWARDEE WILLIAM J. WILSON
Last NameName (Full Name) William J. Wilson Date of Birth 1923Present Address Office of Senator Robert F. KennedyCurrent Address 210 Manhattan Road, New York, New YorkPermanent Address same as above

Notes: Please attach curriculum vitae.

Award Period seven months August 3, 1968 March 5, 1969
Total Time From To

Purpose and description of award:

Study present American political scene to consider and evaluate conflicting motives, reasons and pressures which lead candidates to decisions on their campaign and the effect of their choices on our representative form of government.

Contribution expected from award toward Foundation activity or concern:

Expansion of the knowledge and techniques of methods in and influences on national political campaigns; background material of interest to Government and Law

AWARD BUDGET

Amount of Award \$ 10,400.00
Administrative Charges \$ _____
Total Award Cost \$ 10,400.00

Budget Account: Social Development Fund - Admin. 1968

Notes: Please attach complete budget estimate on separate sheet.

ADMINISTERING AGENCY

Organization FD Manpower Services

Address _____

Person Responsible _____ Telephone _____

Foundation Staff Member Responsible Robert F. Kennedy
Initiating OfficerAPPROVED BY William J. Wilson 5/13/68
Type Name Signature Date

TUESDAY, FEBRUARY 18, 1969

PROVISIONS OF AWARDDependents

For Whom Travel Authorized:

NameAge and Relationship

None

For Whom Maintenance Authorized:

None

Other Dependents Accompanying Awardee:

None

Travel Authorized (International and Local)FromToModeClass

Within U.S. and Canada

Special Provisions: (Include such items as supplemental allowance, if any, interpreter, etc.)

Per diem expenses while travelling - \$2,575.00

Insurance - \$650.00

Maintenance - \$11,725.00

Secretarial assistance - \$1,200.00

Total - \$16,150.00

Arrangements to be made by administering agency:Arrangements to be made by awardee or other agencies:Remarks:

home phone - (515) 446-7761

THE FORD FOUNDATION

TRAVEL AND STUDY AWARD BUDGET

Name of Grantee James Brown Grantee No. 8953
 Date of Birth 2-12-42 Sex M Marital Status M Soc. Sec. No. 309-18-3229
 Citizenship U.S. Occupation Staff Assistant, Senator R. Kennedy staff
 Program Name and No. Social Development Classification Regular

BUDGET	AMOUNT
Regular Maintenance - seven months	\$ <u>11,550.00</u>
Supplemental or Special Allowances (Per Diem expenses 30 days @ \$35/day and 19 days @ \$25/day)	<u>2,875.00</u>
Field Trips (Local Travel)	<u>100.00</u>
Books and Supplies (Secretarial Assistance)	<u>1,300.00</u>
Travel (Within U.S.)	<u>2,500.00</u>
Insurance	<u>250.00</u>
Tuition and Fees	_____
Other	_____
Contingency	_____
TOTAL	\$ <u>19,575.00</u>

Prepared by: [Signature] Date August 5, 1969
 Approved by: _____
 Comptroller's Office: _____ Date _____

THE FORD FOUNDATION

 Budget Fiscal Year 1963
 January 1 to December 31, 1963
SCHEDULE OF PAYMENTS
TRAVEL AND LODGING

34

BUDGET ITEM	PAYMENT DUE:				TOTAL
	(1) Immediately	(2) 2/1/63	(3) 10/1/63	(4) 11/1/63	
Regular Maintenance	\$ 1,675.00	\$ 1,675.00	\$ 1,675.00	\$ 1,675.00	\$ 11,725.00
Supplemental or Special Allowances	1,437.50			1,437.50	2,875.00
Field Trips	200.00			200.00	400.00
Books and Supplies	650.00			650.00	1,300.00
Travel					2,500.00*
Insurance					100.00
Tuition and Fees					
Other (see Remarks)					
Contingency					
TOTAL EACH PAYMENT	\$ 3,562.50	\$ 1,675.00	\$ 1,675.00	\$ 3,562.50	\$ 10,150.00

Remarks: Mr. Bruno's award is for a seven month period. He should receive maintenance in the amount of \$1,675.00 through February 11, 1963. ** Travel agent or airline will send invoices. *** AD&D and Repet. to be paid direct health insurance to be reimbursed to Mr. Bruno.

PAYMENTS TO BE SENT TO:

 (1) Mr. Jerry Bruno
 210 Lenox Avenue
 New York, New York

(2)

(3)

(4)

Date

 William P. Gormbloy
 Assistant to the Vice President

TUESDAY, FEBRUARY 18, 1963

THE FORD FOUNDATION
TRAVEL AND STUDY AWARD AUTHORIZATION

AWARDEE THOMAS
Last Name

 Name (Full Name) _____ Date of Birth _____

Insight 2011en - Administration & relations

Current Address: _____

Permanent Address _____

date: Please attach curriculum vitae.

Work Period March 11, 1921 March 2, 1921 January 6, 1922

Purpose and description of award:

Study of teaching methods, text materials and office writing used in university and law school courses which deal with the lawyer's role in the legislative process. Plans to include Yale, Harvard, California, U. of Chicago, U. of California, Stanford, et al.

Contribution expected from award toward Foundation activity or concern:

Expansion of the knowledge and techniques for the improvement of legal education
which is a topic of interest to the Office of Government & Law

AWARD BUDGET

Amount of Award \$ 12,550.00

Administrative Charges \$_____

Total Award Cost \$ 12,522.00

Budget Account: Special Det. SAL - 12/2/1973

Note: Please attach complete budget estimate on separate sheet.

ADMINISTERING AGENCY

Organization FD-36 (Rev. 12-13-56)

Address _____

Person Responsible _____ Telephone _____

Foundation Staff Member Responsible Thomas D. Gentry, Jr.
Initiating Officer

APPROVED BY: Michael J. Dwyer 8/13/69

TUESDAY, FEBRUARY 18, 1969

PROVISIONS OF AWARDDependents

For Whom Travel Authorized:

E028

NameAge and Relationship

For Whom Maintenance Authorized:

E028

Other Dependents Accompanying Awardee:

E030

Travel Authorized (International and Local)FromTo

Within United States

ModeClassSpecial Provisions (Include such items as supplemental allowance, if any, interpreter, etc.)

Maintenance - \$12,500.00

Insurance - \$24.00

Per diem while travelling - \$2,700.00

Travel w/in U.S. - \$1,000.00

Local travel - \$700.00

Secretarial expenses - \$600.00

Arrangements to be made by administering agency:Arrangements to be made by awardee or other agencies:Remarks:

TUESDAY, FEBRUARY 18, 1969

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THE FORD FOUNDATION

TRAVEL AND STUDY AWARD BUDGET

Name of Grantee Joseph Dolan Grantee No. 9993
Date of Birth 11/23/25 Sex " Marital Status " Soc. Sec. No. 038-14-1697
Citizenship U.S. Occupation Administrative Assistant, Sen. R. Kennedy Staff
Program Name and No. Social Development Classification Regular

BUDGET	AMOUNT
Regular Maintenance 2000.00 for six months	\$ 12,500.00
Supplemental or Special Allowances (Per diem while travelling \$30/day for 90 days)	2,700.00
Field Trips (Local Travel)	700.00
Books and Supplies (Secretarial Expenses)	600.00
Travel (Within U.S.)	1,000.00
Insurance (AAA only)	25.00
Tuition and Fees	
Other	
Contingency	
TOTAL	\$ 18,525.00

Prepared by: [Signature] Date: March 7, 1972
 Approved by: _____
 Comptroller's Office: _____ Date: _____

THE FORD FOUNDATION

Project: Social Development
Number: 6283SCHEDULE OF PAYMENTS
TRAVEL AND STUDY AWARDS

38

BUDGET ITEM	PAYMENT DUE:				TOTAL
	(1) Immediately	(2) 9/1/63	(3) 10/1/63	(4) 11/1/63	
Regular Maintenance	\$ 2,255.00	\$ 2,255.00	\$ 2,255.00	\$ 2,255.00	\$ 13,532.00*
Supplemental or Special Allowances	_____	_____	_____	_____	2,700.00**
Field Trips	_____	_____	_____	_____	700.00**
Books and Supplies	_____	_____	_____	_____	600.00**
Travel	_____	_____	_____	_____	1,000.00**
Insurance	_____	_____	_____	_____	24.00
Tuition and Fees	_____	_____	_____	_____	_____
Other (see Remarks)	_____	_____	_____	_____	_____
Contingency	_____	_____	_____	_____	_____
TOTAL EACH PAYMENT	\$ 2,255.00	\$ 2,255.00	\$ 2,255.00	\$ 2,255.00	\$ 18,556.00.

Remarks: * Mr. Dolan's award is for a six month period. He should receive monthly maintenance checks in the amount of \$2,255.00 through January 1, 1969 (The last check should be in the amount of \$2,257.00). The checks should be deposited in Mr. Dolan's account as set out below. ** Mr. Dolan will submit for reimbursement.

PAYMENTS TO BE SENT TO:

(1) Mr. Joseph Dolan
6019 Woodley Road
McLean, Virginia

(2) Bank Account:

National Savings & Trust Co.
First and Indiana Avenue, N.W.
Washington, D. C.
50634-B

(3)

(4)

Date _____

William P. Gormbly
Assistant to the Vice President

TUESDAY, FEBRUARY 18, 1960

THE FORD FOUNDATION
TRAVEL AND STUDY AWARD AUTHORIZATION

AWARDEE _____

Last Name

Awardee (Full Name) Dr. Edelman Date of Birth _____Present Position Legislative Assistant Office of Senator Robert F. KennedyCurrent Address 101 North Carolina Avenue, SE Washington, D.C.

Permanent Address _____

Note: Please attach curriculum vitae.

Award Period 5 months July 15, 1968 December 15, 1968

Total Time

From

To

Purpose and description of award:

Travel to study community development and social programs in several countries with special emphasis on the degree to which individual citizen participation is encouraged in planning and policy making.

Contribution expected from award toward Foundation activity or concern:

Expansion of the knowledge and techniques in community organization and development which are topics of major continuing interest to the Office of Social Development

AWARD BUDGET

Amount of Award \$ 10,091.50

Administrative Charges \$ _____

Total Award Cost \$ 10,091.50Budget Account # Social Development

Note: Please attach complete budget estimate on separate sheet.

ADMINISTERING AGENCY

Organization Ford Foundation Manager Services

Address _____

Person Responsible _____ Telephone _____

Foundation Staff Member Responsible Thomas M. Conroy, Jr.
Initiating OfficerAPPROVED BY Mitchell S. Simon
Type Name

Signature

Date 7/9/68

TUESDAY, FEBRUARY 18, 1969

PROVISIONS OF AWARDDependents

For Whom Travel Authorized:

NameAge and Relationship

Marion

wife

For Whom Maintenance Authorized:

Marion

wife

Other Dependents Accompanying Awardee:

NONE

Travel Authorized (International and Local)FromToModeClass

See attached itinerary

Special Provisions: (Include such items as supplemental allowance, if any, interpreter, etc.)

Maintenance \$10,500.00

Local travel \$500.00

Secretarial Assistance \$1,000.00

Arrangements to be made by administering agency:Arrangements to be made by awardee or other agencies:

He will make his own travel and programming arrangements

Remarks:

Office (202) 225-4451

Wife's office (202) 659-4240

THE FORD FOUNDATION

TRAVEL AND STUDY AWARD BUDGET

Name of Grantee Patricia Holman Grantee No. 8197
 Date of Birth Aug 30 Sex M Marital Status " Soc. Sec. No. 474-26-8128
 Citizenship U.S. Occupation Legislative Assistant
 Program Name and No. Social Development Classification Regular

BUDGET	AMOUNT
Regular Maintenance	\$ <u>10,500.00</u>
Supplemental or Special Allowances	<u>3,600.00</u>
Travel Expenses <u>¢10/day</u> for 3 mos.	
Field Trips (Local Travel)	<u>500.00</u>
	<u>546.80</u>
Books and Supplies	<u>1,000.00</u>
(Secretarial Assistance)	<u>3,461.80</u>
Travel	<u>3,600.00</u>
Insurance	<u>91.50</u>
Tuition and Fees	<u> </u>
Other (Preparatory Expenses)	<u>100.00</u>
Contingency	<u>300.00</u>
TOTAL	\$ <u>10,061.50</u>

Prepared by: [Signature] Date 7-7-68
 Approved by: [Signature]
 Comptroller's Office: Date

THE FORD FOUNDATION

Program: Social Development
Number: 2 0157SCHEDULE OF PAYMENTS
TRAVEL AND STIPEND AWARDS

BUDGET ITEM	PAYMENT DUE:				TOTAL
	(1) Immediately	(2) 8/15/68	(3) 9/15/68	(4) 10/15/68	
Regular Maintenance	\$ 2,100.00*	\$ 2,100.00*	\$ 2,100.00*	\$ 2,100.00*	\$ 10,500.00*
Supplemental or Special Allowances	3,600.00				3,600.00
Field Trips	500.00				500.00
Books and Supplies					3,000.00**
Travel					3,000.00***
Insurance					1250.
Tuition and Fees					
Other UNCLASSIFIED	100.00				100.00
Contingency					300.00
TOTAL EACH PAYMENT	\$ 2,300.00	\$ 2,100.00	\$ 2,100.00	\$ 2,100.00	\$ 10,000.00

Remarks: Mr. Latham's award is for five months. He should receive maintenance in the amount of \$2,100.00 through October 15, 1968. These payments should be made to his bank account - see address in #2 below.

Budgeted in case required; no payment should be made at this time. * Travel agent will bill Ford Foundation.

PAYMENTS TO BE SENT TO:

(1) Mr. Peter Melman	(2) BANK ACCOUNT	(3)	(4)
101 North Carolina Avenue S.E.	National Capital Bank of Washington		
Washington, D. C.	3rd St. and Pennsylvania Ave. SE		
	Washington, D. C.		
	Acct. # 012020203		

Date

William P. Gornbley
Assistant to the Vice President

TRAVEL AND STUDY AWARD AUTHORIZATION

Last Name

Date Received

2/18/69

Awardee (Full Name)

Date of Birth

Present Position

Current Address

Permanent Address

Note: Please attach curriculum vitae.

Award Period

Commenced

August 5, 1968

September 9, 1968

Total Time

From

To

Purpose and description of award:

Determine changes in participation by officials in political processes in the U.S., especially at the nominating process of the Democratic Party, by observing voting patterns in primary states (California), campaign staff meetings and workers, and other political events; e.g. press releases, student demonstrations, possible demonstrations in Chicago during National Convention in August.

Contribution expected from award toward Foundation activity or concern:

Key person of the Foundation will be observing or observing participation in U.S. political processes and workers; e.g. political campaigns, campaign workers, etc. as well as Government & State.

AWARD BUDGET

0,000.00

Amount of Award

\$

Administrative Charges

\$

Total Award Cost

\$ 0,000.00

(Include travel, meals, etc.)

Budget Account #

Note: Please attach complete budget estimate on separate sheet.

ADMINISTERING AGENCY

Federal Government

Organization

Address

Person Responsible

Telephone

Foundation Staff Member Responsible

Initiating Officer

APPROVED BY

Type Name

Signature

Date

5/10/69

TUESDAY, FEBRUARY 18, 1969

PROVISIONS OF AWARDDependents

For Whom Travel Authorized:

NameAge and Relationship

None

For Whom Maintenance Authorized:

None

Other Dependents Accompanying Awardee:

None

Travel Authorized (International and Local)FromToModeClass

Local within US

Special Provisions. (Include such items as supplemental allowance, if any, interpreter, etc.)

Maintenance - \$3,000.00

Insurance - \$150.00

Supplemental - per diem expenses

= \$1,140.00

International maintenance - \$900.00

Incidental expenses - \$500.00

Arrangements to be made by administering agency:Arrangements to be made by other agencies:

None, unless - advised.

Remarks:

THE FORD FOUNDATION

TRAVEL AND STUDY / WARD BUDGET

Name of Grantee Dill Fournelle Grantee No. 8272
 Date of Birth 2/14/43 Sex M Marital Status M Soc. Sec. No. 058-32-3022
 Citizenship U.S. Occupation Staff Assistant, Senator D. Kennedy staff
 Program Name and No. Social Development Classification Regular

BUDGET	AMOUNT
Regular Maintenance (for 4 months)	\$ <u>3,000.00</u>
Supplemental or Special Allowances (Per diem expenses of 33 days @ \$70/day)	<u>2,310.00</u>
Field Trips (Local travel)	<u>300.00</u>
Books and Supplies (Secretarial Assistance)	<u>600.00</u>
Travel	<u>1,000.00</u>
Insurance	<u>150.00</u>
Tuition and Fees	<u> </u>
Other (Incidental Expenses)	<u>200.00</u>
Contingency	<u> </u>
TOTAL	\$ <u>6,360.00</u>

Prepared by: _____ Date August 5, 1969

Approved By _____ Date _____
 Comptroller's Office: _____

FF-103, 8/67

THE FORD FOUNDATION

 am: Social Development
 New York 10003

 SCHEDULE OF PAYMENTS
 TRAVEL AND STUDY AWARDS

BUDGET ITEM	PAYMENT DUE:				TOTAL
	(1) Immediately	(2) 9/1/68	(3) 10/1/68	(4) 11/1/68	
Regular Maintenance	\$ 750.00	\$ 750.00	\$ 750.00	\$ 750.00	\$ 3,000.00
Supplemental or Special Allowances	570.00	570.00			1,140.00
Field Trips	100.00	100.00			200.00*
Books and Supplies					600.00*
Travel					1,000.00**
Insurance					150.00***
Tuition and Fees					
Other (See 2/2/68 letter)	100.00	100.00			200.00
Contingency					
TOTAL EACH PAYMENT	\$ 1,520.00	\$ 1,520.00	\$ 750.00	\$ 750.00	\$ 6,540.00

Remarks: Mr. Forsythe will advise when third payment for local travel and secretarial allowance should be paid. Travel agent or airline will send invoices. ***ADP paid direct and reimbursement will be for health insurance premium.

PAYMENTS TO BE SENT TO:

 (1) Mr. Bill Forsythe
 200 East 57th Street (Apt. 2E)
 New York, New York 10022

(2)

(4)

TRAVEL AND STUDY AWARD AUTHORIZATION

Last Name

Awardee (Full Name) Evel Graves Date of Birth 32
 Present Position Self-employed, Consultant to Dr. T. G. S. S. S.
 Current Address 1000 14th Street, Brooklyn, New York 11214
 Permanent Address Same as above

Notes: Please attach curriculum vitae.

Award Period From July 15, 1969 To January 15, 1970
 Purpose and description of award:

Study of opportunities for Black people to engage in small private enterprise business starting with the Bedford-Stuyvesant area, with a term at the Folio Institute in Washington, D. C. He is interested in finding out how the business can find capital for such enterprises.

Contribution expected from award toward Foundation activity or concern:

Expansion of the knowledge and techniques in Black entrepreneurship which is a topic of major granting interest to the Office of Social Development

AWARD BUDGET

Amount of Award \$ 10,000.00
 Administrative Charges \$ 500.00
 Total Award Cost \$ 10,500.00

Budget Account # 1000 Development, at ANP - 1000.00
 Note: Please attach complete budget estimate on separate sheet.

ADMINISTERING AGENCY

Organization FP Management Services

Address

Person Responsible Telephone

Foundation Staff Member Responsible Sharon L. C. Smith, FA

Initiating Officer

APPROVED BY Mitchell Smith

Type Name

Signature

Date

8/13/69

TUESDAY, FEBRUARY 18, 1960

PROVISIONS OF AWARDDependents

For Whom Travel Authorized:

NameAge and Relationship

(only to W. Indies)

Barbara

Wife

For Whom Maintenance Authorized:

Barbara

Wife

Other Dependents Accompanying Awardee:

None

Travel Authorized (International and Local)FromToModeClass

Approximately 20 trips within US.

New York

W. Indies

Air

Economy

Special Provisions (Include such items as supplemental allowance, if any, interpreter, etc.)

Subsistence \$7,500.00

Incidental Expenses to Overseas Expenses \$1000.00

Domestic travel \$2,750.00

Incidental Expenses \$4,000.00

To W. Indies w/wife \$700.00

Arrangements to be made by administering agency:Arrangements to be made by awardee or other agency:

He will make travel & provisioning arrangements.

Remarks:

Home phone: 744-5533

THE FORD FOUNDATION

TRAVEL AND STUDY AWARD BUDGET

Name of Grantee Paul G. Gougeon Grantee No. 8233
 Date of Birth Aug 33 Sex M Marital Status M Soc. Sec. No. 122-06-6112
 Citizenship U.S. Occupation Staff Assistant, Senator R. Kennedy staff
 Program Name and No. Social Development Classification Regular

BUDGET	AMOUNT
Regular Maintenance (for six months)	\$ <u>7,500.00</u>
Supplemental or Special Allowances (Per diem expenses 15 days @ \$30/day and 30 days @ \$40/day.)	<u>2,550.00</u>
Field Trips (Local Travel)	<u>500.00</u>
Books and Supplies (Secretarial Assistance)	<u>1,000.00</u>
Travel (Within U.S. and to West Indies w/wife) \$700 for W. Indies and \$2,750 for U.S.)	<u>3,450.00</u>
Insurance	<u>100.00</u>
Tuition and Fees	<u> </u>
Other (Incidental Expenses)	<u>1,000.00</u>
Contingency	<u> </u>
TOTAL	\$ <u>10,500.00</u>

Prepared by: [Signature] Date August 5, 1968
 Approved by _____ Date _____
 Comptroller's Office: _____

THE FORD FOUNDATION

Program of Social Development
Period 4-1-63 to 3-31-64SCHEMATIC OF PAYMENTS
TRAVEL AND STUDY EXPENSES

5

50

BUDGET ITEM

PAYMENT DUE:

	(1) Immediately	(2) 8/15/63	(3) 9/15/63	(4) 10/15/63	TOTAL
Regular Maintenance	\$ 1,250.00*	\$ 1,250.00*	\$ 1,250.00*	\$ 1,250.00*	\$ 4,000.00*
Supplemental or Special Allowances	2,550.00				2,550.00
Field Trips	500.00				500.00
Books and Supplies					1,000.00**
Travel					3,150.00***
Insurance					100.00
Tuition and Fees					
Other (all expenses)	200.00				2,000.00****
Contingency					
TOTAL EACH PAYMENT	\$ 4,000.00	\$ 1,250.00	\$ 1,250.00	\$ 1,250.00	\$ 10,500.00

Remarks: * Mr. Graves' award is for six months. He should receive maintenance in the amount of \$1,250 through 12/15/63. The balance should be made to his bank account - see #2 below. ** Mr. Graves will submit for reimbursement. *** Mr. Graves will submit for reimbursement. **** Mr. Graves will submit for reimbursement.

PAYMENTS TO BE SENT TO:

(1) Mr. Paul Graves
510 Second Street
Brooklyn, New York 11233

(2) First National City
46th St. and Park Avenue
New York, New York
\$ 0210003 07106114

(4)

Date

William P. Gorenblay
Assistant to the Vice President

TUESDAY, FEBRUARY 18, 1964

THE FORD FOUNDATION
TRAVEL AND STUDY AWARD AUTHORIZATION

AWARDEE

Last Name

awards (Full Name) Thomas Johnston Date of Birth _____
 recent Position Staff Assistant - Office of General Administration
 current Address "Elmwood", 20 Elmwood Way, Denver
 permanent Address _____

Note: Please attach curriculum vitae.

award Period 1968 August 1, 1968 October 31, 1968
 Total Time From To

Purpose and description of award:

award to the foundation of a national and/or international newspaper transmitted through the medium of television. Award of \$10,000 to the participants and electronic technicians in the field (particularly in the U.S.) and the U.S. specifically involving questions to members of the paper, published in the field of electronic publishing paper transmitted, within a time number of potentially award, a year.

Contribution expected from award toward Foundation activity or concern:

award to the foundation of a national and/or international newspaper transmitted through the medium of television. Award of \$10,000 to the participants and electronic technicians in the field (particularly in the U.S.) and the U.S. specifically involving questions to members of the paper, published in the field of electronic publishing paper transmitted, within a time number of potentially award, a year.

AWARD BUDGET

Amount of Award \$ 10,000.00
 Administrative Charges \$ _____
 Total Award Cost \$ 10,000.00

FUNDING AGENCY: FORD FOUNDATION - 1968

Budget Account # _____

Note: Please attach complete budget estimate on separate sheet

ADMINISTERING AGENCY

Organization FORD FOUNDATION

Address _____

Person Responsible _____ Telephone _____

Four or Six Staff Member Responsible THOMAS JOHNSTON

Initiating Officer

APPROVED BY _____ Date 1/23/69

Type Name _____ Signature _____

Date

TUESDAY, FEBRUARY 18, 1960

PROVISIONS OF AWARDDependents

For Whom Travel Authorized:

NameAge and Relationship

None

For Whom Maintenance Authorized:

None

Other Dependents Accompanying Awardee:

None

Travel Authorized (International and Local)FromtoModeClass

New York around the world to New York:

Air

Economy

Within U.S.

Special Provisions (Include such items as supplemental allowance, if any, interpreter, etc.)

Maintenance - \$5,000.00

Local travel - \$200.00

Per diem while travelling - \$2,250.00

Travel - \$1,630.55

Geographical expenses - \$1,000

Insurance - 1.00

Arrangements to be made by administering agency:Arrangements to be made by awardee or other agencies:

Remarks: Awardee should be made out to his account and name of Mr. Owen H. Security & Travel Co., Lexington, Ky. (checking account)

THE FORD FOUNDATION

TRAVEL AND STUDY AWARD BUDGET

Name of Grantee Thomas Johnson Grantee No. 8007
 Date of Birth _____ Sex M Marital Status _____ Soc. Sec. No. _____
 Citizenship U.S. Occupation _____
 Program Name and No. Social Development Classification Regular

BUDGET	AMOUNT
Regular Maintenance (for three months)	\$ <u>5,000.00</u>
Supplemental or Special Allowances (.25 per diem while travelling)	<u>2,250.00</u>
Field Trips - Local travel	<u>300.00</u>
Books and Supplies - Secretarial Expenses	<u>1,000.00</u>
Travel	<u>1,630.85</u>
Insurance	<u>5.00</u>
Tuition and Fees	_____
Other	_____
Contingency	_____
TOTAL	\$ <u>10,135.85</u>

Prepared by A. C. [Signature] Date Jan 15, 1969
 Approved by [Signature]
 Comptroller's Office _____ Date _____

THE FORD FOUNDATION

 PAYEE'S NAME: Dr. D. M. [illegible]
 Awarded \$5,000
SCHEDULE OF PAYMENTS
TOWARD AND STUDY AWARD

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BUDGET ITEM	PAYMENT DUE:				TOTAL
	(1) Immediately	(2)	(3)	(4)	
Regular Maintenance	\$ 1,666.00	For three months + total to be \$5,000.			\$ 5,000.00
Supplemental or Special Allowances					2,250.00
Per Diem While Travelling					
Local Travel					500.00
Books, Supplies, Secretarial Assistance					1,000.00
Travel	1,600.00				1,600.00
Insurance					5.00
Tuition and Fees					
Other					
Contingency					
TOTAL EACH PAYMENT	\$ 1,666.00	\$	\$	\$	\$ 10,190.00

Remarks: * Will advise when and where payment should be made.
 ** First payment to be deposited in bank account see below.

PAYMENTS TO BE SENT TO:

 Banking Account:
 Mr. Thomas Johnston
 c/o Mr. Owen Hill
 Security Trust Company
 Lexington, Kentucky

Date

TUESDAY, FEBRUARY 18, 1960

PEACE CORPS STUDY AWARD AUTHORIZING

Last Name

Awardee (Full Name) Frank Markiewicz Date of Birth 5/16/24
 Present Position Press Secretary to the late Senator Robert F. Kennedy
 Current Address 5206 Kadiak, Washington, D. C. 20016
 Permanent Address same as above

Note: Please check curriculum vitae.

Award Period 5 months September 1, 1968 February 1, 1969
 Total Time From To

Purpose and description of award:

To evaluate the extent of change in the rural and urban Peace Corps community development projects for which he was responsible while with the Peace Corps from 1961 to 1963 in the Latin American and Caribbean countries (mainly in Peru). He will study the effects of these efforts in terms of any increase in the number of people participating in the decision-making processes of community development as well as the benefits which might have derived from the establishment of these projects (e.g. roads, bridges, judicial systems, human development). Material thus derived would form basis for substantial articles or a book.

Contributions expected from award toward Foundation activity or concern:

Expansion of the knowledge and techniques and effectiveness of community development projects are of major granting interest to the Office of Social Development, progress and effectiveness of Peace Corps projects in Latin America and the Caribbean are topics of major granting interest to the Office of Latin America and Caribbean Areas in the International Division.

AWARD BUDGET

Amount of Award \$ 15,692.50
 Administrative Charges \$ _____
 Total Award Cost \$ 15,692.50

Sponsor Account # Social Development FAP - Appr. #585

Note: Please check complete budget estimate on separate sheet.

ADMINISTERING AGENCY

Organizer FF Manpower Services

Address _____

Person Responsible _____ Telephone _____

Foundation Staff Member Responsible Thomas E. Conroy, Jr.

Initiating Officer's _____

APPROVED BY Mitchell Swirsdoff

Type Name

Signature

Date

9/12/68

TUESDAY, FEBRUARY 18, 1969

PROVISIONS OF AWARDDependents

For Whom Travel Authorized:

NONE

NameAge and Relationship

For Whom Maintenance Authorized:

NONE

Other Dependents Accompanying Awardee:

NONE

Travel Authorized (International and Local)

<u>From</u>	<u>To</u>	<u>Mode</u>	<u>Class</u>
Washington, D. C.	Latin America & Caribbean	Air	Economy

Special Provisions (include such items as supplemental allowance, if any, interpreter, etc.)

Per diem while travelling - \$1,200.00
 Local Travel - \$500
 Secretarial Assistance, supplies - \$1,000

Travel - \$1,000.00
 Insurance - \$127.50

Arrangements to be made by administering agency:Arrangements to be made by awardee or other agencies:Remarks

TUESDAY, FEBRUARY 18, 1969

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THE FORD FOUNDATION

TRAVEL AND STUDY AWARDS BUDGET

Name of Grantor Frank Wankiewicz Grantee No. 841 S.S.# 573-20-6411

Citizenship U.S. Occupation Press Secretary, Senator R. F. Kennedy

Program Name Social Development Classification Regular

BUDGET	AMOUNT
Regular Maintenance for five months @ \$2,375/mo.	\$ <u>11,875.00</u>
Supplemental or Special Allowances	<u> </u>
Per Diem While Travelling: <u>40</u> Days @ <u>\$ 30</u> per day	<u>1,200.00</u>
Local Travel	<u>500.00</u>
Books, Supplies, Secretarial Assistance	<u>1,000.00</u>
Travel	<u>1,000.00</u>
Insurance	<u>117.50</u>
Tuition and Fees	<u> </u>
Other	<u> </u>
Contingency	<u> </u>
TOTAL	\$ <u>15,692.50</u>

Prepared by: J. Aid B. [Signature] Date September 11, 1968

PROVISIONS OF AWARDDependents

For Whom Travel Authorized:

NameAge and Relationship

NONE

For Whom Maintenance Authorized:

NONE

Other Dependents Accompanying Awardee:

NONE

Travel Authorized (International and Local)Approved trips within United States
or trips to AlaskaModeClassSpecial Provisions: (Include each separate supplemental allowance, if any, interpreter, etc.)

Total amount of U.S. currency = \$2,600.00 and \$1,000.00 (travel only)

Subsistence allowance = \$1,000.00

Traveling expenses = \$100.00

Insurance = \$300.00

Arrangements to be made by administering agency:Arrangements to be made by awardee or other agencies:Remarks:

None paid - 200 000-1100

TUESDAY, FEBRUARY 18, 1969

THE FORD FOUNDATION

TRAVEL AND STUDY AWARD BUDGET

Name of Grantee Allen Williams Grantee No. 1008Date of Birth 2/22/37 Sex M Marital Status M Soc. Sec. No. _____Citizenship U.S. Occupation Legislative AssistantProgram Name and No. Social Development Classification Regular

BUDGET	AMOUNT
Regular Maintenance for 12 months	\$ <u>12,500.00</u>
Supplemental or Special Allowances (Within U.S.)	<u>2,500.00</u>
(For European Trips)	<u>1,200.00</u>
Field Trips	_____
Books and Supplies (Secretarial Assistant)	<u>1,000.00</u>
Travel (Within U.S.)	<u>2,000.00</u>
(Trips to Europe)	<u>2,500.00</u>
Insurance	<u>300.00</u>
Tuition and Fees	_____
Other (Preparatory Expenses)	<u>100.00</u>
Contingency	_____
TOTAL	\$ <u>25,800.00</u>

Prepared by: [Signature] Date January 7, 1969Approved by _____
Comptroller's Office: _____ Date _____

THE FORD FOUNDATION

 Report of the Board
 January 1969
SCHEDULE OF PAYMENTS
TRAVEL AND STUDY AWARDS

BUDGET ITEM	PAYMENT DUE:				TOTAL
	(1) Immediately	(2) 9/1/69	(3) 10/1/69	(4) 11/1/69	
Regular Maintenance	\$ 2,033.00	\$ 2,033.00	\$ 2,033.00	\$ 2,033.00	\$ 12,200.00
Supplemental or Special Allowances	_____	_____	_____	_____	2,000.00
Field Trips	_____	_____	_____	_____	1,200.00
Books and Supplies	_____	_____	_____	_____	1,000.00
Travel	_____	_____	_____	_____	2,000.00
Insurance	_____	_____	_____	_____	300.00
Tuition and Fees	_____	_____	_____	_____	_____
Other (specify)	_____	_____	_____	_____	100.00
Contingency	_____	_____	_____	_____	_____
TOTAL EACH PAYMENT	\$ 2,033.00	\$ 2,033.00	\$ 2,033.00	\$ 2,033.00	\$ 22,200.00

Remarks: Mr. Melinsky's award is for a six month period. He should receive maintenance checks through Jan. 1, 1969. (The last check should be in the amount of \$2,000). ** He will advise when payment should be made. *** He will pay for his own dental insurance and pay the rest directly.

PAYMENTS TO BE SENT TO:

(1) Mr. Allen Melinsky
 7315 Churchill Road
 McLean, Virginia

(2) _____

(3) _____

(4) _____

 William P. Garofalo
 Assistant to the Vice President

TUESDAY, FEBRUARY 18, 1969

TUESDAY, FEBRUARY 18, 1969

THE FORD FOUNDATION

Overseas Staff as of September 30, 1967

	<u>U.S. Appointees</u>	<u>Local Nationals</u>
<u>South & Southeast Asia</u>		
India and Nepal	71	190
Indonesia	3	30
Malaysia	3	54
Pakistan	12	139
Philippines	4	24
Thailand	5	17
	<u>98</u>	<u>454</u>
<u>Middle East & Africa</u>		
Congo	-	2
Tunisia	9	9
Iraq	1	-
Ghana	2	10
Kenya	22	16
Lebanon	21	16
Syria	1	5
Jordan	3	2
Saudi Arabia	1	-
Turkey	6	9
U.A.R.	3	19
Algeria	1	1
Morocco	1	2
Nigeria	21	24
Ethiopia	3	-
Tanzania	8	-
Uganda	3	-
Gambia	2	-
	<u>108</u>	<u>115</u>
<u>Latin America & Caribbean</u>		
Argentina	4	9
Brazil	13	18
Chile	12	15
Colombia	4	12
Mexico & Central America	10	21
Peru	3	9
Venezuela	3	6
Jamaica	1	1
	<u>50</u>	<u>95</u>
Totals	<u>256</u>	<u>664</u>

THE FORD FOUNDATION

Other Professional Services - Fiscal Year 1966

Name and Address of Payee

Academy for Educational Development, Inc. 1180 Ave. of the Americas New York, N.Y.	2,962.96	Preparation of Instructional Television Report "Learning by Television"
Caudill Rowlett Scott 3636 Richmond Avenue Houston, Texas	37,472.62	Architectural Services re - Community Facilities Program in Chile
Canadian Agro Service Ltd. 24 Strachan Street Lagos, Nigeria	10,000.00	Engineering Services re - International Institute of Tropical Agriculture, Ibadan, Nigeria
Gilbert Associates, Inc. 525 Lancaster Ave. Reading, Pa.	12,000.00	Engineering Services re - International Institute of Tropical Agriculture, Ibadan, Nigeria
Smith Haines Lundberg & Washler 2 Park Avenue New York, N.Y.	140,756.28	Architectural and engineering services re - International Institute of Tropical Agriculture
Clarke and Rapuano, Inc. 830 Third Avenue New York, N.Y.	23,544.30	Architectural and engineering services re - International Institute of Tropical Agriculture
Eauline Fisher 110 W. 69th Street New York, N.Y.	454.65	Schematic map showing proposed operation of non-commercial television satellite
Resource Planning Associates 2000 P. Street N.W. Washington, D.C.	12,000.00	Study of the feasibility of a discontinuous national park along the Atlantic Coast
Perkins & Will 309 W. Jackson Blvd. Chicago, Ill.	63,166.55	Architectural services re - National School of Agriculture, Chapingo, Mexico

TUESDAY, FEBRUARY 18, 1969

<u>Name and Address of Payee</u>	<u>Amount</u>	<u>Services Rendered</u>
Neald, Hobson and Associates 230 Park Avenue New York, N.Y.	40,000.00	Consulting services for the year 1966
Boos, Allen & Hamilton, Inc. 135 S. La Salle Street Chicago, Ill.	215.00	Review of Salary Administration Survey
Industrial Relations Counselors Service, Inc. 1270 Avenue of the Americas New York, N.Y.	3,103.88	Consultations re - "Comparisons of various methods of Overseas Compensations" and overseas information reporting service
Documentation, Inc. 4833 Rugby Avenue Bethesda, Maryland	64,000.00	Survey and proposal for data processing system design
Executive Health Examiners 771 Third Avenue New York, N.Y.	4,800.00	Retainer in connection with medical consultations regarding Foundation health program
The Gallup Organization, Inc. 53 Bank Street Princeton, N.J.	1,640.00	Survey of "Knowledge of and attitudes toward the Ford Foundation"
University Council for Educational Administration 65 S. Oval Drive Columbus, Ohio	896.74	Preparing materials for conference to assess possibilities of future Foundation activities in the field of education administration
American Symphony Orchestra League, Inc. P.O. Box 66 Vienna, Virginia	250.00	Research relative to Foundation's symphony orchestra program
Dean Economics, Inc. 156 E. 52nd Street New York, N.Y.	7,500.00	Services in connection with Development Indicator Chartbook

<u>Name and Address of Payee</u>	<u>Amount</u>	<u>Services Rendered</u>
E. F. Shelley & Co., Inc. 886 United Nations Plaza New York, N.Y.	\$ 5,000.00	Feasibility study re - nature and desirability of an information service for family planning administrators and others concerned with population
Cushman & Wakefield, Inc. 529 Fifth Avenue New York, N.Y.	15,000.00	Building management and service
Lawrence K. Grossman, Inc. 275 Madison Avenue New York, N.Y.	2,500.00	Creating and supervising production of "Press Comment on The Ford Foundation Proposal to the F.C.C. etc."
IBM Corporation Armonk, N.Y.	25,000.00	Services re - Broadcasters Non-Profit Satellite System
	<hr/> 472,263.00	
Other professional services rendered overseas paid for in local currencies	<u>1,368.85</u>	
	<u>\$473,631.85</u>	
Rounded total as shown on tax return	\$473,632	

TUESDAY, FEBRUARY 18, 1960

THE FORD FOUNDATION

Other Professional Services - Fiscal Year 1967

<u>Name and Address of Payee</u>	<u>Amount</u>	<u>Services Rendered</u>
Parkins & Will 309 W. Jackson Blvd. Chicago, Ill.	\$ 25,569.67	Architectural services re - National School of Agriculture, Chapingo, Mexico
Candill-Rowlett Scott 3636 Richmond Ave. Houston, Texas	604.55	Architectural services re - Community Facilities Program in Chile
Smith Haines Lundberg & Washler 2 Park Avenue New York, N.Y.	483,578.63	Architectural and engineering services re - International Institute of Tropical Agriculture, Ibadan, Nigeria
Gilbert Associates, Inc 525 Lancaster Ave. Reading, Pa.	25,680.11	Engineering services re - International Institute of Tropical Agriculture, Ibadan, Nigeria
Clarke and Repuano, Inc. 830 Third Avenue New York, N.Y.	90.63	Architectural and engineering services re - International Institute of Tropical Agriculture, Ibadan, Nigeria
Wood & Tower, Inc. 90 Nassau Street Princeton, N.J.	9,146.18	Construction planning and cost control services re - International Institute of Tropical Agriculture, Ibadan, Nigeria
Foundation Engineering (Nigeria) Ltd. Private Mall Bag 2100 Lagos, Nigeria	14,107.96	Subsoil investigation re - International Institute of Tropical Agriculture, Ibadan, Nigeria
Canadian Aero Service Ltd. Nurt Club Road Ottawa, Canada	34,503.00	Engineering services re - International Institute of Tropical Agriculture, Ibadan, Nigeria

<u>Name and Address of Payee</u>	<u>Amount</u>	<u>Services Rendered</u>
Resource Planning Associates 2000 P. Street N.W. Washington, D.C.	\$16,000.00	Study of the feasibility of a discontinuous national park along the Atlantic Coast
Harold F. Wise/Robert Oldstone Associates 1750 Pennsylvania Ave. N.W. Washington, D.C.	2,200.00	Study of the feasibility of a discontinuous national park along the Atlantic Coast
Hughes Aircraft Co. Culver City, California	5,000.00	Study re Broadcasters Non-Profit Satellite System
IBM Corporation Armonk, N.Y.	29,764.34	Services re Broadcasters Non-Profit Satellite System
Executive Development Center 56 Boylston St. Cambridge, Mass.	2,500.00	Services re organization and operation of a national non-Commercial Television Satellite System
Philco-Ford Corp. 3825 Fabian Way Palo Alto, California	44,365.00	Services re Broadcasters Non-Profit Satellite System
Mammett & Edison Box 68, International Airport San Francisco, California	9,264.34	Consultations on Ford Foundation Television Satellite Proposal
Institute of International Education, Inc. 809 United Nations Plaza New York, N.Y.	1,100.00	Programming and listing survey of students from Saudi Arabia in the U.S.
Lockheed Missiles & Space Co. Sunnyvale, California	5,462.54	Consultant Services on Communications Satellite Project
Greenleigh Associates, Inc. 355 Lexington Ave. New York, N.Y.	25,000.00	Evaluation of the Opportunities Industrialization Center in Philadelphia

<u>Name and Address of Payee</u>	<u>Amount</u>	<u>Services Rendered</u>
Heald, Hobson & Associates 230 Park Avenue New York, N.Y.	\$ 35,000.00	Consulting services for the year 1967
Univac-Division of Sperry Rand Corporation P.O. Box 3382 Church St. Station New York, N.Y.	10,690.30	Data processing service on zip coding mailing lists
Management Analysis Center, Inc. 14 Concord Lane Cambridge, Mass.	2,013.45	Review of accounting system
George Comfort Co., Inc. 60 E. 42nd Street New York, N.Y.	12,000.00	Retainer in connection with acquisitions of real estate
James D. Landauer Associates, Inc. 200 Park Avenue New York, N.Y.	12,000.00	Retainer in connection with acquisition of real estate
J. Clarence Davies Inc. 331 Madison Avenue New York, N.Y.	12,000.00	Retainer in connection with acquisition of real estate
Industrial Relations Counselors Service, Inc. 1270 Avenue of the Americas New York, N.Y.	1,933.33	Information concerning personnel practices and compensation in overseas operations
Smyth & Murphy Associates, Inc. 45 Rockefeller Plaza New York, N.Y.	750.00	Consultation on compensation matters
Executive Health Examiners 777 Third Avenue New York, N.Y.	4,600.00	Retainer in connection with medical consultations regarding Foundation health program
Magnum Films 72 W. 45th Street New York, N.Y.	38,500.00	Services in connection with film on Ford Foundation building

<u>Name and Address of Payee</u>	<u>Amount</u>	<u>Services Rendered</u>
Hammer, Greene, Siler Associates 1140 Connecticut Ave., N.W. Washington, D.C.	\$ 5,745.00	Analysis of feasibility of an alternative site for the U.N. International School
Documentation Inc. 4833 Rugby Avenue Bethesda, Maryland	658,681.61	Data processing system design and operating service
Wall Shipping Co., Inc. 1331 G. Street N.W. Washington, D.C.	16.75	Shipping equipment re data processing to Kingston, Jamaica
The Gallup Organization, Inc. 53 Bank Street Princeton, N.J.	1,640.00	Survey of "Knowledge of and Attitude toward the Ford Foundation"
Cushman & Wakefield, Inc. 529 Fifth Avenue New York, N.Y.	39,820.47	Building management and service
Dean Economics Inc. 156 E. 52nd Street New York, N.Y.	652.61	Services in connection with Development Indicator Chartbook
National Academy of Sciences 2101 Constitution Ave. Washington, D.C.	1,026.37	Study on graduate education
	<hr/> 1,571,406.84	
Other professional services rendered overseas paid for in local currencies	<hr/> 21,261.45	
	<hr/> \$1,592,668.29	
Rounded total as shown on tax return	\$1,592,666	

THE FORD FOUNDATION

Office of Reports

Payments to Consultants - Fiscal 1967

<u>Name and Address of Payee</u>	<u>Amount</u>	<u>Services Rendered</u>
Peter J. Pollack 6 W. 77th Street New York, N.Y.	\$ 1,500.00	Organizing and editing photo library and advising on photographic projects
Lucia Mount c/o Christian Science Monitor 333 North Michigan Avenue Chicago, Illinois	250.00	Writing section of report on Foundation-supported school improvements in University City, Wisconsin
Herbert G. Stein 1221 Massachusetts Ave. N.W. Washington, D.C.	300.00	Writing section of report on Foundation-supported school improvements in the public schools of Pittsburgh, Pa.
Wiles Green c/o Oregon Journal 1320 S.W. Broadway Portland, Oregon	200.00	Writing section of report on Foundation-supported school improvements in Oregon
James Benet 161 Elgin Hill Way San Francisco, California	225.00	Writing section of report on Foundation-supported school improvements
Robert M. Tarte 245 Henry Street Brooklyn, N.Y.	350.00	Writing report on the Brantwood, N.J. school improvement program
Jeanne Loe 104 East 81st Street New York, N.Y.	1,500.00	Manuscript on Foundation grant in the field of government, particularly at the state and local level
Helen Rosen 1665 Green Street San Francisco, Calif.	375.00	Writing section of report on Foundation-supported improvements in the public schools of Santa Barbara, California
Ben Bagdikian 1724 National Press Building Washington, D.C.	2,000.00	Preparation of report on the Foundation's activities in strengthening graduate journalism education

<u>Name and Address of Payee</u>	<u>Amount</u>	<u>Services Rendered</u>
Lee Ash 31 Alden Road New Haven, Conn.	\$ 150.00	Study of the practicability of developing a bibliographical record of publications stemming from Foundation grants
Ray Stevens 125 Madison Avenue New York, N.Y.	150.00	Photographing primary school, vocational education project in Camden, N.J.
Fred V. Hoch Associates, Inc. 461 Eighth Avenue New York, N.Y.	500.00	Analysis of bill for topography of Foundation's Annual Report
Black Star Publishing Co., Inc. 450 Park Avenue So. New York, N.Y.	1,050.00	Photograph Foundation activities in Peking and Language Laboratory at Columbia University
Frank V. Vitullo 330 East 33rd Street New York, N.Y.	850.00	Design and supervision of exhibitions installed in Foundation reception room
Arnold Shaw 225-10 16th Ward Flushing, N.Y.	500.00	Design and type specification on booklet "Justice For All"
C. Thomas Hardin 222 E. 1st Place Louisville, Kentucky	150.00	Photographing "Project Opportunity" at Centre College in Danville, Kentucky
Theodore Strongin 675 West End Avenue New York, N.Y.	305.62	Assisting in preparation of pamphlet describing made projects sponsored by grants from the Foundation and the Arts program
	<hr/> \$10,365.62	

TUESDAY, FEBRUARY 18, 1969

THE ROCKEFELLER FOUNDATION

<u>Country</u>	<u>Employees (including officers)</u>
Brazil	3
Chile	4
Colombia	21
India	15
Italy	1
Kenya	5
Mexico	11
Nigeria	6
Philippines	13
St. Lucia	5
Tanzania	2
Thailand	23
Trinidad	1
Uganda	2

The foregoing figures do not include foreign nationals locally hired who are not carried on employees on the records of the Foundation.

The CHAIRMAN. We thank you, Mr. Patman, for bringing to us this information developed in your subcommittee.

Are there any questions of Mr. Patman?

Mr. BYRNES. Mr. Chairman.

The CHAIRMAN. Mr. Byrnes.

Mr. BYRNES. I just want to say to Mr. Patman that I am sure the committee will benefit from the work that your committee has done and the data it developed, and I want to express my appreciation for the information you brought to the committee.

Mr. PATMAN. Thank you, sir.

The CHAIRMAN. Mr. Burke.

Mr. BURKE. I just wish to commend Mr. Patman for his statement. This is a shocking statement and reveals many of the abuses that have taken place, and I think it will be incumbent upon this Congress to take action.

The CHAIRMAN. Mrs. Griffiths.

Mrs. GRIFFITHS. Mr. Chairman, I would like to commend Mr. Patman, also. I must say to you, Mr. Patman, I think you have done more for the average person in this country than perhaps any man who ever entered this Congress, and I think this has been one of the best pieces of work that you have done.

I can't begin to express my gratitude. In my opinion, this committee should do something about the things that you have uncovered.

Mr. PATMAN. Thank you.

The CHAIRMAN. Any further comments or questions?

Mr. Patman, we do appreciate your coming to the committee and the work that you have done in this area. Certainly we also appreciate your making available to us the files of your committee.

We thank you, sir.

Mr. PATMAN. Thank you.

(The following letter was received by the committee:)

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., May 5, 1969.

HON. WILBUR MILLS,
Chairman, House Ways and Means Committee,
Washington, D.C.

DEAR MR. CHAIRMAN: I am transmitting herewith for the consideration of the Committee on Ways and Means the seventh installment of our study of the impact of tax-exempt foundations and charitable trusts on the Nation's economy. This information was not available at the time that I testified before the Committee on Ways and Means on February 18, 1968. This report was developed for and submitted to the Subcommittee on Foundations by Harry Olsner, formerly of the staff of the Subcommittee who left our employ on April 1, 1968.

The Subcommittee on Foundations has now compiled more than 5,000 pages of studies and testimony since our investigation began in 1962, all aimed at determining what legislation is needed in order to provide effective supervisory controls over tax-exempt foundations and to protect the public.

This study deals primarily with data on the activities of 647 foundations during the year 1967. Our earlier work covered the years 1951 through 1966.

The economic prowess of the foundations continued unabated during 1967. Here are some statistical highlights gleaned from the 1967 tax returns of the 647 tax-exempt foundations under study by the Subcommittee:

The 647 foundations had total receipts of \$1.2 billion, including capital gains of \$203.8 million; gross profit from business activities of \$24.8 million, and contributions received of \$285.3 million.

The 647 foundations paid out \$754.2 million in contributions, gifts, grants, scholarships, etc.

The officers, directors, etc., of the 647 foundations received \$18.1 million in compensation, and office rent cost \$9.4 million.

The tax returns of the 647 foundations indicate that they had accumulated (unspent) income of more than \$2 billion at the close of 1967. This compares with around \$1 billion at the end of 1960 and some \$367 million at the beginning of the first accounting period for which they submitted data to the Subcommittee (usually 1951). In other words, a six-fold increase in accumulated wealth during less than three decades, and at a rate that shows no sign of slackening.

The 647 foundations had assets valued at \$17.8 billion at the close of 1967 as against \$15.5 billion at the close of 1966 (with market values of stock being used wherever available). The \$17.8 billion valuation is 66 percent greater than the \$11.8 billion capital funds (capital stock, surplus, undivided profits and contingency reserves) at December 31, 1967 of the fifty largest banks in the United States. The assets, valued at \$17.8 billion, include shares of closely held companies that are not traded, as well as a variety of investments other than securities—land, real estate, inventories, equipment, patents, insurance policies, works of art, etc. The foundations show this type of asset at carrying value, which is the value used in this report. The actual market value in many cases is considerably higher than the carrying value. For this reason, the \$17.8 billion figure is a guideline, but not necessarily a precise one.

For comparison purposes, the carrying value of the assets of the 647 foundations was \$11.2 billion at the close of 1967; \$10.7 billion at the close of 1966; and \$2.8 billion at the close of 1951.

The market value of their investments in corporate stocks was \$13.1 billion at the close of 1967 compared with \$10.9 billion at the end of 1966.

One hundred fifty-four of the 647 foundations under study held sizeable amounts of stock in 313 corporations at the close of the year 1967. Those stockholdings ranged from 5 percent to 100 percent of the outstanding shares of at least one class of stock. The carrying value of those shares was \$2.7 billion and the estimated market value was \$6.2 billion. Again, I point to the fact that the \$6.2 billion valuation may be considerably understated because, in many instances, the securities are those of closely-held companies that are not traded. These are usually shown at the foundation's carrying value; which is normally lower than the real value.

The first six installments of our studies describe in considerable detail various methods by which foundations can and have abused their tax-exempt status. During that period, the attitudes of the foundation hierarchy have changed very little. In preparing their annual tax returns, foundations exempt from income tax are guided by the Internal Revenue Service publication, "Instructions for Form 990-A," Instruction 17 of which reads as follows:

"17. In all cases where money, securities, or other property aggregating \$100 or more is received directly or indirectly from one person in one or more transactions during the year, attach an itemized schedule to page 1 (not to pages 3 and 5) showing the name, address, date received, and the total amount received from each such person. If the contribution is in the form of property the description and the fair market value of such property shall also be furnished. (The term "person" includes individuals, fiduciaries, partnerships, corporations, associations, and other organizations.)"

The officials of the Rockefeller Foundation apparently do not understand the plain language quoted above—or, even worse, choose to ignore it. The Foundation's tax returns for the years 1951 through 1967 show \$295,000 received as "anonymous gifts":

Year	Amount	Year—Continued	Amount
1951.....	\$12,000	1961.....	15,000
1952.....	12,000	1962.....	15,000
1953.....	12,000	1963.....	15,000
1954.....	12,000	1964.....	20,000
1955.....	12,000	1965.....	25,000
1956.....	25,000	1966.....	25,000
1957.....	15,000	1967.....	30,000
1958.....	20,000		
1959.....	15,000	Total.....	295,000
1960.....	15,000		

In response to our inquiry, the Rockefeller Foundation offered this explanation for the "anonymous gifts":

"For a number of years the Foundation has received an annual unrestricted gift from an anonymous donor who is represented by the firm of Saul, Ewing, Remick & Saul (of Philadelphia, Pennsylvania). The wish of the donor to remain anonymous has been declared from the outset and has been declared from the outset and has been respected by the Foundation, which has no way of knowing the donor's identity."

In its annual tax returns, the Rockefeller Foundation generally uses language as follows:

"Anonymous gift received through Mr. Frank Sayre of the law firm of Saul, Ewing, Remick & Saul, Philadelphia, Pa."

Of course, some of the smaller foundations follow the Rockefeller Foundation's disdain for strict adherence to Internal Revenue Service regulations. For instance, a review of the tax returns of the Hugh Moore Fund, Easton, Pennsylvania, for the years 1956 through 1967 indicates that \$176,000 was received from donors identified as "anonymous":

Year	Amount	Year—Continued	Amount
1956	\$5,000	1962	\$15,000
1957	5,000	1963	19,000
1958	20,000	1964	15,000
1959	13,000	1965	21,000
1960	14,000	1966	15,000
1961	13,000	1967	21,000

In response to our query, Mr. Hugh Moore, President of the Hugh Moore Fund, informed us that the donor of the above sums was Adolph W. Schmidt, President, A. W. Mellon Educational and Charitable Trust, Pittsburgh, Pa. Mr. Moore did not volunteer an explanation as to why the gifts were made anonymously.

Even more surprising is the attitude of an organization called, "The Council on Foundations, Inc." of New York City. Despite the clear requirement that details be given on the Form for the source of all donations of more than \$100, the Council on Foundations, Inc. cavalierly tells the Internal Revenue Service that this information is "available at the taxpayer's office."

One can envision the Internal Revenue Service response should an ordinary citizen write on his tax return that the source of information was "available at the taxpayer's office," and refuse to fill in his form as required by law. Is it an overstatement to say that the taxpayer would wind up in jail if he took the same liberties with the law as some foundations do? I think not.

At the same time that the Council on Foundations chooses to willfully disregard Internal Revenue Service regulations, it (the Council) bills itself as sort of a guiding spirit for some 390 member foundations, with assets ranging from \$100,000 to more than \$100 million (according to the testimony of its president, David F. Freeman, before the Committee on Ways and Means on February 18, 1969). Mr. Freeman also stated to the Committee:

"As a condition of membership we require that all our contributing foundations make appropriate reports to the Internal Revenue Service. We also strongly encourage fuller disclosure of our members' programs and finances through the publication of annual or biennial reports."

In this same appearance, Mr. Freeman testified that the Council on Foundations, in collaboration with the Foundation Center, "is undertaking an exploration of the possibility of developing a code of good practice for the field," and has hopes that from this work "will come guidelines which will help all foundations to raise their standards of performance and accountability." And he also spoke favorably of "improved state regulatory legislation."

Since the Council on Foundations has demonstrated its inability to follow existing Internal Revenue Service regulations, I must confess skepticism about any ideas for "self-regulation" that originate within the Foundation Establishment. And I shall remain skeptical until I am presented evidence that it is wise to hire a fox to guard a hen house.

Moving to another, yet related, area, Treasury Instructions I and J require foundations to report on their tax returns certain information dealing with officers, directors, trustees and market value of assets. Such information is open to public inspection. As an example, we have the G. N. Wilcox Trust of Honolulu, which is administered by the Bishop Trust Co., Ltd., with the help of the accounting firm of Peat, Marwick, Mitchell and Co. The G. N. Wilcox Trust

states, in its 1967 return, that it is not filing the information required by Instructions I and J, but that it will "be furnished on request."

The G. N. Wilcox Trust is equally garrulous in another section of its 1967 return calling for a listing of "other assets." IRS directs: "attach schedule." But the G. N. Wilcox Trust jots on the return, "studio apartments," and lists their value at \$274,496.

A like amount of respect for Internal Revenue Service regulations has been exhibited by the Paul and Annetta Himmelfarb Foundation, Inc., Washington, D.C. (Paul Himmelfarb, creator and principal donor). This foundation has, for many years, not only failed to file certain information required on its tax returns, including complete capital gain (or loss) schedules, but its record discloses considerable self-dealing involving certain relatives of the creator, trustees, and other parties associated with the Foundation (see Schedule 11, Appendix 1, submitted by the Foundation). For example:

On December 15, 1961, the Foundation purchased from the creator property at 1116 Lamont St., N.W., Washington, D.C. (Foundation's carrying value \$19,300). On November 29, 1965, this property was sold to Mr. and Mrs. Franklin Himmelfarb for \$11,000. Franklin Himmelfarb is a grandson of the creator.

On June 14, 1966, the Foundation purchased from the creator property at 307 Fifth St., N.E., Washington, D.C. (Foundation's carrying value \$21,000). On July 11, 1966, the property was sold to Mr. and Mrs. Franklin Himmelfarb for \$21,000.

On March 11, 1966, the Foundation purchased from the creator property at 1815 Kenilworth Ave., N.E., Washington, D.C. (Foundation's carrying value \$25,000). On April 18, 1966, the property was sold to Mr. and Mrs. Bernard Cooper for \$25,000. Mr. Cooper is a grandson of the creator as well as a trustee and treasurer of the Foundation.

On June 14, 1966, the Foundation purchased from the creator property at 1201 Kennedy St., N.W., Washington, D.C. (Foundation's carrying value \$25,000). On August 11, 1966, the property was sold to Mr. and Mrs. Bernard Cooper for \$25,000.

On June 3, 1966, the Foundation purchased from the creator property at 1828-30 Seventh St., N.W., Washington, D.C. (Foundation's carrying value \$30,000). On June 30, 1966, the property was sold to Harold Kronstadt for \$30,000. Mr. Kronstadt is the husband of a granddaughter of the creator.

Trust notes receivable held by the Foundation indicate that Benjamin Greenspoon was a debtor in the amounts of \$34,000 at December 31, 1962, \$33,328.26 at December 31, 1963, and \$32,577.65 at December 31, 1964. Mr. Greenspoon has been a trustee of the Foundation since 1962 and is now its President. He is also a member of the law firm Margolius, Deckelbaum, Greenspoon & Edwards, Washington, D.C., which has represented the Foundation for a number of years.

Trust notes receivable held by the Foundation indicate that Messrs. Ralph Deckelbaum and Stanley Karlin, members of the law firm Margolius, Deckelbaum, Greenspoon & Edwards, were also debtors, as follows:

Debtor	Date	Amount
Ralph Deckelbaum.....	Dec. 31, 1967	\$17,350.50
	June 12, 1968	17,161.02
Stanley and Joan Karlin.....	Dec. 31, 1967	29,064.32
	June 12, 1968	29,064.15

In October 1966, the United States District Court, District of Columbia, appointed a guardian ad litem for Paul Himmelfarb, creator of the Foundation. The report of the guardian ad litem to the Court, dated December 5, 1966, states, in part, as follows:

"0. (a) During the six months immediately preceding the filing of the instant petition, the alleged adult ward disposed of four improved properties in the District of Columbia. Because there is medical evidence to suggest that Mr. Himmelfarb was not able to care for his estate and manage his business affairs properly during this period of time . . . it may be necessary for the permanent conservator to take action to set aside these transactions. Two of the properties were acquired by Bernard Cooper soon after Mr. Himmelfarb conveyed them to the Paul and Annetta Himmelfarb Foundation, Inc. A third such property was acquired in similar manner by Franklin Himmelfarb, another grandson of the alleged adult ward, who, like Bernard Cooper, is employed by Penn Properties. A review of

the actual deeds and of the records of the real estate tax assessor's office indicates that at least one of the two properties acquired by Bernard Cooper and also the property conveyed to Franklin Himmelfarb were transferred to them at a price substantially less than fair market value. The fourth property conveyed by Mr. Himmelfarb to the Foundation very shortly thereafter was transferred by the Foundation to one Harid Kronstadt, a nephew of Frances Wolf and a cousin of Bernard Cooper. There is evidence tending to suggest that this property, too, was acquired from the Foundation at a price much less than its fair market value."

Perhaps the Commissioner of Internal Revenue will tell the Committee on Ways and Means (a) Why foundations are permitted to violate Treasury regulations year after year with "anonymous" grants and (b) Why foundations are permitted to slide around reporting requirements with a notation that they will supply information "on request," or that it is "available at the taxpayer's office." Were this absurdity carried to its extreme, a taxpayer would simply mail the Internal Revenue Service a check each April 15 with no explanation whatsoever as to his income and claimed deductions, and supply details only if challenged.

I would also suggest that the Internal Revenue Service require foundations to file meaningful addresses so that the public which is supposed to benefit from their largess will know where to find them. Apparently, most of the nation's foundations are inaccessible to the public by telephone. For example, of the 170 New York City foundations under study by the Subcommittee, over 50 percent of them are not listed in the 1968-69 Manhattan Directory of the New York Telephone Co. In Washington, D.C., more than 60 percent of the 10 foundations under study are not listed in the 1968-69 directory of Chesapeake & Potomac Telephone Co.

A compilation of 30,262 foundations made in late 1968 by the Internal Revenue Service is replete with instances of meaningless addresses. The section of the compilation for Internal Revenue Service District 23, with headquarters in Philadelphia, is illustrative enough. For example, we have the "Bornstein Foundation, Broad and Walnut Sts., Philadelphia." Someone going to Broad and Walnut Sts. in downtown Philadelphia could choose to begin his search in either of four banks and office buildings at the intersection. But other addresses offer even fewer clues. We have, for instance, "The Bartsch Foundation, Philadelphia," with not the barest hint of another address - either in the IRS compilation or in the 1968 directory of the Pennsylvania Bell Telephone Co. for Philadelphia.

In our study dated March 26, 1968, I suggested that, for the duration of the Vietnam War, the tax exempt foundations and charitable trusts of this country contribute their gross receipts (dividends, interest, capital gains, royalties, rents received, profits from business activities, contributions received, etc.) to the Federal Government "In support of our defense of democracy in Southeast Asia and other uses vital to our national interest." Predictably, no foundation chose to accept my invitation to share its responsibilities in support of the war. Nor are they prepared to do so at present, as evidenced by this exchange at a recent meeting of the Ways and Means Committee between Chairman Wilbur Mills and McGeorge Bundy, President of the Ford Foundation:

"The CHAIRMAN Mr. Bundy, we appreciate your coming to the committee and we appreciate your statement. Let me ask just one question if I may because I didn't hear in your statement a discussion of a point which interests me greatly with respect to this particular subject matter as well as with respect to all the subject matters which will be discussed in these hearings.

"Under the situation which presently exists, do you believe that foundations should continue to be insulated from the responsibilities which fall upon taxpayers generally by being allowed to retain the tax-exempt status that was given them initially in the income tax law enacted during the Civil War and also in the present income tax system adopted in 1913?

"Mr. BUNDY, I do, Mr. Chairman . . ."

After more than three decades in Congress, I must admit that I have developed a protective immunity to shock at statements coming from persons who offer self-serving defenses of privileged positions. But a statement made by a witness during a recent Ways and Means Committee hearing has reminded me most graphically that I still retain a capacity for shock - and, happily, for indignation. For this statement, more than any other single utterance among the millions of words that have been written and spoken on the subject, shows the need for prompt and meaningful reform of tax laws that favor the rich and put the burden of supporting the country upon the shoulders of persons unable to find themselves a loophole.

John D. Rockefeller, III, whose family foundations continue to control a large part of the multi-million dollar fortune accumulated by his ancestors, and whose personal wealth has been estimated by *Fortune Magazine* to be in excess of \$300 million, testified at the hearings of the Committee on Ways and Means on February 27, 1969. Mr. Rockefeller took a dim view of most of the proposed foundation reforms and talked at considerable length about the multitude of benefits that foundations bring to our nation and to persons abroad, and how the foundation overlords are motivated primarily by charitable impulses. Then Mr. Rockefeller volunteered this pithy:

"In my own case, although I have qualified for the unlimited deduction privilege during every year since 1961, I have deliberately paid a tax of between five and ten percent of my adjusted gross income in each of those years."

One wonders what reaction Mr. Rockefeller expects from his audience when he makes such a statement—a silence respectful of his family's economic power: howannahs of praise at his generosity in paying a tax at a rate one-third that of the poorest of us; pleas that he abandon such arduous self-sacrifice and cease paying any tax whatsoever.

My own reaction should be no surprise to Mr. Rockefeller. In our society, legality is not necessarily synonymous with morality, and we have come to the point where Mr. Rockefeller and the other persons whose wealth is protected by tax-free foundations need guidelines more specific and binding than personal conscience—in sum, laws that require the rich to pay taxes. My disgust with Mr. Rockefeller's statement is matched in magnitude only by his audacity in offering it as a defense of an inequity which this nation should no longer tolerate.

With kindest regards and best wishes, I am,

Sincerely yours,

WRIGHT PATMAN,

Chairman, Subcommittee on Foundations, House Select Committee on Small Business.

(Editor's Note: The statistical data referred to in Chairman Patman's letter has been printed as Appendix 1 of these hearings.)

(The following statement was received for the record:)

STATEMENT OF HON. RALPH HARVEY, FORMER CONGRESSMAN FROM THE STATE OF INDIANA

My name is Ralph Harvey, a former member of the House of Representatives. During my nine terms of service, the last three were as a member of the Select Committee on Small Business. This statement relates particularly to the Subcommittee chaired by Congressman Wright Patman and devoted to the study of Tax-exempt Foundations.

It was my privilege to serve as the ranking Republican on this Sub-Committee until my retirement at the end of 1966. During this period (1961-1966) Mr. Patman conducted (almost single-handed) an investigation into the activities of tax-exempt foundations and held numerous hearings. In addition, a detailed questionnaire was sent to a select group of several hundred foundations in an effort to determine the nature of their philanthropic activities. The Secretary of Treasury and Commissioner of Internal Revenue were questioned and cross-examined in public hearings on the treatment and auditing of such foundations. During the period of which I speak, there was much acrimony between those involved and the hearings some times developed more heat than light. Anyone who sat through these hearings could not help developing some convictions . . . It will be my purpose to set them forth as objectively as possible.

Permit me to state in the beginning that I do not have any prejudice with regard to foundations. In fact most of them are devoting their resources to worthy projects. They are able to explore various possible social developments in an unfettered fashion, to make mistakes and to proceed along given lines of activity without regard to public opinion or fiscal accountability in contrast with the limitations of the government. The history of such foundations extends more than fifty years. Two very early ones, the Carnegie and Rockefeller contributed much to the advancement of health and knowledge. In fact their names became synonymous with humanitarianism and progress. Since World War II the number of tax-exempt foundations has proliferated immensely.

Out of this welter of charges and counter-charges, one fact has become obvious to me. This is that a life expectancy limitation should be enacted as an amend-

ment to that provision of the Revenue Code that gives license to tax-exempt foundations. Reasons for my conviction are as follows:

1. The present Federal tax system encourages those who hold vast estates to convert them to a tax-exempt status to avoid estate taxes.

2. This tendency has become more obvious during recent years because our affluent times have enabled many to become very wealthy.

3. As we continue to have more and more wealth sequestered from the Federal tax base, the burden upon those who are not so privileged becomes greater.

4. While most of these foundations have not had enough longevity to date to become tools of "professionals" to use for selfish purposes there is ample evidence that this is a growing tendency. . . . especially is this true as these self-perpetuating organizations become farther removed from their founders.

5. While it is not my purpose to recommend a specific period of life expectancy for tax-exempt foundations, it would be my recommendation that consideration be given to a 50 year period with another 10 years in which to phase out the holdings of those so licensed. Of course, no such provision be retroactive.

6. That enough I.R.S. agents be employed to audit the accounts of such foundations regularly to insure that the "bad eggs" among them do not use their authority for either selfish economic or personal gain.

The CHAIRMAN. Our next witness is Mr. Pattillo who is accompanied by Mr. Andrews. Mr. Pattillo? Mr. Pattillo, you may either have a seat there or you may stand if you wish.

Mr. Pattillo, you are the president of the Foundation Center, is that correct?

STATEMENTS OF MANNING M. PATTILLO, JR., PRESIDENT, AND F. EMERSON ANDREWS, PRESIDENT EMERITUS, THE FOUNDATION CENTER

Mr. PATTILLO. That is correct, Mr. Chairman.

The CHAIRMAN. And you are located where?

Mr. PATTILLO. In New York City.

The CHAIRMAN. You are recognized, sir.

Mr. PATTILLO. Mr. Chairman and members of the committee, I welcome this opportunity to appear before you this morning and present a broad factual description of philanthropic foundations as background for your consideration of possible changes in the tax laws.

I am not here to support or oppose specific proposals, although I shall express a personal opinion on several more general matters. You have before you, as an appendix to my prepared statement, a brief account of the organization with which I am associated, the Foundation Center, and I need not elaborate on this.

While the center serves the general public and the entire foundation field, I am not speaking today as a spokesman of any group of persons or foundations.

This is a significant occasion. The philanthropic foundation is an important institution in American life, and its activities ought to be reviewed from time to time in a public forum. Not since the hearings of the Cox committee in 1952 has there been an open and informed discussion of this subject under congressional auspices.

To allow ample time for your questions, I will recapitulate the essential points of my written testimony in nine general statements, with a brief commentary on each.

1. Although organized philanthropy has a long history, going back at least 4,000 years, the foundation in its present highly developed form is largely an American invention of the 20th century. The philosophy of the skillful use of private funds for the public welfare, which is the distinctive purpose of the philanthropic foundation, was hammered out by Andrew Carnegie, John D. Rockefeller, and their associates at the turn of the century and provided the impetus for the establishment of several major foundations. The foundation has enjoyed a steady growth since that time and in recent years has been widely emulated in European, Latin American, and other countries.

2. The foundation has a dual character: it is both public and private. It is public because it devotes its funds to public purposes—educational, social, scientific, religious, and cultural. It is private in the sense that it is nongovernmental and receives its funds from private donors.

As Prof. Milton Katz, of the Harvard Law School, has aptly put it, the foundation is "a privately organized public institution."

In order to encourage this kind of public spirited voluntary giving the American people through their legislative representatives have decided to exempt foundations from taxes. In this respect foundations are similar to universities, hospitals, churches, and other organizations conducted primarily for the benefit of the public. This national policy of tax-exemption has helped to preserve our dual system of governmental and private support for noncommercial enterprises.

Now, there is a lot of popular mythology and fanciful thinking on this point. For example, a widely read women's magazine recently had an article on how to get rich by establishing a foundation. It needs to be stated clearly that when a man makes a gift to a foundation the money is no longer his. He may influence its use, but he cannot legally or morally use it for his own enrichment. The money must be devoted to public purposes.

3. Foundations are a remarkably diverse group of institutions. They reflect the pluralism of American life. They represent a wide variety of points of view about what is good, what ought to be strengthened, and how the public interest can best be served.

In size, foundations run all the way from one minuscule fund in Minnesota with total assets of \$2 to 27 foundations with over \$100 million each. Foundations differ in purpose. Some are dedicated to the strengthening of education, others to the improvement of health, still others to the promotion of peace or the elimination of poverty or the development of an egalitarian society or the advancement of religion or of the arts.

Some foundations assist institutions; others help persons. Some work in several fields; others in a single field. Some employ highly competent staffs and rely primarily on professional judgment in the disposition of funds; others give to "favorite charities." Foundations differ in their relationships to donors. Some carry on the charitable interests of the founders; others are completely independent.

4. It is difficult to define a foundation and to distinguish it from other types of organizations. Various definitions have been proposed by writers on this subject, but none is wholly satisfactory. There is no adequate legal definition.

Defining the term "foundation" is not merely an academic exercise. It poses very real problems in the consideration of additional legislation. I have discussed this at some length in my written statement and shall not dwell on it here.

I would only add that it may argue for including the whole exempt field in any proposed legislation. To try to separate out a segment of organizations for special treatment would lead to endless litigation and quibbling over definitions.

5. The foundation field is growing but is comparatively small. Using the Foundation Center's definition of a foundation, we estimate that there are now about 22,000 foundations in the United States with total assets estimated at \$20.5 billion and making estimated annual grants of \$1.5 billion.

Foundations are distributed broadly throughout the country, though they tend to be concentrated in areas of wealth and population.

More than 90 percent of all assets are held by less than 7 percent of the foundations. Our best estimate is that about 2,000 new foundations are currently being established per year. Most are small and some will cease operation after a few years.

From statistics such as these it is easy to jump to the conclusion that foundations are growing by leaps and bounds and will soon gobble up the whole economy. This, however, is not true. Foundations constitute a very small fraction of the economy. Their total annual grants amount to less than two tenths of 1 percent of the gross national product. May I repeat that sentence? Their total annual grants amount to less than two-tenths of 1 percent of the gross national product.

According to estimates of the American Association of Fund Raising Counsel, foundations accounted for less than 9 percent of voluntary giving in 1967. The Securities and Exchange Commission reports that only 2.1 percent of common and preferred stock is owned by foundations. The expenditures of all foundations were less than 1 percent of the expenditures of the Federal Government in 1967.

6. Foundations concentrate their grants in seven strategic fields. These fields, in order of amounts allocated, are: Education, which receives about one third of all foundation funds, social welfare, international activities, health, sciences, religion, and the humanities and the performing arts.

In recent years foundations of all types have been increasingly active in programs concerned with urban problems and poverty. A recent survey by the center shows that one dollar out of every five spent by foundations in 1968 went toward the solution of the problems of the cities and the poor.

7. If any change is made in the tax laws, I hope that it will be in the direction of simplification. The principal Federal agency with which foundations deal is the Internal Revenue Service. Without in any way disparaging the Service, I would say that a tax collecting agency is by no means the ideal supervisor of foundations. The accident of this relationship has, in my judgment, placed an emphasis on the tax aspect of foundations which diverts attention from their primary purpose. The preoccupation of lawyers and accountants with the technicalities of tax law involves an enormous expenditure of time and talent. Almost no layman fully understands the present tax laws.

I cringe at the thought that the laws may become even more intricate and abstruse. Tax law is already a vast and incomprehensible labyrinth of technicalities. It is time to bring it back to the public domain.

If I speak with some emotion on this point, I am sure I represent the attitude of millions of Americans.

8. The best foundations do a superb job of philanthropy while some foundations should never have been created. The importance of the philanthropic foundation lies not in the massiveness of its funds—we have seen that its resources are comparatively small—but in the expertness of its management.

I believe that the best administered foundations make a greater contribution to the public welfare per dollar spent than any other type of donor, individual, corporation, or government.

There are, first, the well established foundations with substantial funds and broadly representative boards of trustees whose achievements are way out of proportion to their resources. And then there are several thousand philanthropies, chiefly family foundations, that are not pioneers but have a good knowledge of their local communities and provide indispensable support to essential institutions and organizations in society. They do their job well. To these may be added several hundred foundations sponsored by large corporations that furnish similar sustenance on a national basis. Without their help many a necessary financial campaign would fail.

Beyond these three groups there is a fourth probably numbering more than 15,000 very small foundations. There is no criticism we can make of them on moral or legal grounds. They are perfectly legitimate enterprises. But they lack expertness. They really function in the same way as an individual donor. It is difficult to justify them as foundations. Some may eventually receive additional gifts and become larger. Most will continue to be what one wit has called "incorporated pocketbooks," doing nothing that could not be done by an individual donor. The question arises why they should be organized as foundations. Many responsible people in the foundation field are worried by the rapid proliferation of foundations of this type. I am not suggesting a law against them, but I do wish that attorneys would urge their clients to exercise greater restraint in the creation of new foundations. I think this is primarily a responsibility of the legal profession.

Another group consists of the foundations that abuse their public position, that behave as though they were private only. As the Treasury Department Report of 1965 properly says, there is "evidence of serious faults among a minority" of foundations. The full weight of the law should be brought to bear on these abuses. The Internal Revenue Service has, of course, taken corrective action in many cases.

My last major point is that State and professional agencies are playing a valuable role in upgrading foundations. We are seeing a tightening of State supervision. In 12 States foundations are subject to State supervisory agencies. New York and California, representing more than 50 percent of the assets of all foundations in the United States, have perhaps the most effective programs of this kind under their attorneys general. I was pleased to see that the attorney general and the assistant attorney general of New York State will be appearing here in a day or so.

Another promising development concerns the management of small foundations, most of which do not have professional staffs. The sharing of salaried administrators by several cooperating foundations holds promise as a means of improving these smaller foundations. Four or five experiments are now underway and the results are encouraging. Among leaders in the foundation field there has been serious discussion recently of various means by which the less mature foundations can be guided to a higher level of operation.

The most promising proposal in my opinion is that of a system of voluntary accrediting similar to the accrediting agencies that have been so effective in the field of higher education.

This may well be the mechanism that can raise professional standards and cope most effectively with transgressors.

Finally, I hope that the role of the Federal Government will continue to be that of offering friendly encouragement to authentic philanthropy.

(Mr. Pattillo's prepared statement follows:)

STATEMENT OF MANNING M. PATTILLO, JR., PRESIDENT, THE FOUNDATION CENTER

Philanthropic Foundations in the United States

SUMMARY

History of organized philanthropy.—The philanthropic foundation, in its highly developed form, an American invention of the 20th century. Other countries now promoting establishment of foundations patterned on ours.

Foundations and public policy.—The foundation as both public and private. Tax exemption as a means of encouraging use of private funds for public purposes.

Diversity and the problem of definition.—Wide variety of foundations. Lack of sharp distinctions between foundations and other exempt organizations.

Dimensions of foundation field.—Center estimates 22,000 foundations in U.S., with total assets of \$20.5 billion and making annual grants of \$1.5 billion. Foundation resources small in relation to the national economy. Foundations own 21 per cent of common and preferred stock. Annual grants less than two-tenths of 1 per cent of G.N.P.

Fields of foundation activity.—Major fields, in order: education, social welfare, international activities, health, sciences, religion, and humanities and performing arts. One dollar in five allocated to urban problems and poverty.

Sources of information.—Voluntary annual reports of larger foundations. Financial data on all foundations available for public inspection.

Relationship to Federal and State Governments.—Most foundations in states with supervisory agencies. Tax law "a vast and incomprehensible labyrinth of technicalities."

Appraisal of foundations.—Strengths and weaknesses of different types of foundations. Proliferation of very small foundations.

Future development.—Steps being taken within the field. Voluntary accrediting a promising means of raising standards. Need for further governmental encouragement of private philanthropy.

Appendix.—Description of the Foundation Center.

HISTORY OF ORGANIZED PHILANTHROPY

The philanthropic foundation has roots going back to pre-Christian times. We know that the Chinese and Egyptians of 1000 years ago made provision for charitable assistance, and the Greeks and Romans encouraged public-spirited giving. The Judeo-Christian tradition of religiously motivated aid to the needy, exemplified in the parable of the Good Samaritan, has been a strong influence on philanthropy through the centuries. The enactment of the English Statute of Charitable Uses in 1601, during the reign of Queen Elizabeth, was a legal landmark; this statute has been called the "cornerstone of Anglo-Saxon law concerning philanthropy."

In its present highly developed form, however, the foundation is largely an American invention of the twentieth century. The philosophy of the systematic use of private funds for public purposes—and that is the distinguishing feature of the philanthropic foundation—was formulated by Andrew Carnegie, John D. Rockefeller, and their associates at the turn of the century. They laid the groundwork for the steady development of foundations in the last fifty years. The dates of the earliest large foundations show when the movement really began: General Education Board, 1902; Carnegie Foundation for the Advancement of Teaching, 1906; Russell Sage Foundation, 1907; Carnegie Corporation of New York, 1911; and the Rockefeller Foundation, 1913. Other countries have looked with admiration on our professionally managed foundations and are now emulating them. Recent years have seen a substantial growth of foundations in Europe, Canada, Latin America, and Australia.

FOUNDATIONS AND PUBLIC POLICY

Professor Milton Katz, of the Harvard Law School, has recently pointed out that the key to the modern philanthropic foundation is its dual character as a public and a private institution. He calls this the "public-private amalgam" and describes the foundation as a "privately organized public institution." It is public because it devotes its funds to educational, social, scientific, religious, and other public purposes; it is private in the sense that it is non-governmental and receives its money from private donors.

It is necessary to clear up one widely held misconception on this point. The philanthropic foundation is not public because it is tax exempt. It is tax exempt because its purposes are public. The American people have wanted to encourage public-spirited voluntary giving in order to assure a variety of sources of support for activities that are for the common welfare. We have not wanted such activities to be wholly dependent on tax funds. This is the reason for the tax exemption of foundations. In this respect, as John Gardner has emphasized, foundations are like universities, hospitals, and churches.

It follows that when a man makes a gift to a foundation, the money is no longer his. He may influence its use, but he cannot properly use it for his own personal enrichment. Morally and legally, the money must be devoted to public purposes.

DIVERSITY AND THE PROBLEM OF DEFINITION

The public often supposes that foundations are all alike and that two or three of the largest are prototypes for the rest. Nothing could be further from the truth. Diversity is the most striking and one of the most valuable characteristics of the foundation field. Foundations reflect the pluralism of American life, exhibiting a wide variety of points of view about what is good, what should be strengthened, and how the public interest can best be served.

Foundations differ in other respects, too. There are wide variations in size. Assets range from \$2 in one minuscule foundation in Minnesota to over \$100 million in 27 others. Foundations differ in purpose. Some are dedicated to the strengthening of education, others to the improvement of health, still others to the promotion of peace or the elimination of poverty or the development of an egalitarian society or the advancement of religion or of the arts. Some assist institutions; others help persons. Some work in several fields, others in a single field. Foundations differ in expertness. Some employ highly competent staffs and rely primarily on professional judgment in the disposition of funds; others give to "favorite charities." Foundations differ in their relationships to donors. Some carry on the charitable interests of the founders; others are completely independent.

Perhaps this diversity is implicit in the idea of a free society. Who among us would be wise (or foolish) enough to prescribe a monolithic set of values or a single way of helping mankind? Not only is diversity consonant with the principles of a free society, but it has practical advantages. With many foundations, each unique in some respect, the seeker of funds has a broader opportunity than if he had to deal with a coordinated philanthropic system bound by uniform policies and procedures.

The diversity of foundations makes it difficult to say precisely what a foundation is. It has been customary to classify foundations in five broad groups: (1) general purpose, including most of the large, professionally staffed foundations, making more than half of the total grants (examples: Ford, Rockefeller, Kellogg); (2) special purpose, of which the Commonwealth Fund, specializing

in medical education and care, and the Bishop Estate, restricting its grants to education in Hawaii, are illustrations; (3) family foundations with strong family ties (the Woods Charitable Fund in Chicago, Illinois, and Lincoln, Nebraska, and the Irwin-Sweeney-Miller Foundation in Columbus, Indiana, may be mentioned); (4) company-sponsored foundations such as Sears-Roebuck and United States Steel Foundations; and (5) community foundations, which typically receive funds from many donors and concentrate their grants in limited geographical areas (the Cleveland and San Francisco Foundations are examples).

A variety of definitions of the word "foundation" has been proposed by authoritative writers on the subject. The problem is complicated by the imprecise use of the term not only in the United States but in England and other countries. Many organizations calling themselves "foundations" cannot claim the title by any proper definition. Moreover, several well-known foundations do not use the word "foundation" in their titles. Carnegie Corporation of New York, Duke Endowment, and Falk Medical Fund are cases in point.

The most widely accepted definition is that used by *The Foundation Directory*. A philanthropic foundation is defined there as "a nongovernmental, nonprofit organization having a principal fund of its own, managed by its own trustees or directors, and established to maintain or aid social, educational, charitable, religious, or other activities serving the common welfare." The *Directory* supplements this definition by listing certain types of organizations that are to be excluded, namely, those which make a general appeal to the public for funds; which act as trade associations for industrial or other special groups, which are restricted by charter solely to aiding one or several named institutions, or which function as endowments set up for special purposes within colleges, churches, or other organizations and are governed by the trustees of the parent institution.

Defining the term "foundation" is not merely an academic exercise. It poses very real problems in the consideration of additional legislation. Foundations are not clearly distinguishable from other types of organizations. The issue is confused, for example, by the fact that some foundations not only dispense funds but actively seek additional funds from the public. This is true of most of the community foundations. Both the Foundation Center and the Internal Revenue Service have wrestled with the problem of definition, and neither, I believe, can report complete success. It is impossible to make sharp distinctions between foundations and other types of exempt organizations. This may argue for including the whole exempt field in any proposed legislation.

DIMENSIONS OF THE FOUNDATION FIELD

The Foundation Center estimates that there are now about 22,000 foundations in the United States according to its definition. Total assets are estimated at \$20.5 billion and annual grants at \$1.5 billion. Most of the foundations are small. The 1967 edition of *The Foundation Directory* listed 6,803 foundations with assets of \$200,000 or annual distributions of \$10,000. This means that about two-thirds of all foundations were too small to meet those criteria. Of the 6,803 foundations included, 237 had assets of over \$10 million; these 237 large foundations accounted for almost 74 per cent of the assets of all foundations. Foundations with resources of \$1 million to \$10 million numbered 1,227, about 17 per cent of the total. Thus, more than 90 per cent of all assets are held by less than 7 per cent of the foundations. Twenty-seven foundations have assets exceeding \$100 million each.

How rapidly are foundations growing? Between 1961 and 1967 the number of foundations large enough to be included in the *Latest Directory* (\$200,000 assets or \$10,000 annual grants) increased from 5,331 to 6,803, about 500 per year. Their assets grew from \$14.1 billion to \$19.9 billion, while total annual grants increased from \$776 million to \$1.2 billion. These statistics, of course, reflect both the establishment of new foundations and the growth of existing ones. I am not able to present firm figures on the current rate of creation of new foundations of all sizes, but our best estimate is that about 2,000 new foundations are being established per year. Most of them are small, and many may not long survive.

From statistics such as these it is easy to jump to the conclusion that the foundation field is growing by leaps and bounds, and will soon gobble up the whole economy. This is not, however, the case. While foundations are growing in number and size, they constitute a very small fraction of the economy. "The total annual grants of foundations amount to less than 2/10 of 1 percent of the

Gross National Product. Moreover, foundations provide less than 9 cents of the philanthropic dollar. The American Association of Fund-Raising Counsel estimates that total voluntary giving approximated \$15 billion in 1967. Of this amount, \$1¼ billion came from foundations. The Securities and Exchange Commission reports that only 2.1 percent of common and preferred stock is owned by foundations. The resources of foundations appear even smaller when compared with those of government. The expenditures of the federal government were more than 100 times as great as those of all foundations in 1967.

People often ask about the geographical distribution of foundations. Because three or four of the best-known foundations are located in New York City, it is sometimes assumed that most foundations are based there. Of the 6,803 foundations large enough to be included in the latest *Directory*, 1,822, about 27 per cent, are located in New York State. Illinois has 503, California 439, Ohio 403, Pennsylvania 431, Massachusetts 316, and Texas 312. Seventeen states have more than 100 foundations each, and every state has at least one foundation of significant size. In amount of total grants, as distinct from number of foundations, New York State ranks first with 56 per cent. This money is, of course, distributed widely nationally and internationally. Ten of the 25 largest foundations are headquartered in New York; six are located in the Middle West. The trend is toward a wider geographical distribution of foundation resources. This, I believe, is in the public interest.

FIELDS OF FOUNDATION ACTIVITY

How do foundations spend their money? A 1967 report of the grants of foundations showed that education was the field receiving, by far, the largest amount of money from foundations. About one-third of foundation funds went to education, particularly colleges and universities. The other major fields of interest and their percentages were social welfare (16%), international activities (14%), health (13%), sciences (10%), religion (9%), and the humanities and the performing arts (5%).

The various types of foundations exhibit marked differences in fields of interest and modes of giving. For example, the thousands of family foundations are especially active in the general support of colleges, hospitals, local social agencies, and churches. The smaller foundations of this type tend to behave in much the same way as individual donors. They often operate quietly, with a minimum of publicity. Company-sponsored foundations contribute heavily to the financial campaigns of hospitals, colleges, and social agencies in localities in which the companies have plants. The community foundations give especially to well-established educational, health, cultural, and social agencies in their own immediate areas—often their home city or county. The general purpose foundations give particular attention to the solution of basic problems through research and demonstration. Most of them contribute heavily to universities.

In the last five years foundations of all types have shown a rapidly increasing awareness of urban problems and the welfare of disadvantaged groups. A survey by the Foundation Center showed that one dollar out of every five spent by foundations in 1968 went for these purposes. Foundations have been in the vanguard of efforts to solve the problems of the cities and of the poor.

SOURCES OF INFORMATION

Detailed information on most of the larger foundations is readily available to any interested person through printed reports issued by the foundations themselves. In addition, nearly all foundations are required to file annual information reports (Form 990-A) with the Internal Revenue Service, and the so-called "public portion" of these reports can be examined by any citizen. Thus, the essential facts about most foundations are public information.

The Foundation Center maintains libraries, open to the public, in New York and Washington. These facilities include files on about 20,000 foundations, as well as collections of books, printed reports, completed questionnaires, indexes of grants, and other forms of information. The Center also cooperates with other institutions in the operation of seven regional libraries containing similar materials on foundations in their geographical areas. Since the establishment of the Center in 1953 many thousands of citizens and governmental officials have used its facilities.

RELATIONSHIP TO FEDERAL AND STATE GOVERNMENTS

Most foundations are organized as corporations or trusts under state laws. In 12 states, especially those having the largest concentrations of foundations, foundations are subject to state supervisory agencies. New York and California, representing more than 50 per cent of the assets of all foundations in the United States, have perhaps the most effective programs of this kind, under the direction of their Attorneys General.

The principal federal agency in this field is the Internal Revenue Service. Without in any way disparaging the Service, I would say that a tax collecting agency is by no means the ideal supervisor of foundations. The accident of this relationship has, in my judgment, placed an emphasis on the tax aspect of foundations which diverts attention from their primary purpose. That purpose is to promote the public good. The preoccupation of lawyers and accountants with the technicalities of tax law involves an enormous expenditure of time and talent. Almost no layman fully understands the present tax laws. I cringe at the thought that these laws may become even more intricate and abstruse. Tax law has become a vast and incomprehensible labyrinth of technicalities. The ordinary law-abiding citizen has no hope of understanding them, and very few foundation administrators and trustees of my acquaintance feel that they have a proper grasp of the law as it affects foundations. It is time to bring tax law back to the public domain. If I speak with some emotion on this point, I am sure I represent the attitude of millions of Americans.

APPRAISAL OF FOUNDATIONS

What can be said by way of evaluation?

Importance of philanthropic foundations lies not in the massiveness of their funds—we have seen that their resources are comparatively modest—but in the expertness of their management. Many informed observers would agree that the best administered foundations make a greater contribution to the public welfare, per dollar spent, than any other type of donor. This result is achieved through painstaking application of funds to the solution of basic problems. I venture the opinion that neither individual donors, nor corporations, nor government can equal this expertness. I assume that the foundation executives who are to appear as witnesses at this hearing will describe some of the grant programs of which they are proudest—programs that have advanced the well-being of mankind in fundamental ways. They can give abundant examples.

I am referring to the well-established, professionally administered foundations that have substantial funds and can attract first-class law abiding citizen has no hope of understanding them, and very few foundation administrators and trustees of my acquaintance feel that they have a proper grasp of the law as it affects foundations. It is time to bring tax law back to the public domain. If I speak with some emotion on this point, I am sure I represent the attitude of millions of Americans.

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I am referring to the well-established, professionally administered foundations that have substantial funds and can attract first-class talent. There are perhaps 50 such foundations, and their achievements are way out of proportion to their resources.

And then there are several thousand philanthropies operating on a common sense basis with a good knowledge of their local communities. They are supplying urgently needed funds to essential institutions and organizations—colleges, hospitals, social agencies, churches and synagogues, and athletic programs. With-

out this intelligence support, many institutions and organizations would be unable to continue. They would either die or turn to government in desperation. The foundations in this group are not pioneers, but they are making an important contribution to society. They do their job well.

Then there are several hundred foundations sponsored by large corporations that provide similar sustenance to essential institutions and organizations on a national basis. Without their help many a necessary financial campaign would fail to meet its goal.

Beyond these three groups is a fourth segment, probably numbering more than 15,000 very small foundations. They assist many worthwhile services to society but are really indistinguishable from individual donors. There is no criticism we can make of them on moral or legal grounds, but they do lack expertness. It is difficult to justify them as foundations. Some may eventually receive additional gifts and become larger. Most will continue to be what one wit has called "incorporated pocketbooks," doing nothing that could not be done by an individual donor with his own money. Why should they be organized as foundations? Many responsible people in the foundation field are worried by the rapid proliferation of foundations of this type. One can perhaps defend them on doctrinal grounds as a democratization of the foundation idea, but this hardly answers the question about their practical value.

A fifth group is composed of the foundations that abuse their public position, that behave as though they were private only. As the *Treasury Department Report* of 1965 says, there is "evidence of serious faults among a minority" of foundations. In my judgment this is an accurate statement. The full weight of the law should be brought to bear on these foundations to force them to mend their ways or cease operation. The Internal Revenue Service has, of course, taken corrective action in many cases.

FUTURE DEVELOPMENT

I predict three developments in the future that may have a bearing on the issues before the Committee. First, we are already seeing a tightening up of state supervision in the states where foundations are concentrated. This will probably continue. Second, an increasing number of small foundations are giving serious thought to the possibilities of employing professional administrators who would manage several cooperating foundations. Four or five experiments of this kind are now underway, and the results are encouraging. This appears to be an excellent procedure for improving the management of small foundations. Third, among leaders in the foundation field there has been serious discussion recently of various means by which the better foundations can help to strengthen the less mature foundations. A system of voluntary accrediting, similar to the accrediting agencies that have been so effective in the field of higher education, may be the most promising of the proposals for remedial action by foundations themselves.

The philanthropic foundation is an important social invention. It needs stronger internal discipline and self-evaluation, on the one hand, and the friendly encouragement of government, on the other, if it is to achieve its full potential.

APPENDIX—THE FOUNDATION CENTER

History and organization

The Foundation Center was incorporated in 1956 as an educational institution under the authority of the Board of Regents of the University of the State of New York. It is an independent agency governed by its own trustees, half of whom are foundation officials and half public members. Formerly known as the Foundation Library Center, it is supported by funds from twelve sponsoring foundations: Carnegie Corporation of New York, The Danforth Foundation, The William H. Donner Foundation, The Ford Foundation, W. K. Kellogg Foundation, Charles F. Kettering Foundation, Lilly Endowment, Richard King Mellon Foundation, Rockefeller Brothers Fund, Rockefeller Foundation, Russell Sage Foundation, and Alfred P. Sloan Foundation. The Center is dedicated to the public interest.

Functions

The Center has five principal functions, information, research, publications, training, and consultation. More specifically, it is engaged in the following activities:

1. Gathering of comprehensive information on all foundations in the United States and on the principal foundations in other countries. The Center has files on approximately 20,000 American foundations.

2. Compilation and publication of a cumulative record of grants of \$10,000 or more, indexed by fields of interest.

3. Analysis and reporting of trends that are of public and professional interest.

4. Maintenance of libraries, open to the public, in New York and Washington. The library in New York has the most extensive collection of foundation materials available anywhere. The library in Washington emphasizes materials of current significance. In addition, the Center sponsors jointly with universities and other institutions regional depository libraries in Atlanta, Austin, Berkeley, Chicago, Cleveland, Kansas City, and Los Angeles.

5. Publication of *Foundation News*, the bimonthly professional journal.

6. Preparation of *The Foundation Directory*, a standard reference work appearing triennially. The third edition, published by Russell Sage Foundation in 1967, contains basic data on 6,803 foundations.

7. Commissioning of special studies from time to time. The results of the last completed study were published in 1967 under the title *The Investment Policies of Foundations*, by Ralph L. Nelson. A study of the professional staffing of foundations is in process.

8. Preparation of a six-volume series of books presenting in readable form the knowledge essential for foundation executives and trustees. This project was initiated in 1968 with the assistance of advisory committees of practitioners and scholars.

9. Sponsorship of seminars for foundation administrators. The first such seminar was offered in New York in 1968; the program is to be extended to other cities having concentrations of foundations.

10. Consulting service for foundations. With the assistance of a panel of consultants, the Center responds to requests from foundations for advice on problems of general organization, board responsibilities, professional staffing, program planning and evaluation, and reporting. (A special leaflet is available on this service.)

11. Internship program for junior staff members and persons preparing for foundation work. This is in the planning stage.

Limitations

The Center does not direct applicants for funds to particular foundations, arrange introductions to foundation officials, or assist persons seeking foundation positions.

TRUSTEES

Alan Pifer (Chairman), President, Carnegie Corporation of New York.

Robert C. Bates (Vice President), Secretary, Rockefeller Brothers Fund.

Manning M. Pattillo (President).

J. Tysor Stokes (Secretary), Partner, Morgan, Lewis & Bockius.

Morris D. Crawford, Jr. (Treasurer), Chairman, Bowery Savings Bank.

F. Emerson Andrews, President Emeritus, The Foundation Center.

Wilbur J. Bender, Director, The Committee of Permanent Charity Fund, Inc.

Merrimon Cumingzim, President, The Danforth Foundation.

Frederick H. Harrington, President, University of Wisconsin.

John G. Simon, President, Taconic Foundation, Inc.

Richard H. Sullivan, President, Association of American Colleges.

Edwin H. Vause, Executive Vice-President, Charles F. Kettering Foundation.

Sidney J. Weinberg, Jr., Partner, Goldman, Sachs & Company.

Mr. ULLMAN (presiding). Thank you, Mr. Pattillo. Did you want to present a statement, Mr. Andrews? Mr. Pattillo, we will question both of you at the conclusion of Mr. Andrews' statement.

STATEMENT OF F. EMERSON ANDREWS**SUMMARY****INTRODUCTION**

Personal identification.

The question of federal vs. state supervision.

THE SIX MAJOR TREASURY PROPOSALS**1. Self-dealing**

The proposal for absolute prohibition of self-dealing between foundations and their donors or related persons seems desirable, with provision for review in hardship situations.

2. Delay in benefit to charity

Not one year but three years should be permitted for averaging income spending. Low income investments might require spending from capital to ensure adequate current benefits to charity.

3. Foundation involvement in business

The Treasury proposes limiting to 20 per cent a foundation's holdings in any business. Is there danger that this proposal would seriously reduce the flow of philanthropic funds?

4. Family use of foundations to control corporate and other property

The Treasury proposes that gifts of controlled property be not deductible until the item is sold or donor control ceases. This presents severe problems for some donors, and can be safeguarded under sections 1 and 3 above.

5. Financial transactions unrelated to charitable functions

Under suitable definition, a desirable restriction.

6. Broadening of foundation management

The Treasury proposes limiting "family" trustees to 25 per cent after 25 years. Extremely dangerous with respect to company-sponsored foundations, and probably not necessary.

CONCLUSION

If correction is applied to foundations alone, these measures may do no more than transfer the abuses they were intended to cure.

Mr. ANDREWS. Mr. Acting Chairman—

Mr. ULLMAN. We welcome you before the committee and you may proceed, Mr. Andrews.

Mr. ANDREWS. My name is Emerson Andrews. I am a resident of Tenafly, N.J. Had Mr. Mills been in the chair I desired to remind him that my first testimony before this committee was way back in 1947 when he was a member, but not chairman. In that year the famed *Mueller Spaghetti-New York University* case made the headlines and the deep concern of this committee then was the tax shelter many businesses were finding under the too wide umbrella of exempt organizations.

I was already a foundation watcher, and have been for 40 years.

Mr. ULLMAN. Mr. Andrews, may I interrupt. Mr. Mills and Mr. Byrnes had to go before the Rules Committee, as you understand.

Mr. ANDREWS. Yes, I understand. From 1928 through 1956 I was a staff member of Russell Sage Foundation, and for much of that period in charge of their numerous studies in philanthropy. In 1956 I resigned to become directing head of the newly established Foundation Library Center, the name of which has just been shortened to Foundation Center. But now I am merely president emeritus, having retired in July 1967 and being succeeded by Dr. Pattillo. So I really

come before you, not as a representative of any organization, but as a private citizen and a lifelong student of foundations, able and willing to express his own views. It has been suggested that I discuss the six major Treasury proposals which are before your committee, and I shall endeavor to be brief, to leave time for any questions you may desire to raise.

The Treasury Report on Private Foundations is in my view judicious, carefully factual, and its efforts to correct abuses entirely praiseworthy. What mainly needs closer examination are the side effects of some of these proposals, not merely upon existing legitimate foundations, but upon the total flow of philanthropic funds.

FEDERAL OR STATE

But before we get down to individual proposals, a general question that applies to nearly all of them should be examined. Should controlling legislation and supervising agencies be at the Federal or the State level?

Most foundations, whether corporations or trusts, are creations under State law. The presumption exists that registration, reporting, and supervision should be primarily a State function, with enforcement by the State attorneys general. Indeed, at the Federal level the Internal Revenue Service has only a singularly inappropriate sanction, the denial of exempt status. For some infractions, however clearly proved, this is too severe, and therefore not apt to be applied. For others, it is inappropriate, for it does not extend to removing, or making personally liable, errant trustees, and results usually in reducing, not expanding, benefits to the intended charitable recipients.

But whatever the logic of the situation, presently only about a dozen States have any substantial legislation requiring registration and reporting, and in many of these States this legislation, or its actual administration, is not now effective. Though with the recent addition of New York State to this group a substantial percentage of all foundations will be in reporting States, serious gaps and inadequacies may continue for many years at the State level.

In any event the Treasury has made proposals at the Federal level, but the State alternative should be considered with respect to some of these measures. I shall now comment briefly on the six principal Treasury proposals, which are before you.

1. SELF-DEALING

The Treasury proposals absolute prohibitions upon most financial transactions between foundations and the donor or related parties. The present law, passed in 1950, prohibits most such transactions unless carried on at arm's length, or at a "reasonable" rate of interest, with "adequate" security, and the like. The Treasury reports that after nearly two decades of administrative experience it has found the "prohibited transactions" section almost impossible to enforce, first because of inability to audit foundation reports with enough thoroughness to discover most of the infractions and, secondly, because of varying court interpretations of "reasonable," "adequate," and the like.

The proposal for absolute prohibition seems unobjectionable if provision is made for prompt review and exceptions in certain hardship situations. For example, The Ford Foundation presently owns a large block of Ford Motor Co. nonvoting stock. In the past the company has been willing to exchange portions of this nonvoting stock for voting stock, which the foundation could then exchange or sell. This degree of self-dealing would seem unobjectionable, and the law would need simply a review board with power to grant exceptions.

2. DELAY IN BENEFIT TO CHARITY

The Treasury proposes that grant-making foundations be required to spend their investment income within the year of receipt or the year following. I think this was also in Mr. Patman's proposed bill. The term of 1 year after receipt is too short.

Foundations which receive sudden large increases in income, as upon the death of a wealthy donor, need more time to devise constructive programs. A provision for both carry forward and carry back over a period of 3 years would be workable, and still achieve the Treasury objectives.

Further, if investments are in assets yielding low or no income, the foundation would be required to invade capital, if this is necessary, in order to pay out an amount representing a reasonable return from market value of assets at the beginning of the fiscal year.

The Treasury's position seems, in general, sound. The 1950 revision of the code had been intended to accomplish this objective with its provision for loss of exemption in cases of "unreasonable" accumulations, but "unreasonable" has never been adequately defined, and the courts have been wayward in their rulings. A few matters of definition need to be explored.

"Assets at market value" may present problems of valuation. Also, a foundation may be given a non-income-producing asset; for example, a painting. In another section the Treasury proposes that such gifts (unless, of course, the foundation operates a museum so that the gift is of public use) be not deductible as contributions until sold by the foundation and thus translated into an income-producing asset. A better result might be achieved by requiring that the gift be valued at the amount claimed in the original charitable deduction, and income at the agreed percent be expended from other revenue or capital.

"Income" is acceptably defined by the Treasury as investment-type income, not including capital gains. Indeed, one extreme form of "capital gain" might deserve modification: The depletion allowance is permitting some benefiting foundations to build up capital at an extremely rapid rate.

The present drastic sanction of loss of exempt status for infractions is both too severe and inappropriate. The penalty might better be corporate (or in the case of trusts, individual) income tax on the accumulated income.

3. FOUNDATION INVOLVEMENT IN BUSINESS

The Treasury reports that many foundations are deeply involved in the active conduct of business enterprises, and that both problems

and serious abuses frequently arise from such involvement. It proposes prohibiting a foundation from owning, directly or through stock holdings, 20 percent or more of a business unrelated to its charitable activities. A reasonable period would be allowed for reduction of present or subsequently acquired business interests exceeding this limit.

I have seen real problems in this area. At an extreme a donor may contribute stock of a closely held corporation to his foundation, taking his deduction at a value determined by perhaps a single sale arranged by himself, continue to vote the contributed stock, and with this control vote handsome salaries to family members employed in the controlled company, and declare little or no dividends, so that the charity has negligible income.

Close to the other end of the spectrum are a substantial number of very large and well-run foundations whose assets are chiefly the common stock of the donor's company, sometimes amounting to effective voting control. In most of these cases regular dividends are voted, and a recent study by Dr. Ralph Nelson indicated that the investment return was often better than a diversified portfolio would yield. Here no abuse is presently apparent, but a conflict of interest may arise. If at a later date the stock became less desirable, would the trustees, probably family members or otherwise related to the company, be able to take the possibly drastic action required by the charity's interest?

Here, and in connection with several other proposals, consideration needs to be given to possible effect on total flow of philanthropic funds. Without the stimulus of the convenience, and sometimes personal advantages, of the given arrangement, would the gift be made at all? Where is the social balance for restrictions that would indeed prevent some abuses, but also severely reduce total contributions, many of which involve no abuse?

If such side effects are not deemed serious, the Treasury's 20-percent proposal seems feasible, provided ample time is given for required diversification, with a possibility of exceptions being made for assets for which no ready outside market exists.

4. FAMILY USE OF FOUNDATIONS TO CONTROL CORPORATE AND OTHER PROPERTY

The Treasury reports that foundations have frequently been established primarily to maintain control of a private corporation within the family while diminishing the burden of income, gift, and estate taxes. This may be done through contributing voting stock to a controlled foundation, thus avoiding estate tax, and this stock can be voted by younger members of the family to whom control of the foundation is transferred. Or it can be accomplished through gifts of nonvoting stock, which permits transfer of effective control through gift of a small amount of voting stock. Various abuses result, in some respects differing little from those noted under item 3.

The Treasury recommends that such transfers of an interest in a family corporation or other controlled property be not recognized for charitable deduction until the foundation disposes of the contributed assets, or devotes it to an active charitable operation, or donor control over the business or property terminates. But withholding deducti-

bility on gifts of stock in a controlled corporation would present major difficulties for donors who may have little else to give. Several large and effective foundations could be mentioned which probably would not be in existence today had this proposal been in effect.

I believe this problem can be adequately met under the provisions already suggested under proposal 3 with vigorous enforcement also as in proposal 1.

5. FINANCIAL TRANSACTIONS UNRELATED TO CHARITABLE FUNCTIONS

The Treasury proposes restrictions or prohibitions on three types of financial transactions in which some foundations presently indulge. It would prohibit all borrowing by private foundations for investment purposes. It recommends that loans be confined to categories clearly safe and appropriate for charitable fiduciaries. It would prohibit extensive trading activities and speculative practices. Under suitable definition, all of these proposals seem to me eminently reasonable.

6. BROADENING OF FOUNDATION MANAGEMENT

The Treasury Department views with concern the lack of any limit upon the time during which a donor or his family may substantially influence a private foundation. However, it rejects a proposal, sometimes made, for an absolute limit upon the life of foundations, sometimes set at 25 years. It proposes that the donor and related parties be not permitted to constitute more than 25 percent of the foundation's governing body after 25 years, with a 5- or 10-year adjustment period with respect to foundations already of that age.

It is not easy to see how a question of this sort, primarily sociological and philosophical, should fall within the proposed control of a tax-gathering agency. However, the suggestion has been made, and should be examined.

I am afraid this proposal was made without adequate knowledge of one special type of foundation. Let us look for a moment at the broad picture of corporate giving. Donations first became deductible, as this committee well knows, up to 5 percent of net income, under depression pressures in 1936. For some years they averaged an almost negligible \$30 million a year. Final figures for the most recent years are not yet in, but estimates are in the neighborhood now of \$900 million.

This giving used to be done by the president in small companies, or a distribution committee in larger ones. But in recent years most big companies channel their giving through company-sponsored foundations, which are separate legal entities, but with all or nearly all their trustees also officers or directors of the company. The latest Foundation Directory listed 1,472 such company-sponsored foundations in the United States, making grants of \$177 million in the year of record. Now, what would happen to all these foundations under the Treasury 25-percent membership proposal? The courts have generously interpreted the rights of business corporations to make donations, but it remains true that they may not use stockholder money without at least a tenuous relation to the benefit of the corporation, its stockholders, employees, or its business relationships. I doubt that a company could legally contribute unconnected funds to an organization

under majority control of persons legally required to have no relation to the company. Company-sponsored foundations have brought creative programs and skilled direction into much of company giving; they have served also as philanthropic banks, leveling off as between years of good profits and years of poor profits the contributions that they can make to charity and this is a highly desirable function.

This Treasury proposal could be fatal to nearly all of this type of foundation. I would regard this as a very unfortunate result and one I am sure the Treasury did not intend.

As to most of the larger, older foundations, general foundations, they have in fact moved away from family control and predominantly family membership over the years. This Treasury proposal may prove unnecessary in the light of longer experience, and in view of the special problem I have just suggested seems presently unwise.

AND FINALLY—

The Treasury has presented a report that is in all respects worthy of serious consideration. It presents evidence of severe abuses, and though these are limited to a fraction of foundations, mostly small, efforts to prevent and correct these abuses should be made.

One overriding difficulty remains. The regulatory proposals appear to be limited to private foundations. No mention is made of application of the same regulations, where pertinent, to other portions of the exempt field, such as colleges, hospitals, churches.

It usually will not be possible to correct an abuse unless the corrective measures apply generally. When unrelated businesses were taxed to foundations in 1950 the churches moved massively in. If a donor can no longer give stock of his closely held corporation to his foundation, will he not readily find a cooperative small college, local hospital, or private school? In New York State, after restrictive legislation on fundraising was passed some years ago, it was said that "Religion is becoming the last refuge of the charity racketeer."

Gentlemen, I recognize that broadening the regulatory effort to the whole charity field will take political courage. But without such broadening, even the best of these measures may do no more than transfer the abuses they were intended to cure.

Thank you.

MR. ULLMAN. Thank you, Mr. Andrews. Does that conclude your testimony?

MR. ANDREWS. Yes, sir.

MR. ULLMAN. The committee will question both Mr. Andrews and Mr. Pattillo. Are there any questions? Mrs. Griffiths.

MRS. GRIFFITHS. Mr. Pattillo, I would like to ask you, is Rockefeller Plaza owned by the Rockefeller Foundation?

MR. PATTILLO. Mrs. Griffiths, I can't answer that question. I think there will be a representative of the Rockefeller Foundation appearing tomorrow, and he could give you an authoritative answer to that question.

MRS. GRIFFITHS. Do the tax laws of the State of New York permit the nontaxing of the income of foundations just as we don't tax them?

MR. PATTILLO. That is right.

MRS. GRIFFITHS. And the tax laws of the city do not apply?

Mr. PATILLO. That is right; foundations are exempt.

Mrs. GRIFFITHS. Do property taxes apply to foundations in New York?

Mr. PATILLO. No; they do not.

Mrs. GRIFFITHS. So that anything owned by a foundation in the city of New York is paying no property tax and no income tax; is that right?

Mr. PATILLO. Well, now, I would prefer to let Mr. Andrews answer that question.

Mrs. GRIFFITHS. All right.

Mr. ANDREWS. Yes; the answer to that question is there is no such absolute exemption. In general, exempt organizations of the foundation type do have to pay taxes on property that is commercially used but not on property, as, for instance, a building, that they themselves occupy.

Now, you may have noticed, however, that in the case of one foundation, the Twentieth Century Fund, it voluntarily paid a tax equivalent for the building it wholly owned because it says, "We are getting city services and we think we should take care of the expenses of the city to maintain garbage removal, police protection, and the like."

Mrs. GRIFFITHS. That is very sweet of them. I understand, or I have been told, that one of the real problems of the city of New York is that so much of the property is foundation owned, that it is limiting their tax base. I was just thinking perhaps Mayor Lindsay would prefer that Governor Rockefeller permit those foundations to be taxed rather than sending money back from the State taxpayers.

Mr. ANDREWS. Mrs. Griffiths, I take just one minor exception to this. A tremendous amount of New York City property is tax exempt but so far as I have been able to discover, and I have looked into this to some extent, not much of this is foundation owned. Much of it is educational land and church and government owned, but foundations do not really own very much property in New York City.

Mrs. GRIFFITHS. I have just been told by people up here that Columbia owns Rockefeller Plaza.

Mr. ANDREWS. A little later the Rockefeller people will testify. I think that Radio City pays regular taxes.

Mrs. GRIFFITHS. But if they can't tax the income within the State or income within the city and they are not levying property taxes I would think it would put them in quite a bind and it would be greatly helpful if they could.

Mr. ANDREWS. In my view this problem of property tax exemption is a very severe one which will have to be met constructively in the near future.

Mrs. GRIFFITHS. Historically, didn't the State of New York exempt foundations before the Federal Government did?

Mr. ANDREWS. I can't answer that question.

Mrs. GRIFFITH. Isn't it true that John D. Rockefeller, Sr., came first to Congress and tried to get this type of exemption and Congress laughed him out of here and that he then went to the Legislature of the State of New York?

Mr. ANDREWS. It is true that the charter of the Rockefeller Foundation was granted by the State of New York after an unsuccessful attempt to get it from the Federal Government.

Mrs. GRIFFITHS. I understood that that was true. Thank you very much.

Mr. ULLMAN. Are there further questions? Mr. Utt.

Mr. UTT. Mr. Andrews, you made the statement that most of the foundations were created under State law. Therefore, the State should enforce and supervise the foundations. How would the State of California supervise the violations and police the Robinson-Patman Act? How would it supervise the Sherman Antitrust Act or the Clayton Antitrust Act? What would it do about the Interest Equalization Act that we passed?

Incidentally, in the statement of Mr. Patman he indicated that there had been a great many grants made abroad in areas where I as an individual have to pay an interest equalization tax.

Do any of the foundations to your knowledge pay an interest equalization tax when they send money into the nondeveloped countries where we as individuals or corporations have to pay that tax?

Mr. ANDREWS. Mr. Utt, on your first question, in the State of California there is a fairly vigorous effort to bring foundations to account. I am not sure, however, about covering the Robinson-Patman Act and the like which are Federal legislation.

Mr. UTT. That is what I think, and if these abuses come under Federal law and not under State law then why shouldn't they be enforced by the Federal Government.

Mr. ANDREWS. The Federal enforcement would belong to the Federal Government under these particular acts, that is perfectly true.

Mr. UTT. That involves the SEC on trading in stock, it involves the FCC where they have radio stations or television stations that belong to foundations, and I think most of the regulation of the trusts should be by the Federal Government and that there is need for additional law and that the Internal Revenue is simply a taxing organization and would have nothing to do with all of the other Federal regulations where either we ought to have a foundation regulatory board set up to police the foundations or we should give that authority to the Internal Revenue and let them enforce them and police them, but at the present time, I know how much abuse there is within these foundations.

Within your knowledge do any of these foundations deal in gold?

Mr. ANDREWS. Not to my knowledge.

Mr. UTT. And would it be illegal if they did, or are they exempt from that as they are exempt from so many things?

Mr. ANDREWS. I cannot answer that question.

Mr. UTT. That is all, Mr. Chairman.

Mr. ULLMAN. Mr. Collier.

Mr. COLLIER. Can you think of any general areas of foundation philanthropy in which the Federal Government is not already engaged?

Mr. ANDREWS. Yes; there are quite a few such areas. One obviously is religion in which the Federal Government is prohibited from entering.

Mr. COLLIER. Aside from religion? Of course, by indirection are there not Federal programs in research and study areas which do delve into various aspects of religion as part of an academic study, so that this is not entirely true?

Mr. ANDREWS. Theoretically the Federal exemption of religious agencies from tax is an indirect subsidy. I would have to agree with you on that. It is just direct intervention in religion that is forbidden to the Federal Government.

Mr. COLLIER. For the most part in various types of research programs isn't it true that almost without exception the Federal Government through expansion of various functions now engages in virtually every area of this type of research that the foundations now on a selective basis engage in?

Mr. ANDREWS. Talking in broad areas the answer is "Yes." Talking in specific programs the answer is still "No." May I give you just one interesting example?

Mr. COLLIER. Surely.

Mr. ANDREWS. I just drove up from Mexico City to attend this hearing and I am still a little driver conscious. All over the United States now as I drove along the highways I found very helpful white lines on the margins of the highways as well as a white line in the center.

Do you gentlemen realize that as little as 12 or 14 years ago there was not in the United States—I believe this is correct—one marginal white line on any highway? We had the center lines, indeed.

Well, a small foundation in Connecticut, the Dorr Foundation, was then headed by its donor who has recently died who had engineering training. He had an idea. He went to the Connecticut Highway Department and said, "Gentlemen, why don't you put white lines on the edges of your highways?"

They said, "No, that would be three times as much white painting and we are trying to avoid headon collisions and that is what the center line is for."

He said, "Gentlemen, I think you are wrong. I think we motorists driving at night are blinded if we have to look at that white line in the center, and this results in accidents. Will you let me do an experiment, take a road on which you have accident statistics, and with my money if you need it, paint white lines on the side?"

Well, this happened on a prominent highway in Connecticut close to New York and it was to Mr. Dorr's amazement as well as the highway department that accidents dropped something like 63 percent on that newly marked highway.

Mr. COLLIER. Are you prepared to believe that if it hadn't been for that it would have not come about?

Mr. ANDREWS. It would have been 5 or 10 years before you and I would have been more safe?

Mr. COLLIER. You think so?

Mr. ANDREWS. I think so. This is what I mean, sir. While the Federal Government has highway safety programs and while the Federal Government has programs in many areas, we in America on the individual initiative principle have made many of our most important social inventions as well as some inventions in the physical area through independent enterprise.

We have gotten there before we would have gotten there had there not been this individual initiative and these ideas coming from many people.

Mr. COLLIER. Let's presume that that is a laudable exception. For the most part is it not actually a fact, with the various types of research

programs in which a substantial sum of foundations' funds flow, that in many instances they are in fact duplicating Federal programs in one area of research or another and that the Federal Government does in fact now have machinery with its expansion functions to perform in these areas of research on a basis that is reflected by the representatives of the people rather than on the individual choice of those who make these determinations within private foundations?

Mr. ANDREWS. Sir, I yield to no man in my praise for the degree in which many Federal agencies are doing imaginative and excellent research and have very ample funds. I think really, however, the small amount of money foundations still have is usually strategic and important. The better foundations, well staffed and with considerable wisdom, supplement Federal funds and sometimes bring advances and discoveries years ahead of when they would otherwise have come.

One small example. The Federal Government supplied a tremendous amount of farm machinery to a Latin American country, tractors and the like, but it so happens that these could be adjusted only with wrenches of a particular type and it was not possible to get through the Federal Government the additional funds for these wrenches so that this machinery could be used within reasonable time.

A foundation made a small grant and it sent the wrenches down by air freight and the Federal Government grant became immediately usable. There is timing involved in foundation money. This is one of the most important things foundations do. They buy time.

Mr. COLLIER. One final question because I am sure you will have an opportunity to pursue more in detail some aspects of my question. Do you believe that a foundation which subsidizes, if I may use that word, students in a foreign university should discontinue such programs if it has been accurately reported that these students, enjoying the benefits of foundation tax-exempt funds, propose to demonstrate against the Chief Executive of this Nation when he goes abroad?

Mr. ANDREWS. You have asked for a personal opinion, sir, and I would agree with you. I am not expressing an official opinion here because there are major questions, freedom of speech, and academic freedom, and the like involved, and I am sure others would disagree with me but I personally would agree with you.

Mr. COLLIER. I don't think we are talking about freedom of speech when we are talking in terms of diplomatic visitation by the chief executive of a nation to another nation and encounter what has been reported in the way of recipients of foundation funds planning and publicly announcing that they intend to embarrass the chief executive on a foreign diplomatic visitation.

I am going to be very interested to see what action, if any, is taken with regard to funds used for this purpose and under these circumstances.

That is all I have, Mr. Chairman.

Mr. ULLMAN. Are there further questions? Mr. PATTILLO, I don't believe you commented on the Treasury proposals of 1965. Do you concur with Mr. Andrews' statement in that respect?

Mr. PATTILLO. Mr. Ullman, yes. I do essentially concur. He is much more expert in this area than I am. I wouldn't comment on it, but it seems to me his statement was carefully reasoned and in accord with the facts.

Mr. ULLMAN. Thank you. Mr. Andrews, you said that Treasury point No. 3 would meet the problem of No. 4, No. 4 being the family requirement, No. 3 the business holdings.

It wouldn't seem that that would hold in all cases. Would you comment on that?

Mr. ANDREWS. I think one can find few specific cases in which it might not hold but the disadvantage on the other side, which I tried to point out, of probably stopping the flow of foundation funds that would be extremely useful seemed to me to outweigh the few cases where point No. 4 might be desirable.

Mr. ULLMAN. Mr. Andrews, your foundation library center gathered a great deal of information, but I am informed that your position is that in many cases you cannot reveal the identity of specific grantors and identify specific problem cases.

Now, do you think it would be appropriate for the United States to seek more information as to foundations both from those organizations and from grantors? Should people making really large gifts be required, for instance, to reveal their own investments so that these can be matched with the foundations investments?

Mr. ANDREWS. Mr. Ullman, the records in the foundation center, both in New York and here in Washington, do include so far as we have been able to obtain them, and we have had excellent cooperation from Internal Revenue, all the 990-A forms, the financial reports, of all the foundations that file such reports and these include in every instance, or the law requires the inclusion—sometimes they fail—all of the grants made by the foundation with the name of the grantee and the amount of money.

Now, on investments, as you know, 990-A reveals the total investment and divides it up into types of investment and requires a detailed report of any investment in which a foundation owns 5 percent or more of the stock of any corporation, this also must be included on the 990-A with market value and ledger value, and this we have.

Mr. ULLMAN. Is it your opinion then that there are adequate disclosure requirements at the present time?

Mr. ANDREWS. Not quite. I would require full voluntary reporting on the part of at least all the foundations of substantial size, and this has not been the case.

Mr. ULLMAN. There is one other point that is going to create problems. In your book, and it is a very authoritative book on this subject, you state, "A narrow line exists between furnishing objective information and attempting to influence opinion."

Of course this occupies some of Congressman Patman's testimony and it is going to create some problems certainly for this committee and the Congress.

Now, you also indicated that some foundation executives consider the restriction against legislative activity a barrier to working for social reform. Would you care to comment on the basic problem involved?

Mr. ANDREWS. Yes, sir. What I said in the book which you accurately quoted is that there is a very difficult and varying line here. For instance, in the early history, this committee may be aware, the World Peace Foundation was briefly denied tax exemption because it published documentation of the League of Nations.

Now, I think the line was overstepped here. I think such publication of documentation was useful and of general interest and was not propaganda, but that was the court ruling at that time.

Now, there is a valid distinction between specific attempts to influence legislation and objective studies of problems, social problems, financial problems, and other problems, which do not directly attempt to influence legislation, but which do indeed affect public policy, and I think it would be most unfortunate if foundations were not permitted to make these studies which are helpful to the Congress, to the State legislatures, and to the general public.

I believe that Mr. Alan Pifer is going to speak at some length on this topic and perhaps I shouldn't take any more of the committee's time since he is a philosopher in this area.

Mr. ULLMAN. We thank you very much, Mr. Andrews and Mr. Pattillo, for your very expert testimony.

Our next witness is Mr. David Freeman. We welcome you before the committee, Mr. Freeman. Would you please give us your name and the association with whom you are identified for the record and proceed as you see fit.

STATEMENT OF DAVID F. FREEMAN, PRESIDENT, COUNCIL ON FOUNDATIONS

Mr. FREEMAN. Thank you, Mr. Chairman, my name is David Freeman. I am president of the organization known as the Council on Foundations. Its 380 members include grant-making foundations with assets ranging from over \$10 million to \$100,000 or less. Within our membership are all types of foundations such as those that have been described by Dr. Pattillo—family sponsored, which comprise a majority of our members, community foundations, such as the Committee of the Permanent Charity Fund in Boston from which you will be hearing later in these proceedings; and company foundations.

My chief purpose in requesting an opportunity to appear before the committee is to urge upon the committee the importance of the continuing healthy growth of private philanthropy in this country. Voluntary organizations as we know them are a uniquely American phenomenon, and their wide diversity, at the local, State, and national level provide opportunities for millions of our citizens to give time and talent, as well as money, to worthwhile causes. This diversity and independence is reflected in that portion of the philanthropic complex represented by grant making foundations. Their wide range of interests, the fact that the geographical dispersion is good—we have members from 41 States in the Union and Puerto Rico—all add to their potential for making positive contributions to our society.

While the percentage of the private philanthropic dollar represented by foundations' grants in an average year is not as you heard earlier—large as many might think (it is estimated at 8 percent for 1968)—foundations are playing an important role in the support of a wide variety of programs and institutions, and are under ever increasing pressure to increase that support. For example, it is estimated that in 1966 foundations supplied just over 25 percent of the amount of money which came to colleges and universities from all private sources. In the last 2 years, foundations have been increas-

ingly active in support of projects directed to the problems of the cities, such as the National Urban Coalition and its local counterparts.

As has often been pointed out, many grants made by foundations assist programs which government at one level or another would otherwise be expected to finance itself. Foundations also frequently finance projects on a matching basis with government and I might depart for a moment from my written testimony here to point out that some of us who have been in the business for a long time thought we had sort of a patent on the matching grant and now we find that Congress has decided that it is a very useful tactic and that a lot of new legislation over the past 10 years has made provision for a required matching from the private sector before the Federal dollar is available for such things as community mental health development, et cetera. Thus the foundation dollar is not only available for needs government might otherwise have to meet, but it is frequently put to use in partnership with the tax dollar.

Foundations believe that their grants can have added values in terms of innovation, flexibility, lack of redtape, and relatively speedily delivery, which further justify the privileged status of private giving for charitable purposes. They recognize the existence of abuses in the field but believe that your committee will agree with the Treasury's Department judgment that these affect a small percentage of foundations.

We hope that ways can be found to remove these abuses without restricting the growth of the field or inhibiting the activities of the great majority of foundations which take seriously their responsibility to administer their funds as a public trust.

Now, how does the Council on Foundations itself view its role as a service organization for foundations? Since its inception some 20 years ago, the council has stressed the importance of wise giving in communities. Originally its membership was limited to publicly supported community foundations, of which there are now over 200 active in as many communities across the country. Since 1963 the membership has been enlarged by the addition of company foundations and family related foundations. As a condition of membership we require that all our contributing foundations make appropriate reports to the Internal Revenue Service. We also strongly encourage fuller disclosure of our members' programs and finances through the publication of annual or biennial reports.

At our annual conferences I might note that the next annual conference, Mr. Ullman, is to be in New Orleans—attended in recent years by 200 to 300 representatives of all types of foundations, we present a number of challenging discussions of important problems in program areas such as health, welfare, and education. Equally prominent in our programs, however, are what we call "nuts and bolts sessions" on administrative procedures and policies which have been found most effective in reaching decisions as to where foundation grants should go, how they should be followed up and evaluated, and what lessons can be learned by exchange of experience among our members.

This exchange of information is carried on throughout the year by regular mailings to our members, describing recent trends in grant-making and new developments in the field.

Recently the council, assisted by special grants from several major foundations, is expanding its consulting service, through which we attempt to assist members and nonmembers—those who are just entering the field and others who are reassessing their priorities or seeking to improve the quality of their work. In addition, we are encouraging regional meetings of foundations to explore areas of cooperation and mutual interest.

Two additional activities that may be of particular interest to the committee are also being made possible as a result of our staff expansion. One is the encouragement of small, understaffed foundations to band together and employ at least a part-time consultant or executive. While the personal interest and concern of the trustees of small foundations is vital to their effective functioning, we feel that many pitfalls can be avoided, and giving programs greatly improved through the use of professional staff. Major success stories in the field can be told by the Kansas City Association of Trusts and Foundations, and by the Greater Cleveland Associated Foundation, whose president, Dr. James Norton, will be testifying before you tomorrow.

Finally, the council, in collaboration with the foundation center, is undertaking an exploration of the possibility of developing a code of good practice for the field. We hope that from the work of our joint committee will come guidelines which will help all foundations to raise their standards of performance and accountability.

As you know, Mr. Chairman, the 1965 Treasury Report was welcomed by many in the foundation world as a responsible, well-researched effort to identify and suggest remedies for abuses. On closer examination, however, tax experts and representatives of foundations have found reason to question several of the Treasury's specific proposals for reform. We would hope that your committee's deliberations will take into account the importance of retaining the flexibility and independence which now characterize the field. We urge preservation of present incentives for the establishment of new foundations, and the dedication of additional funds to existing ones. In this connection, the very complex nature of several of the Treasury proposals should be weighed for possibly unfortunate side effects, not only on foundations but also on the Internal Revenue Service's primary function as a revenue-producing agency. As the latest Treasury proposals for reform point out, the recommendations in this area would have "no significant overall revenue effect."

The limited sanctions recommended by the Treasury—removal of exemption, imposition of tax, and monetary fines for late reporting—should be compared with the much wider range of remedies available through improved State regulatory legislation, such as that in New York State and in California. In New York State the specifics will be supplied to you I understand by Attorney General Laskowitz.

We hope that your committee will be able to come up with a formula for closer cooperation between the Treasury Department, active State regulatory agencies and organizations such as our own, which will continue and expand services designed to improve the standards of practice in the field.

We trust that, whatever the final result of these hearings, private philanthropy will receive in the future, as it has in the past, encouragement and support from the Congress, and that the private sector will warrant that support.

Thank you, Mr. Chairman.

Mr. ULLMAN. Thank you, Mr. Freeman. Are there questions of Mr. Freeman? Mr. Betts.

Mr. BETTS. Just one question, Mr. Freeman. You point out on page 1 that foundations have supplied over 25 percent of the money that has come to colleges and universities.

Do you think there is anything in the Treasury recommendations which would cut that down?

Mr. FREEMAN. I think the problem here, Mr. Betts, is one of growth. Foundations have been concerned as everyone else has over the years about keeping up with inflation, and this means not only in terms of their investment portfolio, but in terms of being able to make grants.

Obviously, the foundation dollar that bought a certain amount of tuition in a scholarship a few years ago buys much less now and I am afraid I would have to say that if the type of regulation which is to be enacted by the Congress were to severely inhibit the growth of the field of foundations, and this would include not only adding funds to an established foundation, but creating new ones, that the net result would be the foundations would be unable to carry as much of the share of their responsibility as they have.

Mr. BETTS. Do you think the Treasury recommendations would cut down the growth of foundations?

Mr. FREEMAN. I don't want to take too firm a position on this, Mr. Betts, because my own organization, the Council on Foundations, has not taken a firm policy position as to any single one of the Treasury recommendations.

However, I think that the mere complexity of the regulations is undoubtedly going to have some deterrent effect in the creation of new foundations and in the flow of business between present ones.

Let me give you an example of the complexity, if I may, relating to a small foundation of which I am the unsalaried president called the Southern Education Foundation, which is an amalgam of three funds, one of them established just after the Civil War, all of them directed to the problems of improving Negro education in the South. This foundation for a number of years has had a staff, has been active in the Negro colleges and with the State school boards in the South, and it has been fortunate to receive grants from other foundations, particularly the General Education Board, which was the part of the Rockefeller Foundation complex which was most interested in Negro education.

In recent years we continued to receive grants from other foundations. Now, the way I read part B of the Treasury proposals, this Southern Education Foundation would be a nonoperating foundation and would probably, therefore, not qualify for a grant from another nonoperating foundation in terms of that grantmaking foundation's ability to spend all its income in the year which received or the year thereafter.

In other words, we are getting into a series of definitions of types of foundations which have been developed in various parts of the code,

but in this particular instance not for these specific situations, and I think a lot of this is going to make it very difficult for the Internal Revenue Service to advise foundations and for foundations themselves to perform their functions successfully.

Mr. BERG. I would assume that you would say that there is nothing in the Treasury recommendations which would encourage further flow of funds from the foundations into private colleges; is that correct?

Mr. FREEMAN. Well, I have never quite thought of it that way, Congressman. I think one might say that if the final result of this committee's deliberations and of the Congress enactment of legislation were to take a shadow off the field, which undoubtedly does exist because we recognize there have been abuses, that we might end up with a very workable mix where more foundations would be created more of those that have been created would be able to operate effectively, and the net result would be plus for the country and for the foundation field, so I don't want to be too negative.

I recognize there are some serious problems here and that some of them will be dealt with effectively under the legislation that will be enacted.

Mr. BERG. Thank you.

Mr. ULLMAN. Are there further questions? Mr. Schneebeli.

Mr. SCHNEEBELI. Mr. Freeman, would you care to comment on Congressman Patman's recommendation that foundations be limited to 3 percent of stock ownership in any corporation? Is this practical in some cases that we have now?

Mr. FREEMAN. Well, the original impact of it, Congressman, would, of course, be quite devastating on a large number of foundations.

Mr. SCHNEEBELI. Even granted the long transition period during which this could be done; is it still practical?

Mr. FREEMAN. It would be practical in the sense that a foundation could obviously at some point in time diversify its portfolio to the point where it did not own more than 3 percent and still function.

It would have, I think, an extremely unfortunate effect on the creation of new foundations.

Mr. SCHNEEBELI. Do you see any danger in a foundation owning as much as 10 percent voting stock in a corporation? Is this any undue influence in most cases with the experience we have had to date?

Mr. FREEMAN. I think the percentage figures are tricky, Congressman, and I think it is difficult to say that 3 percent—

Mr. SCHNEEBELI. A widely held corporation.

Mr. FREEMAN. I think that a widely held corporation is obviously not going to be controlled by a percentage such as 3, or 4, or 5 percent, but you can argue that if the corporation is very widely held and that if no holdings in any one influence area amount to more than 10 percent, then 10 percent would have influence on the activities of the company.

I think the problem here is both a practical one in terms of the self-dealing provisions, which it seems to me are well laid out in the Treasury recommendations, and a somewhat philosophical one in terms of the Treasury's desire to remove family control not only from companies, but from foundations, I think it is here that we get into an area of some confusion.

Mr. SCHNEEBELL. Thank you.

Mr. ULLMAN. Are there other questions?

Mr. FREEMAN. Tell me just a little more about your council. You represent what percentage of the field?

Mr. FREEMAN. I am afraid it would be a very small percentage, Congressman, if we take the numbers that Dr. Pattillo has mentioned, some 20,000 grantmaking foundations at least in existence, although perhaps not terribly active, and we have a membership of some 380 in total.

On the other hand, we represent a number of larger foundations and a number of the most active small foundations, and I regard the council's function as particularly important when related to the small foundation. This is why I stressed in my testimony the importance as we see it of the small foundations coming together and being able to hire one part-time or full-time consultant which makes their efforts much more effective, and we do represent a good percentage of the most active small foundations across the country and particularly of the community foundations, the type that are formed with the sole objective of improving the social or health field in a given city.

Mr. ULLMAN. Are the Ford and Rockefeller Foundations active members of your council?

Mr. FREEMAN. No, they are not. They are financial supporters of the council, but they are not members and are not represented on the board.

Mr. SCHNEEBELL. Mr. Chairman, may I ask a question on that point?

Mr. ULLMAN. Yes; I yield.

Mr. SCHNEEBELL. What are some of your larger members?

Mr. FREEMAN. One of our larger members is the Cleveland Foundation, which is the oldest community foundation in the country and has assets of over \$100 million. Others are the Permanent Charity Fund in Boston, the Stern Family Fund, one of the most active family foundations, and a number of company foundations such as the United States Steel Foundation.

Mr. ULLMAN. Mr. Freeman, up until a short time ago the foundation occupied a rather preferred status in American public opinion, but during the last few months we have seen increasing criticism of the foundations. Therefore, I am wondering about your position as representing the largest association of foundations with respect to reforms in the handling of the foundations.

It always appears to me that there is a lot of hush-hush when it comes to foundations. Do you think that there are adequate disclosure requirements now?

Mr. FREEMAN. Congressman, I think that the 990-A form, which is the basic instrument on which all foundations are expected to report to the IRS, has been improved. I think there is room for further improvement which would prove more revealing, particularly in terms of the financial activity.

For instance, the State of New York now requires the foundations either fill out a very complex form that they have designed or submit the 990-A copy which they prepared for the Federal Government and add to that some additional financial detail in terms of their transactions, their security transactions in a given year.

I think this kind of implementation or augmentation of the information that is already required would be advantageous. I think the big problem of course is that with 20 to 30,000 grantmaking foundations in the country and with a variety of different levels of activity in these various foundations it is a somewhat frustrating task that the IRS is faced with to try to obtain all the information that would be appropriate and get it out, and this is one reason why we strongly urge our members to publish either annually or biennially, particularly if they are of a consequential size, because this implies several different things.

It implies that the foundation has thought through its broad policy and can at least in its own mind justify every grant that it has made because it has listed that grant to the general public in a printed statement. It also implies that there has been an independent outside audit of its books, and this it seems to me has some advantages.

Therefore, we would say that the required information is probably almost adequate at this point, but that voluntary information to be supplied by grantmaking foundations should be improved and I am sure the Library, the Foundation Center, would agree that we would like to see many more foundations publish than now do so.

Mr. ULLMAN. Well, I am inclined to think that voluntary regulations within your associations are not going to be adequate. I think there is increasing feeling here in Congress that the answer does not lie in a detailed report to IRS which has done an atrocious job of handling foundations, partly because it is not the kind of agency that can supervise them. I would hope that your association might come forward with some proposals for full public disclosure.

I think if we are going to continue this special tax treatment that the taxpayers of America are going to insist on full disclosure. I think we have gone down the road of hush hush treatment of foundations as far as we can go and that from now on it must be out on the table with full public disclosure. I would hope that you would help us in trying to devise some method of doing this suitably.

Mr. FREEMAN. We would be very happy to do so, Congressman, because, as I pointed out in my testimony, this has been one of the main themes of this council ever since it was established, that there should be much more public disclosure and that in fact despite the feelings of some smaller foundations full public disclosure and a statement of what the purposes of the foundation are, and what its limitations are, will be good for that foundation.

One of the things that has held back a number of foundations, as you can understand, from making a voluntary public disclosure, is the notion that as soon as it publishes it is going to be deluged with requests for funds.

I think Mr. Andrews would agree that the fact is that a good clear statement of purposes by a foundation made for the general public will actually not increase the flood, but will produce requests that are more dovetailed to that foundation's purposes.

Therefore, we strongly urge this kind of thing throughout the activities of the council.

Mr. ULLMAN. Mr. Freeman, another matter that concerns me is your treatment of the Treasury proposals. As far as the testimony before the committee is concerned you are rejecting out of hand the Treasury

recommendations and you have not come forward with any plan to regulate or control in any way the obvious abuses that have crept into the foundation procedure.

Now, I would hope that you will, before this committee completes its hearing, come up with some constructive suggestions because you are in a better position than anybody to know the abuses. I certainly know as a reputable organization that you deplore the abuses just as much as anyone else.

I would hope that you would come forward with some straightforward recommendations before this committee completes its hearings on tax reform.

MR. FREEMAN. Congressman, let me just state one thing which perhaps was unclear although I think I tried to point it out in discussion with Mr. Betts, the position that I have to take here officially before this committee is that the Council on Foundations has not itself taken a firm position for or against any one of the Treasury recommendations.

Therefore, I certainly don't want to appear to be criticizing them in their entirety. In fact I tried to point out that I wasn't doing that, nor am I throwing them all out in any sense of the word. What I am attempting to suggest is that a mix of improved Federal regulations, good cooperation with States that are active, such as the proposal that Congressman Utt introduced last session, which would allow the Treasury a little more flexibility in dealing with active State controls, and the cooperation of organizations such as our own should produce a better climate within which the abuses can be controlled and eliminated and foundations continue to perform their functions as I think we all agree they should do.

MR. ULLMAN. Thank you, Mr. Freeman, Mr. Burke.

MR. BURKE. Do you think it is possible before these hearings are closed that your organization will come in with some recommendations on legislation that will deal with these abuses, or do you think you are just going to let it hang up in the air?

MR. FREEMAN. Mr. Burke, if I may, I will answer you this way. Several members of our organization will be testifying on matters that are of immediate concern to their own foundations and you will be able to get from them their frank views. The council because of the fact that it has a very wide variety of foundations in its membership may have difficulty in coming to a meeting of minds within its own membership on precisely what sorts of regulatory steps we would urge that the Congress take.

We will in the normal course, as we have always done, at our meeting in New Orleans have a full discussion of the various problems of regulation. We will be having a representative who recently left the Treasury Department, Mr. Troyer, who will be discussing some of these Treasury recommendations as he interprets them and we will in that sense be trying to educate our members fully to the problem in the field, but I think I would be overoptimistic were I to say to you that before at least this section of the hearings is concluded the Council on Foundations would be able to come up with specific recommendations as to specific pieces of legislation.

It will be a matter that will be discussed with obvious concern by my own board and if there is a possibility of our submitting a statement before the hearings are over which would in our view be helpful to the committee we will certainly want to do so.

Mr. SCHNEEBELL. Will the gentleman yield?

Mr. ULLMAN. Without objection the record will be held open for that purpose.

(The following letter was received by the committee:)

COUNCIL ON FOUNDATIONS, INC.,
New York, N.Y., April 9, 1969.

Hon. WILBUR D. MILLS,
Chairman, Committee on Ways and Means,
House of Representatives,
Washington, D.C.

DEAR SIR: In response to requests from several members of your Committee, the Board of Directors of the Council on Foundations presents specific recommendations for the Committee's consideration in connection with its study of tax reform proposals. The Committee's timetable has not permitted the submission of each of these recommendations to the Council's membership of almost 400 foundations for a formal vote. We believe, however, that they would have the support of a substantial majority of our members.

By way of introduction, we suggest that the testimony you have heard concerning the contributions that foundations have made, and the opportunities for further constructive activity in the public interest which lie ahead, amply justify continuation of the encouragement which Congress has given foundations and other exempt organizations. The true issue, as Professor Stone pointed out in his testimony, is the extent to which Congress should regulate them. As he said, the problem is one of achieving the delicate balance of regulating enough so as to avoid abuse but not so much as to interfere with the beneficial operation of foundations.

The criticisms that have been made of foundation activities fall into two broad categories—financial and program. The 1965 and 1966 Treasury studies show that abuses exist in the financial area, primarily with regard to practices which benefit donors and delay or reduce the application of foundation funds to philanthropic activities. The Treasury recommendations for reform deal primarily with these problems. We endorse in our proposals those recommendations which would not, in our judgment, unduly restrict the growth of the field.

The Council recognizes that it is necessary to ensure that tax-exempt funds do in fact serve the public. We agree with Professor Stone's suggestion that, in achieving the delicate balance needed, Congress refrain from interfering in the carrying out by foundations of their public purposes. In the program area Congress has permitted tax-exempt organizations considerable freedom of choice, recognizing that one of the great strengths of our society lies in the multiplicity of activities and the participation of many people in the decision-making process which this freedom makes possible. There are limits in the program area, however, and they are spelled out in considerable detail in the regulations governing all organizations exempt under Section 501(c)(3) of the Internal Revenue Code.

In our view the most effective way to be sure that foundations, and the tax-exempt organizations to which they make grants, are expending their funds in the public interest, is through requirements for full public disclosure, enforced by adequately trained staffs at both federal and state levels.

Another form of foundation responsibility to the public comes from the demonstration of pilot nature of many foundation grants. Foundation programs can and do offer alternative approaches to problems in the health, welfare and education fields, among others, which the public sector may accept or reject. It is true that almost all the areas in which foundations—and indeed other charitable organizations—operate are fields in which government is also active, but we submit that this co-existence vitalizes and strengthens the democratic process.

When the people, speaking through Congress or at other levels of government, vote to carry forward foundation-sponsored initiatives, as in the case of the Salk vaccine or the Head Start program, the public has exercised ultimate judgment over foundation programs. Similarly, when pilot projects are not supported and expanded by government, or are not able to attract broad-based support from the private sector, the foundation-sponsored idea is "rejected" without major impact on our national life.

In these and other ways foundations are now held publicly accountable for their programs. We believe that with the adoption of the recommendations which follow, foundations will be more effectively accountable to the public, while

retaining their flexibility and ability to support research and experimental work. These are the quantities which have helped to make the foundation a unique form of social organization and a vital part of our democratic society.

SPECIFIC RECOMMENDATIONS

1. We recognize that the Treasury Department has had difficulty in obtaining sufficient appropriations from the general revenues to develop more experienced and trained personnel in the tax-exempt organizations area. Since the recommendations which follow will inevitably add to the work load and administrative costs of the IRS, we propose that the Congress enact legislation to require an annual filing fee from each foundation and charitable trust, similar to the New York schedule (\$10 to \$250, based on assets). The filing fee should be devoted to strengthening units within IRS as needed to assure full disclosure, in accordance with the specific recommendations below. Consideration should be given to a proportionate reduction or rebate of the filing fee for organizations paying state filing fees to support state regulatory bodies.

2. Revise current required Federal returns for foundations and charitable trusts to require more complete disclosure, particularly in the financial transaction area, so that the forms will provide meaningful information for the public as well as for audit and review purposes. Require all foundations and charitable trusts to file Form 990-A, or equivalent, as a prerequisite to continued tax exemption, and submit an independent audit annually with the return. Provide for improved public access to these returns, in IRS field offices, state facilities and private depositories. Require foundations to make available their published report or excerpts from their latest Form 990-A covering grants and purposes, on request from the public.

3. Amend Sections 6033 and 6064 of the Internal Revenue Code to provide free interchange of information between IRS and state regulatory agencies. Give discretionary authority to the Secretary of the Treasury or his delegate to defer or abate federal tax proceedings where state corrective action is being taken and will produce a more appropriate remedy.

4. Regarding the recommendations relating to private foundations contained in the 1965 Treasury Report and the Treasury's 1969 Tax Reform Studies and Proposals,

(a) Adopt the proposal to prohibit self-dealing, with appropriate sanctions.

(b) Adopt the recommendations on current distribution to charity if modified by more flexible carry-back and carry-forward provisions, and relaxation of limitations on grants to non-operating foundations not controlled by donor foundations. Legislation should be drafted so that foundations' capacity to make program-related investments is not impaired. "Income equivalent" definitions should be clear, and the percentage for required distribution should be determined in relation to objective standards, such as average yield on publicly traded stocks.

(c) Adopt the Treasury recommendations on speculation, provided they are spelled out to retain flexibility for exercise of investment judgment by foundation trustees, and to permit program-related investments.

(d) Enact the proposed "Clay Brown bills" to tax all exempt organizations on unrelated, debt-financed rental or other operating type income.

(e) Adopt the Treasury recommendations for expansion of the unrelated business income tax to all exempt organizations.

We believe that the foregoing proposals will deter financial abuses and improve accountability, without seriously limiting the growth of the field or imposing undesirable guidelines. These proposals should be tested before any more radical and complex legislation is enacted. Thus we recommend that the Committee take no action at this time on the Treasury proposals related to foundation control of business and broadening of foundation management.

Apart from problems of constitutional law, it seems clear that the impact of Representative Patman's proposal for a 20% tax on foundation gross income before contributions, or any modification designed to produce substantial revenue for the government, would necessarily fall most heavily on all the educational, charitable and scientific organizations which now look to foundations for support. We urge that no such tax be enacted.

Respectfully submitted,

THE BOARD OF DIRECTORS OF THE COUNCIL ON FOUNDATIONS, INC.
KENT H. SMITH, *Chairman*,
DAVID P. FREEMAN, *President*.

Mr. BURKE. I yield.

Mr. SCHNEEBELI. What is the date of your annual meeting this year?

Mr. FREEMAN. The date of the annual meeting is April 9 through 11 in New Orleans.

Mr. SCHNEEBELI. Will you have adequate time before the committee concludes with this subject to present some thoughts?

Mr. FREEMAN. We could present the thoughts, Mr. Schneebeli, if it were possible for this kind of a membership organization to come to a meeting of minds, but you must recognize that we have some members who feel very strongly against certain recommendations and for others and vice versa.

Whether it will be possible for us to resolve this problem within our own organization within that period of time, I am not sure.

Mr. SCHNEEBELI. We hope you come to that conclusion.

Mr. BURKE. Have you read the digest of statement submitted to the Committee on Ways and Means with respect to the Treasury report of private foundations?

Mr. FREEMAN. Is this the summary of the Treasury report, Mr. Burke?

Mr. BURKE. Yes. It was put out February 17.

Mr. FREEMAN. Yes.

Mr. BURKE. I merely bring this to your attention because it has several diverse views and this is a very complex problem and I am somewhat concerned about it because if this is the type of testimony that we are going to get, and I am not critical of you—I realize that your responsibility is to your organization, but I am somewhat concerned that out of all of this testimony this congressional committee will actually have no recommendations from the foundations for clearing up the abuses or correcting the abuses.

Therefore, you will be leaving it to Congress to write the law. This was the attitude of the AMA on medicare and then, of course, once the horse was stolen they came in and tried to lock the barn door. So I think you have a few months to do something. The foundations certainly have their self-interest to protect here. They should come in with more or less a view that would represent the views of the majority of those who are operating legitimately and not conducting these abuses. They should come in with some specific recommendations for legislation that should be enacted.

Otherwise, you are going to leave it to Congress and you might find out that some of the sections of the law might be very harmful to legitimate charitable organizations.

Mr. FREEMAN. Mr. Burke, if we can possibly do so within our own bureaucratic problems we will certainly come up with something.

Mr. ULLMAN. Are there further questions?

Mr. GIBBONS. Mr. Chairman, I have just several questions.

Mr. ULLMAN. Mr. Gibbons.

Mr. GIBBONS. Mr. Freeman, I notice you say, and another witness, there are about 20,000 foundations, but the Treasury has produced a list of over 30,000 foundations. Now, where is the discrepancy?

Mr. FREEMAN. Well, Mr. Gibbons, this is a perennial problem, the numbers game, if you will. I had occasion to go over the latest Treasury list for several States and my own curbstone opinion is that in

terms of what we think of as a grantmaking foundation there are on perhaps every page or every two pages of that volume one or more foundations which from their title we would say are not grant-making.

In other words, they are organizations that have a 501(c)(3) ruling but are basically seeking funds for some specific project. This would mean, if you were to try and count the number of these titles on each page, and we tried this, that instead of the 30,000 that the new Treasury compilation suggests, the figure might be closer to 25,000 or 26,000.

Mr. GIBBONS. I am familiar that you are not saying the difference terms of what we think of as a grantmaking foundation there are hunting licenses.

Mr. FREEMAN. No; far from it. What happens, you see, is that a variety of different tax-exempt organizations file a 501(c)(3) form, the Boy Scouts of America, for instance, and the Treasury attempted for purposes of this latest compilation to screen out of a vast number of 501(c)(3) organizations those that it could identify as the so-called private foundations in response to questionnaires which were mailed out to a large number, and all I am suggesting is that I think they did a very useful job but that they were still unable to screen completely to the extent that the foundation director, for instance, screens.

Mr. GIBBONS. There is one round figure here and I realize we are talking more or less. It seems to me that the appropriations directly coming from the Federal Treasury spent by foundations are approximately the same as the appropriations spent directly from the Federal Treasury for the poverty program.

I know how much trouble that has caused Congress and I just am wondering whether this foundation problem is going to cause about as much consternation when we really get into it.

Mr. ULLMAN. Thank you very much, Mr. Freeman. I will ask the remaining witnesses to appear this afternoon.

The committee will recess until 2 p.m.

(Whereupon, at 12:30 p.m., the committee recessed to reconvene at 2 p.m. the same day.)

AFTER RECESS

(The committee reconvened at 2 p.m., Hon. Al Ullman presiding.)

Mr. ULLMAN. The committee will come to order.

Our next witness is Mr. Charles McClaskey. We welcome you before the committee, Mr. McClaskey. We are happy to have you here. Please identify yourself and your organization for the record and proceed as you see fit.

STATEMENT OF CHARLES L. MCCLASKEY, PRESIDENT, NATIONAL ASSOCIATION OF FOUNDATIONS

Mr. MCCLASKEY. My name is Charles L. McClaskey, president of the National Association of Foundations. Shall I proceed?

Mr. ULLMAN. Yes; you may proceed.

Mr. MCCLASKEY. The \$1½ billion contributed annually by private foundations for religious, charitable, scientific, educational, and medi-

cal research purposes bespeaks their worth to the Nation far in excess of any eulogy composed of words.

We assume that it is neither the desire nor the intent of this committee to question the honesty or good intentions of those thousands of dedicated men and women who are daily giving their money, energy, and time voluntarily for the benefit of humanity.

The committee is respectfully requested to consider our prior written statement which has been printed as a part of the record.

Our tax system is founded upon the sound basic principle of self-assessment, therefore, as the principle of self-disclosure has been satisfactory it would be in the spirit of democratic government to afford private foundations an opportunity for self-regulation through the association's code of ethics, which is designed to prevent abuse, for it is a sure assumption, that private foundations will realize quickly, that to permit abuse is to perish by abuse.

The code of ethics is as follows:

PRAMBLE

The National Association of Foundations, Inc., in order to inspire public confidence, affirm the fairness of the self-assessment tax process and to indorse the basic principle of promoting private philanthropy through tax exemption, does proclaim ethical standards of conduct for foundations as follows:

(1) Be ever mindful that they are organized for philanthropy and not for private gain.

(2) Recognize that they hold a public trust.

(3) Realize that tax exemption imposes special obligations to operate solely in the public interest.

(4) Never permit a foundation to be used for the self-service or private interests of its donors, trustees, directors, officers or employees.

(5) The foundations recognize the need to make distributions annually commensurate with their income and consistent with their respective charters.

(6) To make investments as a prudent man would in a fiduciary capacity.

(7) Willingly furnish required information when requested by duly constituted local, State and Federal authorities.

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Opposition to each of the Treasury Department Report on Private Foundations proposals, submitted to the committee on February 2, 1965.

A. SELF-DEALING

We neither approve nor defend self-dealing.

The basis of this proposal is that present law is imprecise, difficult, and expensive to administer.

The question is how to protect the public interest and also accord fair treatment to the great majority of private foundations not involved.

Private foundation abuse is, as a matter of fact, not widespread as some would have you believe, because the experience of IRS in auditing private foundations' returns found less than 2-percent violations.

We submit that this percentage is too slight to justify specific additional legislation, which is unnecessary and would by implication "stigmatize" the innocent.

Paragraph (4) of the code of ethics reads:

"(4) Never permit a foundation to be used for the self-service or private interests of its donors, trustees, directors, officers or employees."

B. DELAY IN BENEFITS TO CHARITY

The issue is essentially accumulation of income. This proposal provides (1) that private foundations which do not carry on substantial active charitable endeavors of their own devote their entire income (net) to active charitable operations (whether conducted by themselves or by other charitable organizations) on a reasonably current basis. It proposes a 5-year carry-forward and a rule of accumulation for a specified reasonable period if a purpose is stated in advance and the accumulation is necessary to that purpose and (2) nonoperating foundations which have a lower income because of investments in low-yield assets should have applied to them an income equivalent formula which would put them on a par with foundations having diversified investments. To achieve this such foundations would be required to distribute actual net income (except long-term capital gains) or an amount equal to a fixed percentage of foundation asset value whichever is greater.

The alleged purpose of this proposal is that it is necessary because section 504 of the Internal Revenue Code is so indefinite. If enacted this proposal would bring total confusion. For example, the terms "reasonably current basis," "specified reasonable period," "necessary to that purpose," "income equivalent formula" and a "fixed percentage of foundation asset value" are all too inexact, subject to a wide variance of interpretation thus unsuitable for legislation.

This proposal relates to a narrow class of foundations.

Its purpose, acceleration of benefits to charity may be best accomplished by permitting foundations through self-regulation to comply with paragraph (5) of the code of ethics which reads:

(5) The foundations recognize the need to make distributions annually commensurate with their incomes and consistent with their respective charters.

C. FOUNDATION INVOLVEMENT IN BUSINESS

This proposal would prohibit a foundation free owning, directly or through stock holdings, 20 percent or more of a business unrelated to its charitable activities.

It is alleged that foundations unrestricted ownership of stock of a business (a) causes regular business to suffer serious competitive disadvantage, (b) affords subtle opportunities and temptations for self dealing and (c) diverts foundations to commercial interests.

If foundations ownership of corporate stock is wrong, why then allow less than 20 percent ownership which is purely arbitrary. This only goes to prove that the assumptions prompting this proposal are erroneous. Foundation ownership of corporate stock is not objectionable per se. The Treasury Department report on page 36 concedes that in some instances the IRS has found that business activities of a foundation have benefited charity.

The mention of 19 alleged abuses through foundation involvement in business neither requires nor justifies such action as is proposed. A paltry few abuses arising from foundations' participation in business does not warrant practically abolishing their right. Consequently, the alleged widespread abuse is untenable (1) because it is an assumption unwarranted by facts and (2) instead of penalizing abusers solely it deprives honest foundations of a free choice of legitimate investments.

There is a causal relationship between foundations and business as many notable foundations have been established through the donors transfer of corporate or business interests all without detriment to the public interest.

We submit, an enactment of this proposal would be clearly unconstitutional, because under the guise of taxation it is taking private property without due process of law. To make an arbitrary percentage (less than 20 percent) ownership of corporate stock and to require an absolute divestment of stock ownership of 20 percent or more as conditions precedent to a tax exemption is in fact asking Congress to do by indirection that which it is prohibited by the Constitution from doing directly. The right to own property without limitation of amount is inviolate. This is an instance where the result and not the form of the act is controlling.

It is submitted that the objective of this proposal, lessen foundations' involvement in business, can best and fully be accomplished through self-regulation under paragraphs (1) and (2) of the code of ethics which provides as follows:

(1) Be ever mindful that they are organized for philanthropy and not for private gain.

(2) Recognize that they hold a public trust.

D. FAMILY USE OF FOUNDATIONS TO CONTROL CORPORATE AND OTHER PROPERTY

This proposal relates to future gifts of an interest in a family corporation or other controlled property, where the donor and related parties maintain control of a business or other property after the gift of an interest in it to a private foundation, no Federal income tax deduction be permitted for the gift until (a) the foundation disposes of the contributed property, (b) the foundation devotes the property to active charitable operations, or (c) donor control over the business or property terminates.

Correlatively, the proposal would consider transfers of such interests, at or before death, as incomplete for estate tax purposes unless one of the three qualifying events occurs within a specified period after the donor's death. Control is presumed to exist if the donor and related parties own 20 percent of the voting power of a corporation or a 20-percent interest in an unincorporated business or other property. This presumption may be rebutted by showing that a particular interest does not constitute control.

This proposal is based upon the doctrinaire assumption that when a donor transfers to a private foundation stock of a corporation over which he maintains control, there result consequences which require correction. A like assumption is made when an interest in an unincorporated business or other property is contributed.

No factual evidence has been produced to show that consequences requiring correction actually or inevitably arise from these transactions. The mere mention of a "potential" is not proof that undesirable consequences actually exist.

The report indicates that the Treasury Department has misgivings about the scope, application, and workable aspects of this proposal. It proposes an alternative and finally concludes that a choice should be made by the Congress. We submit that no action by way of legislation is necessary in the public interest.

The objections to this proposal are (1) since it is directed toward conditions which do not exist, it is unnecessary, (2) it is unworkable, and (3) were its objectives valid they could be accomplished in a more advisable way.

This proposal fails to recognize the plain fact that the vast majority of family foundations are operated in the public interest.

The proposal completely reverses the fundamental doctrine of American jurisprudence, namely, that a person is presumed to be innocent until proven guilty. Under this proposal a donor is automatically adjudged guilty and must prove his innocence.

Private foundations themselves have the most at stake in preventing irregularities, consequently, they can confidently be trusted to keep their house in order. Paragraph (3) of the code of ethics provides:

(3) Realize that tax exemptions imposes special obligations to operate solely in the public interest.

E. FINANCIAL TRANSACTIONS UNRELATED TO CHARITABLE FUNCTIONS

This proposal would prohibit private foundations from engaging in three types of financial transactions, namely, (1) borrowing for investment purposes, (2) loans which are not necessary, safe, and appropriate for charitable fiduciaries and (3) trading activities and speculative practices.

The purposes of this proposal are not objectionable. We have previously stated that we neither condone nor defend abuses. The question is, are such abuses sufficiently widespread as to require legislative action. We are of the opinion that these are situations which relatively speaking occur infrequently. However, we condemn them and demand that the foundation form not be used as a "screen" for purely business transactions.

It is submitted that the objectives of this proposal can best be achieved through private foundations' self-government under paragraph (6) of the code of ethics which requires:

(6) To make investments as a prudent man would in a fiduciary capacity.

F. BROADENING OF FOUNDATION MANAGEMENT

This proposal is not to permit the donor or related parties to constitute more than 25 percent of a foundation's governing body after the first 25 years of its existence.

We assert that this is a plain attempt at social reform with no relation to taxation. There is no factual basis to warrant the bold assumption that the management of a private foundation will become decadent after its first 25 years. Foundation managers are as alert, intelligent and progressive as any class of our citizenry.

The right of control is one of the essentials of ownership. Thus, any attempted abridgement by law of the retained right of a creator of a private foundation to control and manage it would encounter the same legal inhibition discussed under paragraph C—it would be unconstitutional.

No threat to the public interest has been shown nor does it exist, consequently, legislative action is unnecessary.

RECOMMENDATIONS

We respectfully propose the following:

(1) As all of the suppositive objectives of the prior Treasury Department foundation recommendations can be achieved under present Federal and State laws and in conjunction with the association's code of ethics, additional legislation is unnecessary.

(2) As a careful analysis of each Treasury Department proposal, upon a basis of facts, shows no threat to the public interest there is no compelling reason for congressional action.

(3) As the obvious and most advisable course, we recommend that private foundations be permitted to achieve strict self-regulation under the association's code of ethics, thus insuring that they will be conducted in the public interest. We feel that we have ample support for our request in behalf of our code of ethics, because it is a method now employed in countless industries, professional groups and has been adopted by the Congress.

Mr. ULLMAN. Thank you very much, Mr. McClaskey.

For the record, how many foundations do you have in your organization?

Mr. McCLASKEY. Forty-three in 17 States. We are a relatively young organization. We have only been active 6 years.

Mr. ULLMAN. Thank you very much.

Mr. Conable?

Mr. CONABLE. Mr. McClaskey, do you find a widely varying set of State regulations affecting foundations or are they fairly consistent?

Mr. McCLASKEY. A wide range of State regulations?

Mr. CONABLE. Yes.

Mr. McCLASKEY. Well, there are State regulations. I don't know that they are necessarily so wide.

Mr. CONABLE. I mean do most States treat foundations in the same manner, require the same sort of reports, have the same basic regulatory provisions?

Mr. McCLASKEY. Yes; I would say they do. Something was mentioned this morning about New York and California. We have members in both of those States who belong to our organization, and they have been audited and got a clean bill of health from their local and Federal Government.

Mr. ULLMAN. I would question, though, whether it is a correct statement to say that State regulations across the country are comparable. I think the States have a wide, wide range of treatment with respect to foundations.

Mr. McCLASKEY. Yes; they have more supervision over them because basically they are creatures of the State law. I do not know of any Federal private foundation incorporated as such unless it would be maybe something under the District of Columbia law.

Mr. ULLMAN. Thank you very much, Mr. McClaskey.

If there are no further questions, we appreciate very much your appearing before the committee.

Mr. McCLASKEY. Thank you, Mr. Chairman.

(The following letters and statement were received by the committee:)

WALTER E. HERING FOUNDATION,
Philadelphia, Pa., January 27, 1969.

Mr. CHARLES L. McCLASKEY,
The National Association of Foundations, Alexandria, Va.

DEAR Mr. McCLASKEY: Thank you for your letter of January 18. I am sending a copy of it to each member of our Board.

Enclosed is a copy of our last annual report. Our accountants have not as yet completed the report for the year 1968. For the period from September 30, 1967 to September 30, 1968, we made the following disbursements:

Hahnemann Medical College & Hospital of Philadelphia	\$20,200.00
Convalescent Homes & Hospitals, nurses, doctors' bills, etc.	12,737.95
Contributions	43,635.00

I will be interested in receiving a copy of the article you are now preparing on the merits of private foundations. Many persons connected with them work without compensation and they are inspired to put in long hours and to accomplish the greatest amount of good for each dollar contributed.

I received a booklet prepared by the Foundation Center on "Patman and Foundations" by F. Emerson Andrews.

Sincerely,

OTIS F. SHEPHERD, Treasurer.

UNIVERSITY OF PENNSYLVANIA,
OFFICE OF THE PRESIDENT.
Philadelphia, December 30, 1968.

Mr. OTIS F. SHEPHERD,
Treasurer, Walter E. Hering Foundation, Philadelphia, Pa.

DEAR Mr. SHEPHERD: Many of the contributions to society in which the University of Pennsylvania finds its greatest satisfaction have been made possible by the help of foundations. To illustrate what foundation support has meant to this University, and to express our gratitude, we have published the enclosed brochure, "Giving Substance to Ideas".

We make this report in the spirit of both grateful appreciation and humility. The critical issues that have challenged such universities as Pennsylvania during our long lives are far from having been resolved.

Poverty, ignorance, overpopulation, world hunger, racial unrest, and the whole nest of problems that plague our cities call for knowledge and insights that do not yet exist. All of these are phenomena to which this University is addressing its educational and research efforts; but we have scarcely begun to mobilize our forces on the scale demanded by the magnitude of the problems.

Grateful for what they have helped us accomplish in the past, we look hopefully to the foundations, great and small, for much of the support that Pennsylvania requires to meet its responsibilities in the present and future.

Very sincerely,

GAYLORD P. HARNWELL.

WALTER E. HERING FOUNDATION,
Philadelphia, Pa., January 13, 1969.

Mr. CHARLES L. McCLASKEY,
The National Association of Foundations,
Alexandria, Va.

DEAR Mr. McCLASKEY: Our annual report for the year ended December 31, 1968 sets forth that 94% of receipts of income from a Trust Fund created by Walter E. Hering, totalling approximately \$100,000 was applied in contributions to hospitals and other organizations in the work of assisting the sick. We also paid some medical and hospital bills for persons who were in need and who qualified. 6% of the income was used to pay our operating expenses.

I have received many letters similar to the one enclosed. It just seems incredible that a summary of the work of the Foundations in this area cannot be brought to the attention of the Pennsylvania United States senators.

I was prompted to write this letter when I read comments in a book entitled "The Rich and The Superrich." In it the author supports Senator Patman. Can't someone write a book or pamphlet setting forth the merits of privately operated Foundations?

Yours very truly,

OTIS F. SHEPHERD.

PRICE WATERHOUSE & Co.
Philadelphia, Pa., April 13, 1969.

BOARD OF DIRECTORS,
Walter E. Hering Foundation:

In our opinion, the accompanying statement of income received and expenses and distributions disbursed and fund balances resulting from cash transactions presents fairly the receipts and disbursements of Walter E. Hering Foundation for the year 1967 and its fund balances at December 31, 1967 resulting from cash transactions on a basis consistent with that of the preceding year. Our examination of this statement was made in accordance with generally accepted auditing standards and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances including confirmation of cash and securities owned at December 31, 1967 by correspondence with depository.

PRICE WATERHOUSE & Co.

WALTER E. HERING FOUNDATION

STATEMENT OF INCOME RECEIVED AND EXPENSES AND DISTRIBUTIONS DISBURSED AND FUND BALANCES
RESULTING FROM CASH TRANSACTIONS FOR THE YEARS ENDED DEC. 31, 1967 AND 1966

	1967	Percent	1966	Percent
Income received:				
Fidelity-Philadelphia Trust Co., trustee U/D/TR. of Walter E. Hering - Distributions of income to the foundation during the period	\$87,020.11		\$94,221.79	
Interest received on U.S. Government obligations	6,025.26		6,136.26	
Other	911.87			
Total	94,017.24		100,358.05	
Distributions and expenses disbursed:				
Hahnemann Medical College and Hospital for research, equipment, etc.	15,200.00	15.30	37,200.00	31.57
Convalescent homes, hospitals, nurses, doctors, etc. for care of convalescent cases	14,340.64	14.44	22,837.83	19.38
Awards to hospitals, medical organizations	63,435.00	63.86	51,000.00	43.29
Administrative expenses: Treasurer's and secretary's salaries, treasurer's bond, auditing fees, office, and other expenses	6,350.84	6.40	6,784.14	5.76
Total	99,326.48	100.00	117,821.97	100.00
Net change	(5,309.24)		(17,463.92)	
Undistributed balance at beginning of period	197,277.85		214,741.77	
Undistributed balance, Dec. 31, 1967	191,968.61		197,277.85	
Undistributed balance, Dec. 31, 1967, comprised:				
Cash, regular deposit account	34,741.18			
Cash, custodian account	424.09			
Total	35,165.27			
Securities - U.S. Government Treasury bonds and notes¹	156,803.34			
Total	191,968.61			

¹ See table below.

	Market value Dec. 31, 1967	Cost
35,000, 5.75 percent due Nov. 15, 1974	\$35,000	\$35,047.50
75,000, 4 percent due Aug. 15, 1970	71,415	73,389.95
30,000, 4 percent due Aug. 15, 1973	27,384	29,111.51
10,000, 2.50 percent due June 15, 1967-72	8,920	9,321.88
10,000, 5 percent due Nov. 15, 1970	9,723	9,892.50
Total	152,442	156,803.34

*Walter E. Hering Foundation—Awards, gifts, grants, and contributions—1967**Hahnemann Medical College and Hospital:*

For expenditures under direction of finance committee.....	\$15,000.00
Awards for nurses at commencement exercises.....	200.00
Total.....	15,200.00
<i>Convalescent homes, hospitals, nurses and doctors for convalescent care...</i>	<i>14,340.64</i>

Awards to hospitals, etc.:

American Oncologic Hospital.....	2,000.00
Arthritis Foundation, Eastern Pennsylvania Chapter.....	500.00
Catholic Charities appeal.....	1,200.00
Child Study Center of Philadelphia.....	500.00
Children's Hospital.....	3,000.00
Children's Seashore House at Atlantic City.....	2,500.00
Christmas seals.....	10.00
Crozier College of Nursing.....	500.00
Delaware County Memorial Hospital.....	2,000.00
Delaware Valley Diabetes Association.....	4,000.00
Elwyn Institute.....	10,000.00
Germantown Dispensary Hospital.....	2,000.00
Greater Philadelphia Movement.....	1,000.00
Homemaker service.....	2,000.00
Hospital survey committee.....	3,000.00
Kensington Hospital.....	1,000.00
Memorial Hospital of Chester County.....	3,000.00
Pennsylvania Hospital.....	3,000.00
Pennsylvania Plan to Develop Scientists in Medical Research— University of Pennsylvania.....	9,600.00
St. Christopher's Hospital for Children.....	2,000.00
Southern Home for Children.....	2,000.00
Taylor Hospital.....	1,000.00
United Fund.....	4,125.00
Wheels for Welfare.....	500.00
Women's Medical College.....	3,000.00

Total.....	63,435.00
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Grand total.....	92,975.64
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**THE SANDY HILL FOUNDATION,
Hudson Falls, N.Y., March 18, 1969.**

**Mr. CHARLES L. McCLECKEY,
The National Association of Foundations,
Alexandria, Va.**

DEAR Mr. McCLECKEY: In reply to your letter of March 7, the Sandy Hill Foundation is pleased to make the following statement:

The entire income from the principal gifts to the Foundation each year, since its inception in 1961, has been expended for legitimate charity purposes as outlined in the list of approved Internal Revenue charities.

Further, no personnel trips or compensation have been charged as expenses, and finally, less than 20% of any corporation's stock is in its portfolio.

The Sandy Hill Foundation subscribes to the Code of Ethics of The National Association of Foundations Inc.

If you wish the specific record of each year's operations, it has of course been duly reported to the tax authorities, but copies could be sent for your purposes.

Sincerely yours,

J. WALTER JUCKETT, Trustee.

Mr. ULLMAN. Because we have a recorded vote, we must recess for a few minutes until we can record our votes. The committee will stand in recess.

(Short recess.)

Mr. BURLISON (presiding). The committee will come to order.

The next witness is Mr. Pifer. You may proceed, Mr. Pifer. You have a written statement. You may proceed. Give your name and address and your organization which you represent, for the record, please.

**STATEMENT OF ALAN PIFER, PRESIDENT, CARNEGIE CORP. OF
NEW YORK**

Mr. PIFER. Mr. Chairman and members of the committee, my name is Alan Pifer. I am president of the Carnegie Corp. of New York, one of the older, larger, and better known private, philanthropic foundations, established by Andrew Carnegie in 1911.

I would like to make it clear at the outset that we at Carnegie Corp. warmly welcome the attention which this committee of the Congress is giving to tax-exempt foundations as part of its general consideration of tax reform. We have no doubt that the hearings will be constructive and will be of benefit both to the foundation field and to the public at large. Disclosure of abuses found to exist in some foundations tends to undermine public confidence in all foundations. It is, therefore, not only in the public interest but also very much in the interest of the vast majority of foundations which operate with no other motive than maximum benefit to the public that the possibility of future abuses be eliminated.

We assume that much of the committee's attention will be directed to the recommendations of the Treasury Department Report on Private Foundations of 1965. We consider that report to be an excellent piece of work containing many valuable proposals. It is a report which is by no means antagonistic to foundations. On the contrary, it is entirely sympathetic to the productive role they play in American life and seeks only to insure that foundations operate for the maximum public benefit and offer no opportunity for abuse or unwarranted private advantage.

I must also state at the outset that, because of Carnegie Corp.'s history and the way it has evolved over the years, none of the recommendations of the Treasury Department report of 1965, if enacted into law, would affect our foundation. It is precisely for this reason that we feel a responsibility to express our thoughts not only on the Treasury report but also on the characteristics of foundations generally and on the public benefit which derives, where appropriate standards are met, from the continued protection of foundations under the tax laws.

We agree with the objectives of the Treasury proposals that tax exemption and deductions for charitable purposes be allowed only when there is reasonable assurance that the funds to which such tax benefits are given will be devoted to the public benefit. We also agree that to provide such assurance it may be desirable to proscribe certain transactions and relationships where substantial opportunities for diversion of funds to private benefit may exist, without requiring proof that such diversion or other abuse has in fact occurred.

Thus, we believe that it would be appropriate to approve the Treasury proposals to prohibit self-dealing, to require that all net income except long-term capital gains be devoted on a reasonably current basis to active charitable operations, and to prohibit unrelated financial transactions. Also, as discussed in the written statement of Carnegie Corp. submitted at the invitation of this committee in 1965, it may be appropriate to require that a foundation holding very low yielding assets currently apply some funds to charity by conforming to an "income equivalent" formula, provided that the income equivalent rate is modest so that the requirement does not interfere with prudent investment policy, and further provided that adequate consideration is given to the special problems that may exist in the case of those foundations that are precluded from expending corpus.

We have some question about the Treasury proposals that would prohibit a foundation from owning 20 percent or more of a business, that would postpone tax deductions for contributions of interests in a business that remains under the control of the donor, and that would prohibit the donor and related parties from constituting more than 25 percent of a foundation's governing body after 25 years of the foundation's life. Our difficulty is that these proposals might to some extent discourage future contributions to foundations.

As we see it, you will have to weigh whether the public interest lies more in precluding the establishment of such relationships because they might provide some opportunity for abuse, or more in the encouragement of philanthropy. It may be important to a donor to know that he, as long as he lives, and possibly members of his family thereafter, will have the major influence on the selection of the areas of public interest to which the foundation's funds are to be applied. Similarly, in many circumstances, the principal asset that would be available for the creation of a charitable foundation is stock of a corporation controlled by the donor, the contribution of which would be discouraged under the proposed rule.

There are today a number of excellent foundations that are clearly operated solely for the benefit of charity which would not conform to these Treasury proposals on business control and donor influence. We believe that your committee should consider carefully whether any opportunities that might exist for diversion of charitable funds to private interests merely because of the existence of such relationships may not be effectively curtailed by means that would not discourage philanthropy.

For example, you might consider whether the proposals to prohibit self dealing should not be extended to corporations controlled by foundations as well as to the foundations themselves, whether provision for minority participation in foundation management by unrelated parties would not sufficiently provide the outside influence that the Treasury suggests is desirable, and whether limitations on the control of businesses held by foundations might be applied only to preclude the purchase of such interests and not to their retention if acquired by contributions. Also, as discussed more fully below, some opportunities for abuse that may seem to be inherent in the described relationships may be reduced by increased public reporting requirements.

We hope that your committee would take no action that would

significantly limit the creative role that foundations play in serving our public needs.

The term "tax-exempt foundation" has unfortunately in recent years been used by certain critics of foundations in such a persistently derogatory manner that it has in the minds of some members of the public acquired a kind of pejorative quality. Quite contrary to the implications of this derogatory use, the tax-exempt foundation or, as we prefer to call it, the philanthropic foundation, deservedly occupies an honored place among a large class of private organizations that are protected and encouraged under one of the most fundamental tenets of the American system. The American people, throughout their history, have believed in pluralism and have practiced it. They have recognized that the Nation's public purposes are considerably broader in scope than its governmental purposes, and they have enabled a wide variety of private institutions, including foundations, to be chartered to accomplish certain public purposes through nongovernmental action.

The Congress has also chosen to grant income tax exemption since 1913, income tax deduction since 1917, estate tax deduction since 1918, and gift tax deduction since 1924 as a means of facilitating the work of private charitable institutions, and this has over the years since proven to be eminently in the public interest.

In short, we in this Nation have done much of our public business through private, tax-exempt organizations, including foundations, and we have prospered thereby. Any curtailment of the basic tax-exempt status of foundations unrelated to the problem of abuse for private benefit would in effect be an assault on the general principle of tax exemption in our society. It would not only inhibit foundations, but would also by implication pose a threat to all charitable institutions—churches, private colleges, private welfare agencies, voluntary hospitals, and many others.

It must also be noted that any impairment of the philanthropic potential of foundations through removal of their tax exemption would result in a serious loss of income to recipients of foundation giving, which are in very large measure other private, tax-exempt institutions—churches, colleges, schools, hospitals, and so forth. The vigor and independence of the entire private, nonprofit sector is, therefore, directly related to the financial strength of foundations. This is a point we dare not forget in an age when the Government sector is, perforce, expanding so rapidly in relation to private endeavor.

I feel obliged at this point to say a word about Government regulation of foundations. The concern of the Treasury report in this connection was limited, quite properly, to the Federal Government's unquestioned responsibility to see to it that all foundations with tax benefits, whatever their size, however long or newly established, whether the donors be alive or dead, operate for the maximum benefit of charity and allow no opportunity for personal gain.

Some critics of foundations, however, because they are displeased at particular things foundations have done, such as assisting certain organizations or institutions or certain experimental projects or studies of which they disapprove, have gone much further than this legitimate governmental concern in the control of foundations and implied the need for substantive forms of control which would put public

authorities in the position of interpreting and defining the nature of the public benefit that should accrue from private charity.

Governmental control such as this would have far-reaching and extremely dangerous consequences for the American pluralistic system, of which foundations constitute such an important part. For it would drive a wedge into the entire body of private, tax-exempt organizations and institutions and lead inevitably to a general erosion of their independence. Furthermore, if Government were to begin to prescribe what kinds of activities foundations could or could not support, this would, in effect, also constitute a form of control over the potential recipients of foundation giving, which as we have said, are frequently other private, tax-exempt kinds of institutions.

We must, therefore, recognize that if we want a pluralistic society, if we want multiple, private centers of initiative for the public good, if we think the principle of friendly competition by private organizations with an otherwise all-powerful, all-embracing Government is a good thing, we must be prepared to accept the consequences of that system. Private organizations, including foundations, will at times cause irritation. They will support unpopular causes. They will assist experiments which fail. Their actions will in some measure influence the development of public policies of which some may disapprove.

But, equally, they will please some people. They will support causes which later become intensely popular. They will support experiments which succeed and show the way to a better life for all of us. And their actions will influence the development of public policies which prove to be widely beneficial and gain general acceptance.

A striking example of the latter is the enormous influence the Carnegie Foundation for the Advancement of Teaching has, since 1905, had on the development of pension theory and practice in this country, including the principles upon which the Federal social security program was founded. There were times during that 60-odd years of history when actions taken by that foundation were unpopular. Yet few today would regard its contribution to the Nation's life as anything but immensely constructive.

In view of these considerations, it is sad and disturbing to note that some of our critics seem to have so lost faith in foundations and, therefore, in the principle of pluralism in the Nation's life that they appear to favor curtailing the freedom of the very class of tax-exempt institutions whose chief purpose it is to enable pluralism to continue to survive. We trust that these hearings may serve to renew their faith in the American system.

Within the large field of tax-exempt organizations, foundations, in our opinion, have a special, perhaps unique, potential value to the larger society. This potential derives from their relative freedom, combined with the generally uncommitted nature of their funds. Having these attributes, foundations are possessed of a high degree of maneuverability and flexibility—more so than most other institutions, public or private. In an age of rapid social change such as the present, they are able to respond quickly to new social needs. They can deploy their funds flexibly, and if need be fearlessly, to the support of the Nation's most able and imaginative citizens—leaders in the fields of medicine, science, the arts, education, and many other areas.

Some of our foundations are enabled by their charters to enhance the prospects for world peace through their support of education, population control, and improved agricultural production in Asia, Africa, and Latin America. I must cite here the extraordinarily important work done by the Ford and Rockefeller Foundations abroad. The miracle rice and wheat developed in the Philippines and Mexico through the efforts of these two foundations are of incalculable benefit to all mankind, whether living in other nations or here in the United States. I must also mention Carnegie Corp.'s work in assisting the development of viable educational systems in some of the African nations. We are proud of it.

Here in the United States, it would be hard to place a value on the accomplishments of such foundations as Kellogg, of Battle Creek, and Danforth, of St. Louis, in education, of the Hogg Foundation, of Austin, Tex., in mental health, of the Commonwealth Fund, of New York, in medical education and many, many other examples I could refer to, were time available.

Let me simply take a brief moment to describe to you four projects being supported by our own foundation, to illustrate how relatively limited amounts of money from such a source can carry the potential for greater public benefit.

We are currently, together with the Commonwealth Fund, supporting an exciting new program at the University of Colorado Medical Center for the training of a new kind of medical practitioner, a pediatric associate, who, working under the direction of a pediatrician, will be able to examine and immunize well children and treat normal childhood diseases. I say exciting because this program, which has been approved by the Colorado State Medical Society, and which is expected to spread rapidly to other parts of the country, offers promise of relieving the critical shortage of doctors available to look after our burgeoning child population. And if the program works in pediatrics, possibly it will work in other areas where there is a serious shortage of specialists to deliver health care to the American people. It is doubtful this program would ever have come into being without foundation help.

I would like to say parenthetically that the original proposal for support of that program was turned down by the Federal Government and it was only because two foundations were willing to come in and put up the experimental money that it ever got off the ground.

Another program, based in Los Angeles, is concerned with higher educational opportunities for Mexican Americans. These disadvantaged people comprise the second largest minority in the United States. Yet in California, where they make up about 11 percent of the population, they represent only 0.5 percent of the enrollment in State colleges and universities. The Youth Opportunities Foundation was organized by a group of successful Mexican Americans to confront this problem by counseling, placing, and securing funds for Mexican-American students. Carnegie Corp.'s grant to this organization, acting in partnership with funds raised from local voluntary organization and industries, is providing administrative support and scholarships. This is a case of a national foundation helping those who would help themselves in conjunction with local efforts.

A third project involves the American Academy of Arts and Sciences. Under the aegis of this leading organization and with financial support from our foundation, some of the most brilliant men in the nation, representing many different professions and disciplines, have been meeting regularly as members of the academy's commission on the year 2000. Out of this systematic look into the future are coming insights that will, through published reports, no doubt be widely influential in the formation of American public policy in both domestic and international affairs. In a world of immense danger and complexity there can be no substitute for the application of high intelligence to the Nation's problems. Foundation money is making this possible. Can a price tag be put on it?

Lastly, I must mention the children's television workshop. This project, started by Carnegie Corp. and now supported also by the Ford Foundation and the U.S. Office of Education, is preparing an experimental, hour-long, daily television program for 4-years-olds, which will combine fast-paced entertainment with instruction. There is little prospect that there will be the public funds available within the foreseeable future to provide preschool education to all children. Indeed, it would require many hundreds of millions of dollars to make that possible. If the children's television workshop can devise programs that can catch the attention of millions of youngsters and at the same time get them off to the early start in formal learning—which educators are now agreed is essential—it will have performed at relatively small cost an immense public service. A public agency could have had this idea—but didn't. It was a product of the initiative and imagination of a private foundation.

In the light of foundation activities such as these I have just discussed, you can, perhaps, understand the distress which those of us who serve bona fide foundations feel at the approbrious connotation certain critics have managed, totally unfairly, to attach to the term "tax-exempt foundations." We believe the foundations' contribution to American life has justified many times over the public trust that has been placed in them by virtue of the tax exemption. We are proud to be foundation officers.

A frequent misconception about foundations is that they are becoming a disproportionately large segment of our national economy. This misconception arises from emphasis on total assets of foundations, rather than on the more meaningful figure of funds available for annual expenditure and from a failure to relate either assets or expenditures to other aspects of our national economy. To illustrate this point, let me give you some comparative figures.

The market value of foundation assets in 1967 was about \$20.3 billion—considerably less than 1 percent of the total private financial assets of the Nation. In the same year total foundation spending for all purposes came to approximately \$1.4 billion. This was only 0.2 percent of the gross national product for that year, only 0.6 percent of all Government spending at all levels, and only 1.4 percent of what the Federal, State, and local governments were spending on just health, education, and welfare.

Furthermore, it must always be remembered that annual foundation expenditure is only a small part, less than 10 percent, of total annual private, philanthropic giving—\$1.4 billion out of a total of \$14.5 billion. These figures are for 1967.

To suggest, then, that either foundation assets or spending are too large a part of the economy is, in comparative terms, not supported by the facts—as the Treasury report so concluded. And the charge is equally unfounded that foundations represent a vast concentration of economic power, when one stops to consider that the control of their assets is diffused among some 20,000 separate and highly independent boards of trustees.

Indeed, the enormous variety among foundations and fragmentation of the field is an absolute monument to pluralism and striking evidence that the spirit of individual initiative is still vigorous in the Nation. I know of no other class of organizations or institutions, public or private, profitmaking or nonprofit, the members of which guard their independence more jealously than do foundations.

I would lack candor, however, if I closed this testimony letting you think I believe the foundation field is above criticism. Certainly it is not. There are abuses in a minority of foundations, and they must be stopped. There is some mismanagement and some complacency here and there. Occasionally foundations make errors of judgment. No one could pretend that every foundation is what it ideally should be—any more than one could say that every voluntary hospital or every private college lives up to the ideal. The greatest fault of the foundation field, in my estimation, is an inadequate awareness in some foundations of the need for a sense of public accountability.

Although foundations are private institutions, they are created for the benefit of the public and therefore the public has a legitimate interest in being kept fully informed about what they are doing. In a democracy, enjoying, as it does, the right of free speech and possessed of a free press, there can be no better way of protecting this public interest than through full disclosure.

I am, therefore, disturbed to observe that among the 249 foundations with assets of over \$10 million, less than a third have ever issued a public report and fewer than a quarter do so regularly. They do, of course, file their annual information return with the Internal Revenue Service, but that to me is not a substitute for a readily available public report which includes such information as a list of trustees and senior staff, a description of the foundation's program interests, a list of donations for the past year including the purpose, recipient, and amount of each grant, a list of the foundation's investments, and, finally, a breakdown of its administrative expenses.

It is my personal view that consideration should be given to making the preparation of such a report mandatory under the tax laws. Moreover, foundations might be required to prepare and make available for public inspection relevant financial and operating information with respect to any controlled businesses.

Mr. Chairman, I have taken the liberty of using this opportunity to put in a good word for foundations because I am a firm believer in their high value to this Nation and to the world. I hope this has been helpful as background to your more specific responsibility of tax reform. Please be assured of our sincere desire at Carnegie Corp. to further the important and timely work of this committee, and feel free to call on us if you think we can be of any further assistance.

Mr. BURNERSON. Thank you, Mr. Pifer, and our regrets for having been delayed for an hour.

Now the chairman will take over and see if there are questions.

The CHAIRMAN. Are there any questions?

Mr. Ullman.

Mr. ULLMAN. This has been very constructive testimony. I think you have a sympathetic ear as far as the general value of foundations is concerned. Isn't part of the dilemma because of the question of whose money is it that foundations spend? The answer to that question, of course, holds the key to a lot of the problem that we have. Obviously, the Congress through tax action could virtually eliminate charitable foundations. It is the feeling of an increasing number of American people that it is public money, taxpayers' money that is being spent. I don't think they object too much to the fact that private nonprofit people spend it, but I think that there is a growing feeling that a lot of foundations and many private businesses look upon them as "money trees," that there has been a failure of responsibility to live up to the rigid standards of accountability that controls expenditures of public money, and that for these reasons the foundations must be much more aware of the fact that it is public money that they are spending.

You might comment.

Mr. PIRN. I think you have raised a very real question. The tax exemption does in the minds of many people make foundation money, or seem to make it, public money. One can also take the view, I think, that since this is money which never in a sense got into the hands of the Government, and since this is under the control of privately chartered boards of trustees that it is private money. That is the dilemma. Foundations are both public and private in their nature. There is some of each in them and this to me makes me argue very strongly for the need for a sense of public accountability on the part of foundations.

I come back again and again in my mind to the great power in a society such as ours of a free press and full disclosure. It seems to me that if we had a better means for a full disclosure that some of the abuses would simply not be able to stand the light of day. It is true that we have the 990-A forms which are filed and these are available, but to me this is not the same thing as having information sheets which could be prepared by every foundation. It would not necessarily even have to be printed. There would not have to be a lot of expense involved but the kind of minimal information which I outlined here it seems to me any foundation ought to be prepared to make available to the public and to the press on request. I don't think that is really asking very much in return for the tax benefits.

Mr. ULLMAN. But would you rest your case solely upon that one factor? Would not you concur that structurally there are some things that need to be done and that with regard to the Treasury recommendations each one of these items needs a real close hard look.

Mr. PIRN. I agree absolutely, Mr. Ullman. There are several there which we at Carnegie Corp. support very strongly. Obviously, self-dealing must be stopped and one of the things your committee will need to consider is whether you want to return to the 1950 bill which did not pass at that time, which would have cut off a good deal of the opportunity for self-dealing, and we have also suggested in our testimony here that opportunities for self-dealing between foundations

and, particularly, closely controlled companies which they control ought to be eliminated.

So we have our concerns here and I think we raised them in the form of doubts because, as I said we are not affected in our foundation. We would recommend that you be quite careful not to take any steps that would tend to limit the birth of new foundations, particularly some of sufficient size so that they could provide greater competition. There are really quite a limited number of foundations that are large enough to provide adequate competition of ideas and programs and purposes, and it is my feeling very strongly that it would be in the public interest if the public had a greater choice of substantial sized foundations that it could go to for the support of its projects.

Mr. ULLMAN. That is all.

The CHAIRMAN. Mr. Byrnes.

Mr. BYRNES. I think Mr. Ullman put his finger on it in the question with respect to the public moneys involved.

Now, of course, a portion of the money that the foundation is dealing with is in a sense public money by the very fact that it is money that has escaped taxation. Out of this arises the problem. The problem is, as you refer to it, the public interest, and we are all going to have differences, I suppose, as to what is an appropriate public interest, or what is an appropriate educational or charitable foundation. But why is it that foundations have much more latitude for their grants than an individual has and still get a tax deduction?

Why should foundations have a different rule than the individual in terms of recognition by the tax laws as to whether it is deductible or not deductible?

Mr. PIFER. Well, I am not sure I can answer that question and to be quite truthful with you I was not fully aware that foundations have that much greater latitude than an individual because causes to which an individual can give his funds are quite broad. I had not been aware that the difference was all that considerable.

Mr. BYRNES. But you have a difference. Is there any justification for a more liberal attitude toward how foundations can spend their money and get tax exemption than what an individual can give and be eligible for a deduction?

Mr. PIFER. Well, one of the relevant points here is the fact that most foundations do insist that the recipients of their giving themselves have tax exemption.

Mr. BYRNES. But that is not always true.

Mr. PIFER. It is not always true; no.

Mr. BYRNES. One thing that comes to mind quite frankly is this most recent eleemosynary operation by the Ford Foundation in the transition of people from public to private life. Having been in public life for some time I can understand a certain desirability in having a transition, but I am not sure as to the degree to which it should be classified as a charitable or educational contribution under the tax laws. Certainly an individual could not do what the Ford Foundation did. They could not make a grant to these gentlemen that worked for the Senator and then deduct that grant in calculating their income tax. An individual would have to do it out of the goodness of his heart with after-tax dollars.

Why should a foundation which has received these funds from an individual in the first place, and has earned income in addition to that

on a tax-exempt basis, be able to do that sort of thing if the individual cannot?

Mr. PIFER. I think this really raises the question as to whether a foundation should be in a position to operate scholarship and fellowship programs. I don't know the circumstances of those grants. I assume they were considered to be fellowships for study. Many foundations have operated scholarship programs, travel grant programs, and fellowship programs where they have themselves set up mechanisms, advisory committees, and that kind of thing, to make decisions about who should get the awards.

Certainly, there should be minimal standards. In fact, there should be high standards to which any foundation would conform in making grants of that kind. The grants should be competitive and this should be carefully considered and the purposes for which the grants should be given should be ones which the individuals concerned are qualified to perform. In other words, there should be an application which states what the grantee is going to do with the funds and presumably in many cases there is some kind of report that comes out at the end of it which tells what was accomplished under the grant, so that you really have to look, I would think, at those particular grants under that broad heading of scholarships, fellowships, and so on, that have been a traditional foundation activity.

I really should not be commenting about those specific grants because I have no personal knowledge of them. I only know what I heard from Representative Patman this morning.

Mr. BYRNES. I use it only as an example of the capacity of a foundation to go way beyond what an individual can do with public funds in a sense. I don't know why foundations should be favored that much more than an individual because in many cases still it is the individual that makes the decision because of the closeness of control, so that you allow an individual to do indirectly what you say he cannot do directly as an individual taxpayer. If you set up your own foundation and give to yourself, then you can do it. It seems to me that there is an area where there is some inconsistency, and I would like you to tell me why there should be that inconsistency.

Mr. PIFER. I wish I could, Mr. Byrnes. I really don't know the answer to that one.

Mr. BYRNES. Thank you.

The CHAIRMAN. Mrs. Griffiths.

Mrs. GRIFFITHS. You point out that the market value of the foundation assets in 1967 was \$20.3 billion. Would you know what it was in 1957?

Mr. PIFER. I am afraid I can't answer that question. I could get it for you and would be glad to supply it to you.

Mrs. GRIFFITHS. Would you do so.

(The following letter was received by the committee:)

CARNegie CORPORATION OF NEW YORK,
March 13, 1969.

Hon. WILBUR C. MILLER,
Chairman, Committee on Ways and Means,
House of Representatives, Washington, D.C.

DEAR MR. MILLER. In my testimony before the Committee on Ways and Means on February 18, I promised to provide information on foundation assets in 1957 to compare with the figures which I gave the Committee for 1967.

The Foundation Center's best estimate of the assets of philanthropic foundations in 1957 is \$11.6 billion. One caveat needs to be mentioned, until fairly recently foundations have not made as clear a distinction as they now make between ledger and market values. Thus, the \$11.6 billion figure included ledger amounts for a number of foundations and is therefore not quite comparable with the 1967 estimate of \$20.3 billion assets.

Sincerely yours,

ALAN PIFER.

Mrs. GRIFFITHS. If that money were not in foundations what would you assume would be the return on that amount of money that would be taxable?

Mr. PIFER. The rate of return?

Mrs. GRIFFITHS. On those assets? What would you assume that the tax bill would be? You point out that the foundations have given away \$1.4 billion. Is that less or more than the amount of taxes that would have been collected if those assets had not been in foundations?

Mr. PIFER. I don't think I could answer that question without knowing all the individual circumstances of the individual foundations. I doubt if that is a question that can be answered without a vast amount of specific information about each of the situations concerned.

Mrs. GRIFFITHS. Would not you assume offhand that the taxes collected on it would be larger than the amount of money spent?

Mr. PIFER. Well, as you say, I don't think I can assume anything without knowing what all the circumstances were in each of the many situations cumulatively. I think it would be quite hazardous to make a guess as to what the answer to that question would be.

Mrs. GRIFFITHS. I shall assume that it would be. I would like to ask you also what real case could be made for any foundation making a study of the inscriptions on the tombstones in Bosnia.

Mr. PIFER. Well, I think that raises the question of whether public authorities, and I think this was what Representative Patman was suggesting this morning, ought to be in a position to decide which among the relative benefits of charity are the ones which are most in the public interest. I would suggest that that is an enormously difficult thing to do. I think it would be extraordinarily difficult for the members of the executive branch of Government, or for the Congress to come to any agreement on what foundation funds should and should not be spent on. In that case those grants were made by a foundation which, as I understand it, has always had an interest in the humanities. There are a lot of people in our society who feel that the humanities are neglected.

Indeed, the Federal Government has set up a humanities endowment for that very reason, and it seems to me rather invidious to pick out one particular grant and say, "Isn't that a silly thing for a foundation to be doing?" Possibly, for all any of us know here, that might be a very important thing.

Mrs. GRIFFITHS. As a matter of fact, that exact thing has been done by institutions in this country where Government has spent the money. I remember that we have had on the floor great discussions on little amounts like \$20,000 spent on the life of a fly or some such thing and it was republished throughout the country by various organizations, some of which I have no doubt are interested in foundations. They picked out those things themselves and yet when you looked at it, when you found out the whole truth, you found out that it was something that helped American agriculture.

Mr. PIFER. I would agree with you.

Mrs. GRIFFITHS. While I voted for the humanities appropriation I think that you could fairly say that the taxpayers of the United States really should not have to subsidize somebody's private idea of looking into the tombstones of Herzegovina and Bosnia.

Mr. PIFER. I would certainly agree with your first point, Mrs. Griffiths, that if any agency, public or private, in the country picks out a particular grant and takes it out of context and removes it from all the circumstances surrounding selection of that particular project or grant it can be made to look quite irrelevant, even quite ridiculous, and it is just as wrong for a private agency to do it in regard to a Government grant as it is, I think, for a Government agency to do it in regard to a private grant.

The Bollingen Foundation, from what little I know of their program, has been one that has supported the humanities, and I think probably a lot of people who are worried about the humanities in American life would say that that is a good thing. Possibly that grant is not one that our foundation would have made or many other foundations, but I think that the diversity, this pluralism among foundations, the fact that one would support that sort of a grant and another would not is what gives the field its enormous strength.

Mrs. GRIFFITHS. But would you assume that there should be some control over what the money is spent for, or no control?

Mr. PIFER. No, I think as long as the funds are spent for the genuine public benefit, that is that the funds are not being diverted to private benefit, that that really is the extent to which public control should go.

If the terms of the charter creating the foundation are being fulfilled, if the foundation is being managed properly, that is, if the accounts are being kept properly and there is no absconding with the funds or anything of that sort, and there is regularity in spending the funds and if the tax laws are being obeyed, and if there is no diversion of the benefits to private benefit, then what is left enters into the broad realm of the nature of our American society. That is that we have private institutions and this gives us multiple choice. It gives us many centers of initiative. We don't always like all the things that private institutions do. There are private colleges that no doubt have programs which some of us might not like. There are voluntary hospitals which occasionally come under great criticism. This is the nature it seems to me, of pluralism and having private institutions, and I for one would be very concerned if the day were to come when public agencies began to tell my class of private nonprofit, tax-exempt organization, foundations, or any others how they should spend their money.

Mrs. GRIFFITHS. But you would let them look into whether or not it was spent really privately more than it was for a public purpose so that if you could prove that the investigation had been made really for no real serious purpose but just to give a free trip to somebody that the persons heading the foundation liked then you would say perhaps that was not for a public purpose.

Mr. PIFER. I would have to know the circumstances of any particular case.

Mrs. GRIFFITHS. The moment you put it into that you would have a great deal of trouble and a great deal of regulation also.

Mr. PIFER. Excuse me?

Mrs. GRIFFITHS. The moment that you began with that, you would also have a great deal of regulation, if you have to determine between whether the purpose is public or private.

Mr. PIFER. When I referred to private benefit I was referring particularly to the problem of self-dealing which the first Treasury Department recommendation is directed to.

Mrs. GRIFFITHS. So if it were a member of the family of the donor that would be different.

Mr. PIFER. Yes, that would be different.

Mrs. GRIFFITHS. All right.

Thank you.

The CHAIRMAN. Mr. Schneebeli.

Mr. SCHNEEBELI. To further the question of Congressman Byrnes you gave a warning that you felt that the Federal Government should not establish any guidelines whatsoever with regard to foundation activities. Don't you think there might be some areas where there should be a curb such as in political activity or in stock market manipulation or, looking into the future, aren't there some areas where there should be some regulation. You seem to me to say that we should keep hands off entirely.

Mr. PIFER. No. I am glad you asked that question because it gives me an opportunity to clarify that point. I say that Federal control is not appropriate in regard to the purposes of charity, that is in selecting between different kinds of charity, saying whether a man or a foundation should spend its money on higher education or secondary education or agriculture. I was confining my comments to that point alone. There is a proper area for Federal control and this has to do with the enforcement of the tax laws, the prevention of self-dealing and things of that kind.

Mr. SCHNEEBELI. I interpreted your broad remarks over about two or three pages to say that the Federal Government should keep hands off throughout and it seems to me that there are areas of activity where foundations should not go.

Mr. PIFER. I am sorry. I did not mean to convey that impression at all. I think the majority of the Treasury recommendations are constructive and should be taken quite seriously.

Mr. SCHNEEBELI. Thank you.

The CHAIRMAN. Are there further questions?

Mr. CORMAN. Mr. Chairman.

The CHAIRMAN. Mr. Corman.

Mr. CORMAN. One of the witnesses indicated that the foundations pioneered in the field of getting matching funds to expand their programs. Does your foundation have such a policy of encouraging spending by giving matching funds? For instance, the Federal Government many times will say they will pick up so many Federal dollars if local or State governments put up so many. One of the witnesses this morning indicates that the foundations had pioneered in that field by offering a certain grant if it were matched by, I take it, some public body or some other private group. Does your foundation operate in that way?

Mr. PIFER. We do not.

Mr. CORMAN. Thank you.

The CHAIRMAN. Mr. Conable.

Mr. CONABLE. Mr. Pifer, I assume that the Carnegie Corp. does make what you consider to be full disclosure of the activities of the foundation, is that correct?

Mr. PIFER. Yes. I think it would be invidious or immodest of me to suggest that our report is any better than any number of good reports in the field, but we have believed very strongly in public disclosure and have revised our annual report from time to time to try to increase the amount of disclosure. It was revised in this past year with this very thought in mind.

Mr. CONABLE. I wonder if you would spell out in the record what you consider the necessary elements of a full disclosure. I assume that in such a report you would disclose your investments, your beneficiaries, your donors, the officers of your corporation, the trustees if that is what you call them.

Mr. PIFER. Yes.

Mr. CONABLE. Are there other elements that should be included in full disclosure?

Mr. PIFER. Well, the elements which I have suggested here that I think should be included are information on the trustees, the senior staff, description of the foundation's program interests—I think the public has a right to know what kind of things the foundation is interested in—a list of donations for the past year including the purpose the recipient and amount of each grant, a list of the foundation's investments and a breakdown of its administrative expenses. If you have that much information, you have really quite a lot of information about a foundation.

Mr. CONABLE. With respect to full disclosure, I take it that you are not limiting the disclosure to those things which would be necessary to determine whether or not the foundation should be judged tax-free? You are advocating disclosure beyond this, disclosure which would permit the public to assess and evaluate the work of the foundation quite beyond the natural interest that you have in maintaining your tax-free status.

Mr. PIFER. Yes, I think I would agree that having available to the public something that any member of the public can ask for or where any member of the press can go to the X foundation and say, "I would like to know in brief form what this foundation is, what its purposes are, what it is doing, what kind of people it is supporting and what sort of grants it is making, what its charitable limits it to," all of those things really are to me something that the public has a right to know.

Mr. CONABLE. Are there any elements relating to the work of the foundation that you feel should not be disclosed?

Mr. PIFER. Yes. I think it may not be good to disclose the particular reasons, pro and con, which have to do with the decision about a specific grant because this could do a great deal of harm to the recipients. If there were some negative reasons as well as some strong positive reasons it would not be fair for a foundation to make that public knowledge. It seems to me if it tells what it did, who it was given to and for what purpose, and that is described in sufficient detail so that anyone could understand it, then that is full disclosure. I don't think the foundation would be obligated to go and detail the reasons, pro and con, that went into all these specific decisions.

Mr. CONABLE. Thank you.

That is all, Mr. Chairman.

Mr. VANIK. Mr. Chairman.

The CHAIRMAN. Yes, Mr. Vanik.

Mr. VANIK. I would like to ask the gentleman this question. What were the assets that started off the foundation of 1911?

Mr. PIFER. \$125 million is my recollection.

Mr. VANIK. What is the present asset value?

Mr. PIFER. Well, it is approximately \$340 million, but I could not give you precise figures.

Mr. VANIK. That is the accretion over the years.

Mr. PIFER. Yes. In our own case we have had serious doubt, our legal counsel and trustees have had serious doubt whether we are allowed to spend capital gains. The charter and the original letter of gift were so drawn that they left a very considerable doubt, particularly in relation to the uncertainties of the New York State law in this connection, as to whether we were allowed to spend capital gains.

Mr. VANIK. A Federal law would certainly supersede any charter. If we had some Federal law taxing the capital gains, that would take care of the charter question; would it not?

Mr. PIFER. I can't answer that question.

Mr. VANIK. The Federal tax law could be made to nullify any charter requirements on this point.

Mr. PIFER. Presumably it could. I am not a specialist in that area and am sorry that I cannot answer that.

Mr. VANIK. Is it your contention that capital gains should not be considered?

Mr. PIFER. I think this can depend. Clearly there is a problem that foundations face today of keeping pace with inflation and clearly they must plow back into their corpus enough so that if they are perpetual trusts or if the intent of the donor was that they should go on for a long time or the trustees think this is desirable that they continue to grow. One of the problems, of course, of not being able to spend capital gains is that this circumscribes the kind of investment policy that a foundation can have and it may mean that the corpus is not growing as rapidly as it ought to to keep the income up at some future period. This is a problem which, of course, we have had to consider in our own foundation.

Mr. VANIK. Of course, the way it could be precipitated is by making capital gains taxable. That would certainly force the issue.

Mr. PIFER. That would force the issue.

Mr. VANIK. Thank you very much.

The CHAIRMAN. Mr. Utt.

Mr. UTT. Mr. Pifer, I have one question. That is, With whom do you file this revealing report that you make out?

Mr. PIFER. With whom?

Mr. UTT. With whom, with what agency, or where is this report available?

Mr. PIFER. Well we make our reports available to the public generally in that we mail out a great number of them. We send them, to the press. We send them to the foundation center and, of course, they have copies in their branch depositories and we give it out to anyone who writes and asks us for it, so that all in all our annual report, I

think, receives a very wide circulation and we put on our mailing list anyone who writes to us and asks to be on it. We also publish a quarterly report as well as an annual report in which four times a year we describe in quite some detail some of the projects we are supporting.

Mr. UTT. Mr. Chairman, would it be in order to ask Mr. Pifer to submit the last statement to the committee and make it part of the record at this point?

Mr. PIFER. Yes; I have a copy here and would be happy to submit it.

The CHAIRMAN. Without objection, it will be included in the record at this point.

(The report may be found in the committee file:)

The CHAIRMAN. Mr. Bush.

Mr. BUSH. Mr. Pifer, on the area of public benefit I would like to come back to something Mr. Schneebeli touched on. Your foundation does not deal in political activity of any kind; is that correct?

Mr. PIFER. That is correct.

Mr. BUSH. Do you support voter registration drives either directly or indirectly?

Mr. PIFER. We do not.

Mr. BUSH. You don't support a group or none of your funds go to a group that would in turn support them?

Mr. PIFER. That is correct.

Mr. BUSH. You talked about bona fide foundations. What would be a nonbona fide foundation?

Mr. PIFER. That would be one in which there is a diversion of funds to private benefit.

Mr. BUSH. Would you expand that to say to include political activity, private benefit in the field of politics, or not?

Mr. PIFER. That is a very difficult question because it takes one into the interpretation of the statute which governs political activity by foundations, and this is an area in which there have been very few legal cases and there is very little guidance in this field. I think it is a field in which one has to use judgment, and arguments can be made on both sides of a question of that kind. But it is not an area in which there is presently much clarity.

Mr. BUSH. Would the Carnegie Corp. under your existing policy have any objection if the Congress or this committee endeavored to come to grips with the political activity point? Would you feel that this would be appropriate to try to restrict it, to try through law? Would you feel that would be unwarranted control on the scope of foundations if we endeavored to write some legislation along these lines?

Mr. PIFER. Obviously, if this committee and the Congress at large feel that that is an important question, they should have a look at it. I would hope that they would keep in mind the extreme complications and difficulties and problems that are involved in some of our urban problems today and the difficulty a foundation faces.

It does not have the kinds of traditional guarantees, the bona fides that it would have had in, let's say, making a grant to a well-known college or institution that has been in existence for many years. We are, all of us, public and private agencies alike, up against some extraordinarily difficult problems in our cities. We are dealing with new kinds of organizations and institutions which are hard to classify and

measure against traditional standards, and it is in this area of urban problems that the greatest difficulties now arise.

Therefore, I would hope that if the Congress decides to look at this one, it does so with sympathetic attention to the problems that everyone is having including business firms and public agencies and State agencies, Federal agencies, and private organizations like foundations, in working out good programs in this difficult area.

Mr. BUSH. I have just a few other questions. Do you own any newspapers or magazines?

Mr. PIFER. We do not.

Mr. BUSH. On your assets I presume you have some assets where the securities are not listed securities, where you can't get a daily quotation on the New York Stock Exchange or American Stock Exchange or over the counter or something like that?

Mr. PIFER. No. I would like to answer this subject to correcting the record if I find I am wrong.

Mr. BUSH. Yes, sir.

Mr. PIFER. My understanding is that we do not own any such securities, that all of the securities we own are listed securities.

Mr. BUSH. So you don't own any real estate. Unless you own it indirectly through a listed security you don't?

Mr. PIFER. The only piece of real estate we own is the Carnegie Mansion left to us by Mrs. Carnegie.

Mr. BUSH. Then I should broaden my question. Do you know, as you look at other foundations, that there is appreciable difference in yield from assets in which a foundation owns control of an unlisted situation as opposed to where they are participating in certain numbers of shares of General Motors or are in steel or something like that?

Mr. PIFER. I haven't made any study of that. I think that would be a very useful question to look at, and I am afraid I really can't answer that one. We have thought long and hard about our own investment policy, trying to steer a mean between prudence and growth, and we have our problems. Other foundations do also. That really is a general question which I could not answer.

Mr. BUSH. From just a cursory look at the figures, a glance through the Treasury figures, it looks to me as if the listed assets yield far more than a wholly owned little corporation that maybe the founder owned or something like that. I don't know whether that is true, but I think it is very relevant to what the committee is going to be doing, and I wonder if there are any of you gentlemen who testified today who would have that in your professional knowledge, the Foundation Association, or what not.

Mr. PIFER. I would be very glad to look into that question and see if we can get some information on that.

Mr. BUSH. That is all, Mr. Chairman. Thank you.

(See p. 135.)

The CHAIRMAN. Are there any further questions?

Mr. BYRNES. Mr. Chairman.

The CHAIRMAN. Mr. Byrnes.

Mr. BYRNES. Of course, in your discussion with Mrs. Griffiths, your suggestion was that we shouldn't try to impose limitations, and I can see the problems that arise in definitions, but the statute does at least make an effort to limit what foundations can do, charitable, schol-

tific, religious, public safety, educational purposes, literary purposes.

There has been a body of law developed to some degree at least within the charitable concept, and I suppose there is some in the area of education so that it is not just a completely unlimited aspect; is it?

I mean just because foundation A says, "I think this activity is educational," that doesn't automatically make it educational; does it?

Mr. PIPER. As I said before, we are in an area here of the edge of foundation work in which the ground rules are not very clear, in which there is a minimum of helpful litigation from the past, and I think all foundations, or particularly those that are concerned with urban problems, have been wrestling with some new and difficult kinds of questions that never troubled us before as to whether it is proper to do this or that, and strong arguments can be made for the desirability of doing something, but equally arguments can be made that that introduces or pushes foundations into a kind of new area that they have not been in before.

Mr. BYRNES. That is what I was wondering, whether the test is desirability of doing something or whether it has to meet the test of the statute of being educational or scientific or charitable or religious. Isn't that the basic test rather than desirability?

Mr. PIPER. Yes; it does by all means have to meet that test.

Mr. BYRNES. I was going to ask whether you have within your foundation developed any sort of rules in dealing with requests for grants because you certainly get plenty. I imagine on some that you get, you automatically would say, "We just can't conceive of this being within the realm of reason as an educational or charitable project."

Mr. PIPER. That is right.

Mr. BYRNES. Do you have any kind of a definition for your own use or does the subject ever even come up other than whether it is desirable? Do your attorneys or anybody ever advise you, do you seek their advice as to whether it comes within the code?

Mr. PIPER. Yes. We, of course, ask legal counsel on a number of occasions.

Mr. BYRNES. But on this particular aspect I am speaking of?

Mr. PIPER. In our particular case our charter says that the funds must be used for the advancement and diffusion of knowledge, and that is a narrower mandate than some other foundations have.

For example, I believe the Ford Foundation has a charter which says the funds shall be used for the general welfare of mankind.

Mr. BYRNES. That is pretty broad.

Mr. PIPER. That is a pretty broad kind of charter and many foundations have that broad a charter. In our case the test is somewhat narrower and we have to ask ourselves, and do many times a year in regard to specific proposals, "Is that activity going to advance and diffuse knowledge?"

That is the test we have to apply in our own case, and I think and hope we have applied it successfully.

Mr. BYRNES. I would assume that that definition of your purpose comes within certainly the educational purposes.

Mr. PIPER. That is right.

Mr. BYRNES. So that you are not in conflict.

Let me ask you this. Have you ever been audited by the Internal Revenue Service?

Mr. PIFER. Not in recent years. We may have been before, and I will have to check. I have only been president of the foundation for the past 2 years and I really don't know the answer to that. I can easily find it out.

Mr. BYRNES. At least we know they haven't since you have been there?

Mr. PIFER. They certainly have not been since I was president. (The following letter was received by the committee:)

CARNEGIE CORPORATION OF NEW YORK.
February 19, 1969.

HON. WILBUR C. MILLS,
Chairman, Committee on Ways and Means,
House of Representatives,
Washington, D.C.

DEAR MR. MILLS: As promised in my testimony yesterday, I would like to submit the following supplementary information:

1. Within recent years, Carnegie Corporation has been audited by the Internal Revenue Service only once. That was in 1964.

2. Carnegie Corporation has not been audited by the New York State Attorney General's Office.

3. At the end of its most recent fiscal year, Carnegie Corporation held equity positions in 58 leading corporations. All are widely and publicly held stocks and all but one are listed on the New York Stock Exchange. By resolution of the Board of trustees, the Corporation's investment in the stock of a single company may not exceed one per cent of the outstanding shares of that company. Most of our fixed income securities, which constitute a minor part of the Corporation's holdings, are also issues which are widely and publicly held.

4. I enclose an additional copy of the Corporation's Annual Report for 1968 and copies of the last four issues of our quarterly report.

Sincerely yours,

ALAN PIFER

Mr. BYRNES. I have a feeling that no effort is made to audit foundations primarily because there is no tax to recover. The Internal Revenue Service could take away the whole charter, I suppose, but other than that is the only recourse, so that the Internal Revenue agent says, "This isn't going to be a very productive activity if I spend my time auditing the Carnegie Foundation or Ford Foundation or Rockefeller Foundation because they are tax exempt already."

I am wondering whether we should not have some policing over the foundations so that they don't just get to using only one test; namely, does one of the trustees think it is desirable.

Mr. PIFER. Yes. Clearly, foundation activities must fall within the confines of the statutes.

Mr. BYRNES. But public disclosure is not going to be effective because if an individual finds that the Carnegie Foundation is giving money or doing things that he doesn't think is particularly sound, what can he do about it?

Mr. PIFER. It has always been explained to me that the Internal Revenue Service has not audited foundations very much because, as you point out, the potential return is small; secondly, that they are understaffed for this purpose and perhaps you will want to weigh up the question of whether the Internal Revenue Service should be more heavily staffed simply to enforce the statutes we already have, let alone any new ones that you may decide in your wisdom in this committee to add.

Mr. BYRNES. The reason I raised this question is because I get a feeling that in the administration of these foundations very little attention is paid to the basic code by which they get their tax exemption simply because nobody else is paying attention to whether or not they are operating within the code and, therefore, operating on the basis of a justifiable tax exemption.

Thank you very much.

Mrs. GRIFFITHS. Mr. Chairman.

The CHAIRMAN. Mrs. Griffiths.

Mrs. GRIFFITHS. Let me ask you this question. Has the attorney general of the State of New York ever checked into your activities? You are in the State of New York?

Mr. PIFER. That is correct. He has not checked into our activities in the sense of coming to visit us or sending a team to visit us. I am sure he has available to him, I know he has available to him, our regular reports and, of course, if he gets around to having a look at us, we will be entirely happy to have him do so.

Mrs. GRIFFITHS. But so far as you know, the attorney general of the State of New York has never objected to any activity of the Carnegie Foundation? Would you say that is right or not?

Mr. PIFER. I think that is correct.

The CHAIRMAN. Are there any further questions?

If not, Mr. Pifer, we appreciate very much your statement and responses to our questions.

The CHAIRMAN. Our next witness is Professor Stone. When you were with us before we were not calling you professor. We welcome you back to the committee. You may either sit or stand.

STATEMENT OF PROF. LAWRENCE M. STONE, SCHOOL OF LAW, UNIVERSITY OF CALIFORNIA, BERKELEY

Mr. STONE. I feel like I have come back to the place of my training. I always tell my students I learned most of what I know here under Professors Woodworth, Surrey, Mills, and Byrnes.

The CHAIRMAN. We are going to find out whether we have taught you very much.

Mr. STONE. Or how much of it I have lost. I think that in view of the hour, I will not read all of my statement.

The CHAIRMAN. You feel free to discuss with us what you can talk about. We are sorry we have been so long getting to you. Take your time and go through your statement if you desire to do so.

Mr. STONE. Tax reform is always difficult, as you gentlemen very well know, but in this area of charities I think it is most difficult because the very reason for granting tax benefits for charitable activities is the thought that this is an area where governmental control and governmental direct expenditures should be avoided.

So you immediately start out with the dilemma of how do you control abuses without defeating your very purpose, and that is a very delicate problem. That is the problem that you are engaged in trying to find a solution to now.

I begin with the strong conclusion that the continued healthy existence of most of our exempt organization area is a vital matter to our free pluralistic society.

On the other hand in view of the large amounts of money involved in the tax benefits granted to these organizations and their donors and in view of the extremely current pressing needs for Government revenues, it seems to me that many benefits that were granted decades ago to certain nonprofit organizations must be revised and in some cases removed.

The issue is not whether these are good or bad organizations. The question is whether they should retain priority over other expenditures. As it is today they have priority without your doing anything because they simply continue to get these benefits every year.

As an example, and I think we can come up with endless examples, should the tax support of social and country clubs, continue to take precedence over support of needed city playgrounds. That is a question that we don't wrestle with too much.

As it is, the social or country clubs get whatever benefits they have every year, year in and year out, and the money for playgrounds has to be found through direct expenditures.

Similar questions could be raised about fraternal lodges, veterans organizations, perhaps to the extent that they carry on activities which are in the nature of social clubs and so forth.

Again I would raise the question about whether business organizations such as chambers of commerce which are supported by profit-making members and which are designed to further the profits of their members really need any kind of tax support as compared to other pressing needs of government.

So as a first recommendation I would urge that the committee carefully reexamine the exemptions now enjoyed by certain classifications including business, professional and trade organizations, social and country clubs, lodges, fraternal and veterans organizations and also numerous cemetery organizations, many of which are often merely the vehicles for profitmaking activities of their promoters.

The next subject I would like to talk about is unrelated business income. Rather than trying to argue about what Congress had in mind in 1913 or other years, I would suggest that this committee try to consider what purposes it believes exemptions should serve today and move from that direction. I would suggest a couple of tests that you might possibly find helpful.

If the organization is of the kind which Congress wishes to encourage through tax incentives and if you, accordingly, give tax deductions to donors, then it doesn't make sense to tax the organization when it receives these donations or when it has receipts from the conduct of activities which it is supposed to be carrying on, its charitable activities. So it wouldn't make sense to collect tax from the hospital on the fees it receives from patients, or the university on the tuition that it gets from the students.

Furthermore if contributions and these kinds of receipts are to be exempt, then there is no reason to tax income from the investment of some of these moneys if the organization builds an endowment fund out of them.

In all of these situations, the exemptions of the organization merely furthers what Congress has in mind in encouraging the organization in the first place through the charitable contribution deduction provision, and in each case there is private sacrifice involved, contributions of the donors or dues of members, on the one hand, or proceeds

resulting from the conduct of the desired activities, on the other hand, the school tuition, for example.

But if the organizations borrows money and engages in business or investment activities with these borrowed funds and seeks to build capital and income from these sources, then the organization can grow in unlimited fashion and its growth is merely limited by the financial ability of its managers.

The potential shrinkage of the tax base is unlimited and at least in my opinion is politically, economically, and socially dangerous.

Tax subsidized competition with the private enterprise base is also unlimited, and I think undesirable.

Finally, in this kind of situation it is unlikely that the organization will maintain that strict dedication to its purposes as is necessary where reliance on donors and users is required.

Similar problems arise when exempt organizations engage, even with funds contributed by their donors, in active commercial enterprises. The Congress already recognized this for most organizations in 1951 when it enacted the unrelated business income tax, but I would strongly urge that this committee extend the unrelated business income tax in the following ways:

First, all exempt organizations should be made subject to the tax. There are organizations today, including religious organizations, fraternal beneficiary societies, and so forth, which are exempt and there is no reason for this exemption. The only effect is to force those activities that you have taken away from some organizations into the hands of the others. If the university can't buy the macaroni factory, the church will, and we are seeing that happen right now.

Second, any income of any exempt organization attributable to the investment of borrowed funds for nonexempt purposes, whether in active or inactive business, should be taxed to that extent as unrelated business income.

In this way organizations will not be able to continue to grow, in effect, from nothing. They will have to grow from contributions of their donors or receipts from their related activities. This is essentially what H.R. 12663 and H.R. 12664, introduced by the chairman and Mr. Byrnes in 1967, would do.

Three, I would urge that the committee support the philosophy of the Treasury's regulations defining unrelated business income which regulations are commonly known as the advertising income regulations.

An organization that is engaged in related activities, that is, activities important to its exempt purposes, may, as a side effect, also engage in what is purely commercial enterprise, and the best example of this is, and this is why the regulations are called the advertising regulations, the solicitation of advertising by an exempt journal.

I see no reason for not taxing this commercial income because again this involves no private sacrifice and does not have the limits and controls that I think the Congress should impose on the extent to which exempt organizations can grow.

On the subject of foundations, it is obvious that the private foundation is a prosperous and going part of our way of life and is significant in terms of revenue, even though it may be less than 1 percent of some enormous figure such as gross national product.

It is undeniable that the extensive growth, certainly in terms of numbers, in the last few decades has been primarily induced by our Federal income, estate, and gift tax systems, and in one sense this is a major success for these provisions because that is what they were intended to do.

They were intended to induce donations.

On the other hand, the causal connection between the income, estate, and gift tax laws and the growth of private foundations and the enormous amount of Federal revenues waived obviously gives Congress the right to make certain that the public receives what is intended to be bought through these tax incentives.

So I don't think that there is any issue here about whether Congress can or cannot regulate. It has regulated to some extent and the only argument is whether that regulation is sufficient or effective. The problem is the delicate one of achieving some balance so as not to destroy what the law acts as an incentive for.

As a possible standard in achieving this delicate balance I would recommend that the Congress largely refrain from interfering in the carrying out by these organizations of their exempt purposes.

It may seem tempting at times to argue about whether a particular grant by an organization is one that really should have been made. But I think that so long as it is a question of judgment, that is precisely what we intend to buy. We hope the foundations will do the odd, the unique, the controversial thing. At least in my mind that is the useful thing to buy.

On the other hand, the Congress should provide for regulation designed to insure that, (1) the funds are devoted exclusively to exempt purposes rather than for private benefit; (2) that reasonable amounts are spent for charity and that excessive accumulations are avoided; (3) that the exemption is not exaggerated by engaging in commercial enterprise; (4) that speculative and other inappropriate activities are avoided; and (5) that nonexempt purposes do not become the dominating factor of an organization.

I think these are areas where Congress can and should enter strongly and can do so without interfering with the values that we associate with the foundations.

One of the big problems that you will face in enacting any legislation is the question of how to insure compliance with whatever rules you decide are necessary and in fact with today's rules because this problem exists right now. Whatever rules we have are difficult to enforce because the only real sanction provided is one of revocation of exemption. If I were to range in a spectrum the various sanctions that could be used this would be the one that I would use last, I think, because it, in effect, tells the organization that it can go away and disappear and not worry about regulation anymore.

It doesn't assure that the organization will do what it is supposed to do.

Foundations are largely the creatures of Federal tax law at least in recent times, but they are technically organized as corporations or trusts under the laws of the various States.

During the course of these hearings it will be urged upon you that the State is the appropriate organization to supervise the activities of these organizations because they are organized under State laws.

I don't think that this argument holds up. In the first place there are vast Federal revenues involved. Second, it is not clear to me that the Ford Foundation should be under the control of one attorney general of any one State. I would think that the Ford Foundation is a national treasure, if you will.

In any event I think the route of State regulation is not a promising one to rely on. I thought at one time that impelled by the possibility of increased Federal regulation the States might step up their activities in this area. However, I don't think that this has happened, and I don't think there is much hope that it will happen.

The State of New York has made some significant changes and the gentleman from the attorney general's office will tell you about that. But I think that in the State of California that it is my impression that we are beginning to lag and the problem is the typical one, the lack of funding. The States have no great financial interest in enforcing this area. Is is the Federal Government's money and the last office to be funded in the attorney general's office is that small one down at the end of the hall that is supposed to look into the activities of exempt organization.

I would recommend that Congress take whatever action it can to encourage State enforcement and to cooperate with State enforcement because it is useful to have a number of people looking at these organizations. No one office will ever be wise enough or big enough to see all that needs to be seen.

In this regard I would recommend that exempt organizations be required to pay an annual filing fee ranging from, as little as \$10 a year graduated up on asset size to maybe \$500, or perhaps even \$1,000.

This is similar to what New York does to fund its enforcement activities, and I think that most organizations would agree that it is not unreasonable to have them pay the costs of regulating themselves. These moneys could be made available for enforcement at the Federal level or if the States wish to go into a large enforcement program, perhaps the funds could be shared with them. In this way the States might be induced to do more. But, if not, the funds should be used at the Federal level for enforcement.

The second recommendation for cooperation with the States would be to have supervision by the Federal agency supervising charities to give way to State enforcement when the State is doing the job, but this has to be a discretionary type of authority.

For example, if the attorney general takes action to replace trustees and this promises to take care of abuses in the future and he has also taken action to make sure that the fund has been made whole by surcharging the erring trustees, then I think the Federal Government might sit back and not worry about doing anything else.

The very purpose of any sanctions that you would want to enact would have been accomplished. This in itself would encourage the State to enforce because one of the ways in which the States attack erring foundations and trusts is to force them to divest themselves of their assets and to contribute them to other active charities within the State so that instead of the money going in the form of taxes, to the Federal Government, the money would be put to work in the State.

But the Federal Government must retain residual regulatory power in the last analysis. At a minimum this is necessary only if we are to

avoid having strong enforcement in California and New York merely result in future foundations being formed in Nevada or some other State where there is no strong enforcement.

There are other things which can be done to help the States, minimum requirement which it seems to me might even be possible. For example, you could require that the charters of these organizations, at least those that are formed in the future, provide that they at all times perform and behave in such a way as to comply with the Federal tax laws. This would mean that any time they do something which jeopardizes their exemption the attorney general of the State would then have a right to come in and proceed against them.

Now the question of who at the Federal level does the regulation is a very important one. I think the Internal Revenue Service's record has not been a good one here, and I think there is a very good explanation for it.

The Internal Revenue Service and its personnel are geared to the collection of taxes. Regulation of exempt organizations is an entirely different matter. The people who are put to work in the Internal Revenue Service normally are not oriented or focused in this direction, and this has resulted in the exempt organization area often being treated as an orphan child. I think that what is needed is an organization, within the Treasury Department or the Internal Revenue Service, that has some independence and has a head whose job is to regulate charities and not to collect taxes. Then he would hire people around him who have the same orientation.

Second, I would strongly urge that the committee not attempt to regulate solely through the use of tax penalties or tax benefit withdrawals. I think as you get into these methods you will see that they become extremely complicated, that they may become harsh in certain circumstances if they are going to work. They may have to be quite severe and sometimes they will be wholly inappropriate.

If you tax the foundation itself or the charity, then you are taking money away from charity. What you want is to have the charity do what it is supposed to do, and ideally this would be accomplished if the State attorneys general were doing their job because they have equity powers. They can go into court and say, "This trustee is not behaving properly." And if they prove their case the court will replace the trustee. Or they can go into court and say, "There is self-dealing going on and property has been taken from the foundation," and the court will order its restoration.

They can, in other words, force the charity to operate properly.

I think that the Federal revenues granted here give the Federal Government just cause for taking upon itself equity powers in this area, and I would recommend that the most flexible and the most effective actions that you could enact here would be to grant to a Federal agency together with the Federal courts, equity powers similar to those now enjoyed in the State courts by the attorneys general.

That may seem revolutionary and extreme, but I think that in many ways it may be less extreme and less harsh and less mechanical and arbitrary than attempts to deal with this in the form of tax penalties on the foundation or on the trustees.

On the substantive recommendations of the Treasury Department Report on private foundations, as the committee knows, I was associ-

ated with the preparation of these. I have reviewed them extensively on several occasions since leaving the Government, and I still am in wholehearted agreement with them and yet remain to be convinced that they are not correct.

I think that in view of the hour I will avoid summarizing in effect the reasons for the principal recommendations of the Treasury and leave it to the committee to ask me questions about that.

I would like to urge upon the committee three other recommendations, some of which have been discussed already today.

The first relates to information reporting. Presently, most exempt organizations are required to file annual information reports even though they are not required to file tax returns. Some organizations are exempt from these requirements. I believe that in view of the billions of dollars in revenues involved that statistics should be collected so that the Congress will have the information necessary to make the correct policy decisions when it chooses to review these areas. So I would strongly recommend that all exempt organizations be required to file some kind of annual information return. This would include churches and every other exempt organization.

These can be designed so as not to be a burden on small organizations or on organizations which already prepare public reports for other purposes. I would combine this with my filing fee recommendation.

The second recommendation is that all such information returns and all information contained in them be available to the public. It has always seemed to me inconceivable that organizations receiving very substantial tax benefits should be allowed to operate in secrecy. Yet some of them do take the position that what they do is none of the public's business.

My recommendation here extends even to the names of donors which may be important information especially concerning a private foundation. This is a matter which is currently not of public record under existing law. Donors may have some interest in keeping their identity secret so that they will not be solicited for other contributions, but I believe that the public's interest outweighs this objection.

My third recommendation in this area is that the Congress require the Treasury Department to periodically submit to it detailed information concerning the revenues involved in the entire tax exempt area with sufficient functional breakdowns, in fact, a tax-exempt budget in this area, so that the Congress and public will be aware of the amounts of money that are being spent for these various exempt purposes and in a position to reevaluate their policy conclusions.

But I do not believe that we should wait to collect this information. I think that there is enough study and knowledge available to enable the committee to act this year on most of the matters in the exempt area in which it has solicited testimony, and I believe that it is important that the committee do so.

Thank you.

The CHAIRMAN. We thank you very much, Professor Stone, for your statement. Without objection, we shall include your entire statement in the record which you summarized today.

Mr. STONE. Yes, please.

The CHAIRMAN. At the table here you had also a reprint of an article from the proceedings of the University of Southern California Law

Center Twentieth Tax Institute that you have prepared, entitled "Federal Tax Support of Charities and Other Exempt Organizations: The Need for a National Policy."

I have been glancing through it, and I think it would be helpful that this, too, could appear in the record immediately following your full statement. Without objection, it will be made a part of the record.

(Mr. Stone's prepared statement and reprint follow:)

STATEMENT OF PROF. LAWRENCE M. STONE, SCHOOL OF LAW, UNIVERSITY OF CALIFORNIA, BERKELEY

TAX EXEMPT FOUNDATIONS AND RELATED MATTERS

I appreciate the opportunity to present my views on the first subject matter of the Committee's broad tax reform hearing. The Committee has embarked on a most difficult endeavor and deserves the gratitude and assistance of all segments of the American public.

My comments are those of tax scholar and citizen. I am not representing any organization or taxpayer.¹ I have made available to the Committee, as a more complete statement, a paper I prepared last year on the subject matter of this hearing. My purpose today is to summarize, bring up to date and supplement the suggestions contained in that paper.²

Tax reform is always difficult. However, it is most difficult in the case of "charitable" and other section 501(c)(3) organizations. The reason for tax benefits is that this is an area where government control should be avoided when possible. The problem then is an extremely delicate one of imposing the right amount of control to prevent abuse without destroying the very purpose for which tax privileges are granted.

I begin with the strong conclusion that the continued healthy existence of most of our exempt organization area is a vital matter to our free pluralistic society. All levels of government are now strongly competitive with private charitable organizations in meeting our needs in the fields of medicine, social welfare, education, and research. This is very much unlike the situation when our internal revenue laws were first enacted. But there is still ample justification for continued encouragement of much of the private exempt area. The private not-profit entity still offers the best route in many situations to innovation and experimentation in controversial areas where the government moves only with difficulty. It often provides a unique and flexible form of social organization that can counterbalance the vast unlimited power of government and the concentrated wealth of profit-making organizations. In many ways it may be a prerequisite to the continuation of a healthy democratic society.

Some exempt organizations no longer justified

On the other hand, in view of the large amounts of money involved in the tax benefits granted to exempt organizations, and their donors, and in view of the current pressing need for government revenues, it is clear to me that many benefits granted decades ago to non-profit organizations must be revised and in some cases removed. The issue, I submit, is not whether these are "good" or "bad" organizations. The question is whether support of these organizations should retain priority over other pressing needs of society. Continuation of tax benefits to exempt organizations requires no appropriation or other action by the Congress. This in effect, gives them a priority position over other needs. For example, should tax support of social and country clubs continue to take precedence over support of better school playgrounds for our crowded cities? Or should tax support of private lodges, fraternal and veterans' organizations take precedence?

¹ It is important for a witness to disclose his possible conflicts. The Committee is aware of my prior services as Tax Legislative Counsel of the Treasury Department. In that capacity I played a role in the preparation of the Foundation Report, the Clay Brown legislation, and the regulations on advertising income. I am also associated with a private law firm, Brill and Marcell, Los Angeles, California, which represents some foundations. Finally, I am presently Vice-Chairman of the Committee on Exempt Organizations of the American Bar Association's Section on Taxation. I served in 1968 as a consultant on exempt organizations to the Commission on Tax Reform of the State of California and as a member of a Public Hearings Advisory Committee of the Foundation Center, New York, New York.

² Reprinted from the Proceedings of the University of Southern California Law Center, 20th Tax Institute (1968).

dence over the need for more recreational centers for the poor or the aged or for expansion of medical treatment for the aged? Do the thousands of Chambers of Commerce and other organizations of profit-making enterprises really need a tax subsidy when compared to the need for more training and employment service for the unemployed? While it is true that in many cases the exemption does not result in vast revenue losses, why should there be any losses? And why should the Congress and the Treasury and the Internal Revenue Service and the courts have to cope with complicated compliance questions such as what is an unrelated business conducted by a trade organization?

So as a first recommendation, I would urge this committee to take a very hard look at the categories of organizations which now enjoy exemption and I would recommend strongly that it consider removing the exemptions now enjoyed by (1) business, professional and trade organizations, (2) social and country clubs, (3) lodges, fraternal and veterans' organizations, and also (4) the numerous cemetery organizations which often are merely subterfuges for profit-making activities of their promoters.

Unrestrained debt-financed growth of exempt organizations and unrelated business income

The history behind the exemption of the numerous organizations listed in section 501 of the Code is often vague and murky. Rather than arguing about what the Congress had in mind in 1913 or 1916 or 1920, I suggest that this Committee consider today what purposes it believes exemption should serve today. I would suggest the following tests:

If an organization is of the kind which Congress wishes to encourage through tax incentives, it is not sensible to tax the organization when it has receipts from the conduct of activities which are sought to be encouraged. For example, if a conservation education organization receives dues from its members for which a deduction is granted, there is no purpose in taxing the organization on the receipt of these dues. Or if a hospital receives charges from its patients or a school receives tuition from its students.

Many exempt organizations will attempt to achieve some degree of stability and independence in their year-to-year operations by building an endowment fund from contributions of donors. If the contributions are to be exempt on receipt, there is, again, no reason to tax the income from the investment of such contributions where the purpose is to further the organization's purposes.

In both of these situations the exemption of the organization merely furthers what Congress has in mind in encouraging the organization through the charitable contribution deduction. In each case there is private sacrifice involved (contributions of donors or dues of members) or proceeds resulting from the conduct of the desired activities by the organization (fees of a hospital or a school).

If, on the other hand, an exempt organization borrows money, engages in business or investment activities with these funds, and seeks to build capital and income from these sources, the case is an entirely different one. Such an organization can grow in unlimited fashion, its growth merely limited by the financial acumen of its managers. The potential shrinkage of our taxable base is unlimited and, in my opinion, politically, economically, and socially dangerous. Tax subsidized competition with the private base is unlimited and undesirable. Finally, it is unlikely that the organization will maintain the dedication to its purposes as is necessary where reliance on donors and users is required.

Similar problems arise when exempt organizations engage, even with funds contributed by donors, in active commercial enterprises. The Congress recognized this for most organizations in 1951 when it enacted the unrelated business income tax.

I would urge strongly that this committee extend the unrelated business income tax in the following ways:

(1) Exempt organizations should be subject to the tax. Certain organizations including religious organizations, fraternal beneficiary societies (lodges), cemetery companies, and social clubs are now exempt from the unrelated business tax. There is no fundamental reason for continuing this immunity.

(2) Any income of any exempt organization attributable to the investment of borrowed funds for non-exempt purposes whether in an active commercial enterprise or merely in stock or real estate should be taxed as unrelated business income. In this way organizations will not be able to "grow from nothing." The justifications for the exemption, namely, to further the basic

congressional purposes of encouraging sacrifice by donors and of encouraging certain activities, will not be interfered with in any way. I, therefore, support H.R. 12063 and H.R. 12064 (introduced by the Chairman and Mr. Byrnes in August of 1967) but would urge that consideration be given to the deletion of the exceptions in those bills.

(3) I would also urge that the Committee support the philosophy of the Treasury's regulations defining unrelated business which are more commonly known as the "advertising income" regulations. An organization engaged in related activities, i.e., activities important to its exempt purposes, may, as a side effect, also engage in what is purely commercial enterprise. The best example of this is the solicitation of advertising by an exempt journal, such as the National Geographic. I see no reason for not taxing this commercial income. Administrative difficulties are over-exaggerated. It will be possible with the cooperation of certified public accountants and other interested parties to develop ample rules of allocation to separate the net income from such activities from the net income of the related activities. If this Committee adopts the recommendation of the Treasury's Foundation Report that foundations not own a more than 20 percent interest in any unrelated business activity, it may be necessary to make an exception for unrelated businesses which are an integral part of a related activity.

Private foundations

A recent report by the Internal Revenue Service to Mr. Patman's Committee indicates that the number of private foundations in this country may be as many as 30,000. Even allowing for erroneous inclusions, the true number is probably not less than 20,000 to 25,000. Obviously, the private foundation is a prosperous and growing part of our way of life, is significant in terms of revenue, and is one which Congress cannot ignore. While foundations have existed in one form or another for thousands of years and cannot be said to be caused solely by tax considerations, it is undeniable that their extensive growth in the last two or three decades has been primarily induced by our income tax system. In one sense this is a major success for the income tax provisions which are intended as an inducement to donations to private foundations (as well as other 501(c)(3) organizations). On the other hand, the causal connection between the income tax system and the growth of private foundations and the enormous amounts of federal revenues involved obviously gives the Congress the right to make certain that the public receives what is intended to be brought through these tax incentives. These foundations are, to a substantial extent, the creatures of Congress and the tax laws. The only true issue is the extent to which Congress should regulate them. This turns primarily on the reasons for the encouragement of private foundations by the tax law. The problem here is the one of achieving the delicate balance of regulating enough so as to avoid abuse but not so much as not to interfere with the beneficial operation of foundations.

I would suggest as a standard, in achieving the delicate balance needed, that you refrain from interfering in the carrying out by these organizations of their purposes. Broad definitions such as "educational" should suffice. The few activities that require some regulation are "ideological" activities, the espousing of a particular cause in the manner of a propagandist, and the engagement in political activities and grass-roots legislative lobbying.

On the other hand, the Congress should provide for regulation designed to insure that funds are devoted exclusively to exempt purposes rather than for private benefit, that reasonable amounts are spent for charity and excessive accumulations avoided, that the exemption is not exaggerated by engaging in commercial enterprise, that speculative and other inappropriate activities are avoided, and that non-exempt purposes do not become a dominating factor. Such regulations can be carried on without interfering with the values of the foundation and other 501(c)(3) organizations.

Ensuring compliance with Federal regulations

Although foundations are largely the creatures of the federal tax law and therefore of the federal government, they are technically organized as corporations or trusts under the laws of the various states. Traditionally, exempt organizations are under the supervision of the state that provides them with their existence as a legal person. In a non-federal system, national law would be the legal structure under which charitable organizations would be formed. In our federal system, most trusts and corporations are formed under state

laws. In the case of private trusts it is the beneficiaries who have the right to demand compliance with the obligations of the trustees. In the case of a charitable trust the State Attorney General, in effect, steps into this role. In the case of private corporations, the shareholders perform this duty; in the case of charitable corporations which are without shareholders, it is the State Attorney General in effect who performs this role.

During the course of these hearings it will be urged upon you that the state is the appropriate organization to supervise the activities of foundations and other exempt organizations. Unfortunately, this route is not a promising one. The Congress has no direct way of requiring the states to carry out such regulation. And in practice the behavior of the states in this area has obviously been very deficient or else we would not be sitting here today discussing the problem.

I thought at one time that, impelled by the possibility of federal increased regulation, the states might seek to perform their duties in this area in a better manner than they have in the past. However, it is my opinion at this time that there is little hope of this. It has been many years since Mr. Patman's hearings began. Many years have passed even since the issuance of the Treasury's Private Foundation Report. With the exception of perhaps the state of New York, no significant changes have occurred at the state level in recent years. The state of California, which was perhaps the leader in this area several years ago, is, I fear, now lagging behind due to a problem which appears to be endemic with the states. That problem is that the state, unlike the federal government, has no great financial interest to protect here. So typically states have underfinanced their enforcement activities in this area. My prediction would be that they will continue to do so.

In the paper which I have submitted as a fuller statement, I recommend that the Congress take whatever action it can to encourage state enforcement and to cooperate with state enforcement. My principal recommendation in this regard is that all exempt organizations be required to pay an annual filing fee ranging from as little as \$10 a year to as much as \$500 a year and that these funds be made available for enforcement at the federal or state level. Thus, if a state wished to inaugurate a full enforcement program comparable to that in New York, it could do so in large part with the use of the federal funds. If not, the funds would be used for enforcement at the federal level.

The second recommendation for cooperation with the states is that federal regulation give way to state enforcement whenever possible. For example, any penalties imposed at the federal level upon the charity itself should in appropriate circumstances be waived if the Attorney General takes action under the state laws to insure that the funds will be given to appropriate charitable organizations within the State. Once again, this would act as an encouragement to the states to enforce the law.

However, I would emphasize that the federal government must retain residual regulatory power to insure that its "creatures" perform in the public interest. At a minimum this is necessary if we are to avoid having strong enforcement in one state merely act as an inducement for the creation of foundations in other states.

My pessimism applies even more so to the case that will be made to you during these hearings for voluntary regulation. While this is to be encouraged, it is even less likely of success than state regulation. The very organizations that need the regulation the most will be the ones that will refrain from any voluntary enforcement codes. As detailed in my longer statement, voluntary regulation would work only if it were similar to that which is used for the regulation of stock brokers by exchanges and dealer organizations. The voluntary regulation would work if there were federal sanctions behind it or if non-volunteers were directly regulated by the government.

Finally, the question of who at the federal level does the regulation is an important matter. In my fuller statement I suggest that it is unlikely that the Internal Revenue Service will be the appropriate party to regulate. The problems in this area are simply not those in which the Internal Revenue Service has, or is likely to develop, expertise. However, since these organizations exist by reason of tax benefits, their regulation should be carried out in close cooperation with the Internal Revenue Service. I have, therefore, suggested that an independent office within the Treasury Department be set up for this purpose.

Secondly, I would strongly urge that the Committee not attempt to regulate solely with tax penalties or tax benefit withdrawals. These methods are likely to prove wholly inappropriate either because they are too severe or because they

do not perform the job that needs to be done. For example, to tax a charitable organization does not carry out Congress' purpose in allowing the charitable organization to exist in the first place. Taxing the organization removes funds that would otherwise be available for the charitable purpose. It is more important to make the charitable organization perform properly.

The most efficient and appropriate methods and the least harsh methods for accomplishing these goals are the equitable powers that most State Attorneys General, together with the state courts, enjoy. These include the power to replace erring trustees, to expand the number of trustees in appropriate situations, to cause private parties to restore to the charity property which rightfully belongs to it, and to compel the trustees to specifically perform an act such as the disposition of a speculative investment. These all are powers that can be finely and delicately balanced by the enforcement agency and the courts to achieve "equity," and to perform the delicate job that needs doing. They can, in short, compel an organization to continue to perform in compliance with the requirements for federal exemption. The best example I can think of is a situation in which an organization has been created through large donations in past years which were deducted. The organization now begins to act in a manner which results in most of its benefits inuring to the benefit of private parties. To revoke the exemption at this point simply removes the organization from any supervision as an exempt organization and places it in the same category as a private organization. This may not bother the erring parties. It does bother me since at this point it seems to me the public has a right to insist that these funds for which charitable deductions have been given continue to be devoted to charitable purposes. The most appropriate method of accomplishing this is to remove the existing trustees and have new trustees appointed with court approval, or in the alternative to give the assets to other charitable organizations.

Although my recommendations for direct supervision may seem extreme, it is my opinion that they are really far less extreme than any *effective remedies* which can be proposed within the context of the Internal Revenue Code. For example, I prefer them to penalizing the charity and I would also prefer them to strong and severe penalties on trustees of charities. I would, therefore, strongly urge this Committee to consider the possibility of the creation of a separate office within the Treasury Department that would have the responsibility of insuring compliance by these organizations with the federal income tax law and that it be granted the fullest equity powers to be enforceable in federal courts. Any problems of obtaining this control can be overcome by making consent to this kind of supervision a condition to the enjoyment of federal tax benefits.

Substantive recommendations on private foundations

Pursuant to the request of this Committee and the Committee on Finance, the Treasury made an extensive study of private foundations and reported to the committee on February 2, 1965. I was associated with the preparation of this report and I was in agreement at that time with all of its recommendations. I have reviewed them extensively on several occasions since leaving the government, and I am still in whole-hearted agreement with these recommendations. I believe that they represent a reasonable balancing of the dual public interest here. The first is to insure the integrity of the funds subsidized through tax benefits. The second is the desire to encourage the continued and healthy existence of foundations which are performing the purposes which are the basis for the tax incentives.

Existing law has provisions dealing with "self-dealing" between donors, trustees, and officers of foundations and the foundation itself. These rules are based on a standard of "arm's length" conduct. As detailed in the Report, the rules have been difficult, if not impossible, to enforce. There is no strong reason for allowing donors, trustees and officers to engage in financial transactions with a foundation. The overwhelming public values to be gained from a complete absence of such dealing far outweigh any disadvantages that, in rare cases, might stem from the prohibition. Most foundations are in agreement with and will support this recommendation.

A second major recommendation concerns delay in benefit to charity. Immediate deductions from income and estate and gift taxes are given for contributions to foundations. In the typical charitable contribution to a public charity, the donation is put to immediate use either by being spent for current needs of charity or by being invested in property (a hospital, a school) used in the conduct of the charitable purpose. The typical foundation, however, treats its contributions as "capital." This means that while the donor in the top bracket today

saves 77 cents for every dollar contributed, only a small fraction of that 77 cents will see immediate charitable use. Typically, only the income from this dollar, let us assume 5 percent or 5 cents, will be donated to charity in the following year. There is thus already in the usual foundation case a delay of many years between the time that the tax benefits are given and the time the public obtains benefits equal to these tax benefits. However, in some cases the delay is increased through the accumulation of income.

This can be accomplished through an actual accumulation of realized income or in the alternative through the investment of the foundation's capital in non-income producing assets such as growth stocks. While it is true that ultimately the fund and its ability to accomplish charitable purposes will be enhanced, it seems clear in view of the many demands on federal revenues that it is not unreasonable to demand that there be some reasonable devotion of contributions to immediate charitable purposes. This is all the Treasury Foundation Report recommends. It does not recommend that all of the donations be devoted to charitable purposes. It merely insists that realized income or an assumed amount of realized income be currently devoted to charitable purposes (the latter being needed to take care of investments in non-income producing assets). I do not think that this recommendation is extreme. In fact, I think I could agree with a recommendation that required that at least one-half of the contributions themselves must be used for charitable purposes within a reasonable period after their donation and not just the income from the contributions.²

The Report recommends that foundations refrain from control of businesses. Involvement in business creates the possibility of extremely subtle forms of self-dealing. Involvement in business is undesirable because it distracts from the organization's purposes and in some cases may make the conduct of business the principal item of attention while the making of charitable grants is an afterthought or a by-product. Ample examples are contained in the Foundation Report to support this proposition. The materials contained in Mr. Patman's "Fifth Installment" all relating to the extensive business involvement of a large foundation, possibly one of the ten largest in the country, provides another excellent example. This particular foundation whose assets are worth anywhere from \$100 to \$250 million or more has given amounts to charity representing much less than 15 percent of its corpus for many years. There is ample evidence in this situation, including the lack of any professional staff concerned with charitable giving, that the trustees of this organization are far more concerned with protection of the capital and insuring of its growth than with their charitable endeavors. Such behavior is a gross distortion of the purpose for which tax benefits have been granted to such organizations. Furthermore, I believe that in the context of an essentially private enterprise system, it is extremely unhealthy to have large amounts of capital owned by tax exempt organizations in direct competition with private enterprise. This Committee has had to deal with this problem in other contexts, for example, the competition between cooperatives and private enterprise, the competition between essentially exempt savings and loan and thrift institutions and commercial banks and so forth. I recommend that it take steps now to require existing charitable and exempt organizations to gradually divest themselves of control of active enterprises. This problem will not diminish with time. World history is replete with examples that confirm this.

A related area is the concern of the fifth major recommendation of the Foundation Report, that dealing with the use of foundations to control family businesses. A widespread impact of the effort to avoid income, gift and estate taxes has been the growing use of gifts of stock of closely held companies to private foundations. This device avoids taxes while at the same time retaining full control over family owned businesses. The situation in which a donor and his foundation own the stock of a privately held corporation presents an impossible conflict of interest problem. Yet this is precisely the situation that exists in the case of thousands of existing private foundations. In these cases it is highly unlikely, for example, that a trustee-donor would take steps to divest himself of stock of the company when he thought it was entering a period of extended losses. Even if some of the stock is publicly traded, the donor would not be likely

² This rule was enacted in 1964 for certain gifts from unlimited donors.

to have the foundation sell its stock if this might further depress the market for the stock. A foundation should be earning a sufficient income to carry out its charitable purposes. Yet the donor trustee may be in a high bracket and not want dividends. Or the company may need funds for expansion. Under these circumstances the donor is unlikely to act to provide the dividends that the foundation needs. The conflicts are endless. I don't think that the human being exists who is capable of wearing both of these hats while doing justice to both of his split personalities. The law is never successful when it asks people to do things which are impossible.

The Treasury recommends, therefore, that until a donor has really cut his ties with the property given to charity, and this has not occurred when the donor continues to be a co-investor with the charity, no deduction for charitable contributions be allowed. If the charity disposes of the donated property, then the deduction would be allowed at that time. There possibly are different ways of carrying out this essential recommendation, some of which are outlined in the Foundation Report itself. If the above recommendation for a federal regulatory agency with equity powers were enacted then other solutions to this difficult problem may present themselves.

The final important Treasury recommendation pertains to a broadening of foundation management. I do not agree with those who recommend that foundations be limited in life. I do not believe we have arrived at the time when foundations are so large and predominant that it is necessary to think in terms of requiring their dissolution after some period. In rare situations where an organization ceases to function in pursuance of its exempt purposes, there should, however, be powers in the relevant supervising agency to replace trustees or to force mergers with other organizations carrying out similar purposes.

On the other hand, foundations which are subject to the control of neither owners, the market place, nor voters should be encouraged to avoid parochialism and to rejuvenate themselves by drawing independent trustees from a wide segment of the public. Publicly supported charitable organizations normally are subject to the scrutiny and influence of a fairly large segment of the public. However, organizations such as endowed private foundations do not need to seek contributions from the public. There is a real danger that these organizations may after a period of years cease to be responsive to the needs of the public and the purposes of the organization.

In the early years of the private foundation, close control may not be harmful and in fact may be desirable. During these years the principal donors are making their contributions, financial and spiritual, and are guiding the organization along the lines that inspired the donations. Later those in control may be self-perpetuating trustees answerable to no one. The interests of the public requires that management and direction be in the hands of a wider group of interests. The Ford Foundation is an example of where the transition from family control to independent control has been made in a very commendable fashion. Others have not been so fortunate.

The recommendation of the Treasury Report that after a period of years no more than a minority, for example 25 percent of the controlling board of a foundation, consist of a creator or donor and related persons is sound. However, if the supervising agency recommended above were granted flexible equity powers, it could be authorized and encouraged to do all in its power to insure a wide representation of public views in such organizations at an earlier date under any appropriate circumstances. Such equitable powers might even perhaps obviate the need for any mechanical rules such as the 25-year rule suggested by the Treasury, and could be flexibly administered with possibly far better results.

Information reporting and publishing of statistics

I would like to urge upon the committee three other recommendations. The first relates to information reporting. Presently, most exempt organizations are required to file annual information reports even though they are not required to file tax returns. Some organizations are exempt from these requirements. I believe that in view of the billions of dollars in revenues involved that statistics should be collected so that the Congress will have the information necessary to make the correct policy decisions. I, therefore, strongly recommend that all exempt organizations be required to file some kind of annual information return. Furthermore, as suggested above, they should be required to pay at least an annual minimum filing fee of \$10 each year as a means of financing enforcement in this area.

My second recommendation is that all such information returns be available to the public. I do not believe that organizations receiving tax benefits should be allowed to operate in secrecy. My recommendation here extends even to the names of donors, a matter which is currently not a matter of public record. Although the donors may have some interest in keeping their identity secret so that they will not be solicited for other contributions, I believe that the public's interest outweighs this objection.

My third recommendation is that the Congress require the Treasury Department to periodically submit to it detailed information concerning the revenues involved in the entire tax exempt area with sufficient functional breakdowns so that the Congress and public will be aware of the amounts of money that are being spent for these various exempt purposes and in a position to reevaluate their policy conclusions.

Conclusion

I believe that enough study and knowledge is available to enable the Committee to act this year on most of the matters in the exempt area on which it has solicited testimony. I believe that it is urgent that the Committee do so.

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Federal Tax Support of Charities and Other Exempt Organizations: The Need for a National Policy

by

LAWRENCE M. STONE*

*"Faith is a fine invention
For gentlemen who see;
But microscopes are prudent
In an emergency!"*¹

During the fiscal years 1964-1967, the Internal Revenue Service conducted field audits of 47,754 returns of exempt organizations, involving 31,490 different organizations, and estimated that it had screened and reviewed 500,000 exempt organization returns.² The Commissioner is not the only one who has been interested in this area.

Few matters of federal income taxation have been the subject of such extensive discussion in the last two decades as the treatment of charities and other exempt organizations and the closely related problems of deductions for charitable contributions. The debate has

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¹ Emily Dickinson, quoted by Randolph E. Paul in the preface to his *Taxation in the United States* (Little, Brown & Co. 1954).

² Statement of Sheldon S. Cohen, Commissioner of Internal Revenue, before Subcommittee No. 1 of the House Select Committee on Small Business (Nov. 16, 1967).

included congressional hearings,³ Treasury Department studies and reports,⁴ extensive statistical compilations

³ See, for example, Hearings Before the House Ways and Means Committee on Revenue Revision of 1942, 77th Cong., 2d Sess., 89 (1942) (leading to the imposition of information return requirements now contained in Section 6033 of the Internal Revenue Code of 1954); Hearings Before the House Ways and Means Committee on Proposed Revisions of the Internal Revenue Code, 80th Cong., 1st Sess., Pt. 4, 1895 *et seq.* (1947); Hearings Before a Subcommittee of the Committee on Interstate and Foreign Commerce on Investigation of Closing of Nashua, N.H., Mills and Operations of Textron Incorporated, 81st Cong., 1st Sess. (1949); Hearings Before the House Ways and Means Committee on Revenue Revision of 1950, 81st Cong., 2d Sess. (1950); Hearings Before the Special Committee to Investigate Tax-Exempt Foundations and Comparable Organizations, House of Representatives, 83rd Cong., 2d Sess. (1954) (concerning "subversive and un-American" activities); Congressman Putman's numerous reports (hereinafter referred to as "Putman Reports, 1st Installment," etc.): Tax-Exempt Foundations and Charitable Trusts: Their Impact on our Economy, Chairman's Report to the House Select Committee on Small Business, 87th Cong., 2d Sess. (Comm. Print 1962); 2d Installment Subcommittee Chairman's Report to Subcommittee No. 1, House Select Committee on Small Business, 88th Cong. 1st Sess. (Comm. Print 1963); 3d Installment, *id.*, 88th Cong., 2d Sess. (Comm. Print 1964); 4th Installment, *id.*, 89th Cong., 2d Sess. (Comm. Print 1966); 5th Installment, *id.*, 90th Cong., 2d Sess. (Comm. Print 1967); hearings held by Congressman Putman in 1964 and more recently in November of 1967; Written Statements by interested Individuals and Organizations on Treasury Department Report on Private Foundations, submitted to Committee on Ways and Means, 89th Cong., 1st Sess. (1965) (two vols.); Hearings Before the Committee on Ways and Means on H.R. 15942 and H.R. 15943 to Impose a Tax on Unrelated Debt Financed Income of Tax Exempt Organizations, 89th Cong., 2d Sess. (1966).

⁴ E.g., Statement of Stanley S. Surrey, Assistant Secretary of the Treasury, on H.R. 15942 and H.R. 15943 in Hearings, N. 3 *supra*; Treasury Department Report on Private Foundations, Committee on Ways and Means 89th Cong., 2d Sess. (1965) (hereinafter referred to as Treasury Foundation Report); President's Message to Congress 5 at 18-20 in Hearings Before the Committee on Ways and Means on President's 1963 Tax Message (Pt. I, revised March 27, 1963); Statement of C. Douglas Dillon, Secretary of the Treasury, *id.* 29 at 46-50; Statement of Asst Comm'r Norman A. Sugarman in 1954 Hearings, N. 3 *supra*, at 423; President's Tax Message to Congress, Jan. 23, 1950, 1 U.S. Code Cong. Serv., 81st Cong., 2d Sess., 1349 at 1352 (1950) and Supplementary Treasury Department Statement on Tax Exempt Organizations Before House Ways and Means Committee, Feb. 7, 1950.

and analyses,⁶ scores of articles, symposia and books,⁶ and significant legislation and court decisions.⁷

⁶ See, e.g., Statistical Appendix to Treasury Foundation Report cited in N. 3 and sources referred to therein; Nelson, *The Investment Policies of Foundations* (Russell Sage Fdn. 1967); *The Foundation Directory* (Russell Sage Fdn., 3d ed. 1967). Kahn, *Personal Deductions in the Federal Income Tax*, Nat'l Bureau of Econ. Research, Ch. 4 (Princeton Univ. Press 1960).

⁶ Only a few illustrative selections can be cited here. Others are cited elsewhere herein. Fremont Smith, *Foundations and Government* (Russell Sage Fdn. 1965); *Symposium: Taxation and Education* (The Proceedings of the Special Conference of the American Alumni Council, Feb. 7 and 8, 1966 at Airlie House, Warrenton, Va., edited by R. L. Rinehout); Andrews, *Philanthropic Foundations* (Russell Sage Fdn. 1956); Andrews, *A Study of Company Sponsored Foundations* (Russell Sage Fdn. 1960); Andrews, *Foundations: 20 Viewpoints* (Russell Sage Fdn. 1965); Weithorn, *Tax Techniques for Foundations and Other Exempt Organizations*; articles by various authors in 3 Tax Rev. Compendium 2067 2143 (Committee on Ways and Means, U.S. House of Representatives 1959); numerous articles in the proceedings of the N.Y.U. Biennial Conferences on Charitable Foundations; Rogovin, "The Charitable Enigma: Commercialism," 1965 So. Calif. Tax. Inst. 61; Elinsberg, "Charity and Commerce: Section 401(c) (3)—How Much Unrelated Business Activity?" 21 Tax L. Rev. 53 (1965); Fink, "Business Activities of Noncharitable Tax Exempt Organizations," 1966 So. Calif. Tax Inst. 389; Wolfman, "Federal Tax Policy and the Support of Science," 114 Pa. L. Rev. 171 (1965); Rudick & Gray, "Bounty Twice Blessed: Tax Consequences of Gifts of Property to or in Trust for Charity," 16 Tax L. Rev. 273 (1961).

⁷ Legislative activity has included the Revenue Act of 1950, which added the tax on unrelated business income (§§ 511-515), prohibitions on nonarm's length dealings and unreasonable accumulations of income, etc. (§§ 503-504), and denied exemptions to "feeder" corporations (§ 502); the Revenue Act of 1964 changed the limits on deductibility for many publicly supported organizations from 20 percent to 30 percent, added a carryover for certain unused charitable contribution deductions, restricted the so called unlimited charitable contribution provision, and eliminated deductions for gifts of remainder interests in tangible assets where the donor retains the use for life. Some of the more significant court decisions were: *Comm'r v. Brown*, 380 U.S. 563 (1965) (relating to so called bootstrap sales to charity); compare *Sensongood v. Comm'r*, 227 F.2d 907 (8th Cir. 1955), with *Dulles v. Johnson*, 273 F.2d 362 (2d Cir. 1959) (on issue of "carrying on propaganda, or otherwise attempting to influence legislation"), compare *Sico Foundation v. United States*, 295 F.2d 924 (Ct. Cl. 1961), *reh'g denied* 297 F.2d 557 (1962), with *Sico Foundation v. United States*, 102 F. Supp. 197 (Ct. Cl. 1952), and *C. F. Mueller Co. v. Comm'r*, 190 F.2d 120 (3d Cir.

At the state level, there has also been activity. Several states have passed charitable registrations laws and initiated more regular auditing and enforcement activities.⁹ California led the way by enacting the Uniform Act for the Supervision of Trustees for Charitable Purposes¹⁰ and New York, whose private foundations account for almost 50 percent of all foundation assets, has recently followed.¹¹ Interest has also extended to the local level, where pressures on revenue bases have led to considerable questioning of the merits and constitutionality of real estate and other local tax exemptions.

Concern with the appropriate treatment of charities and other exempt organizations and business activities has not been limited to this country. In England,¹¹ Can-

1951) (the latter cases were decided under pre 1950 law) (all relating to "unrelated business").

⁹ See Fremont-Smith, N. 6 *supra*, Chs. VII-IX, at 233 *et seq.*; see also Greenfield, "The New York Statute for Supervision of Trustees for Charitable Purposes: Present Impact: As a Possible Model for Other States" 8th Biennial N.Y.U. Conf. on Charitable Foundations 169 (1967). D'Amours, "Charitable Trusts: New Hampshire's Experience with Supervision and Enforcement," 5 N.H.B.J. 217 (1963).

¹⁰ Cal. Gov't Code § 12580 *et seq.* (first enacted in 1955, Cal. Stats. 1955, Ch. 1820). See Fremont-Smith, N. 6 *supra*, at 319-332, describing administration of the Uniform Supervision of Charitable Trustees for Charitable Purposes Act in California; see also discussion by Assistant Attorney General of California, Howland, "The History of the Supervision of Charitable Trusts and Corporations in California," 13 U.C.L.A.L. Rev. 1029 (1966).

¹¹ The Foundation Directory, N. 5 *supra*, at 24, lists assets of New York foundations in 1965 as equal to 48 percent of total known foundation assets. Significant new legislation was enacted in 1966 in New York adopting the Uniform Act with modifications. 2 McKinney's 1966 Session Laws of New York, Ch. 831, at 1780 and 2928; N.Y. Estates, Powers & Trust Law § 8-1.4. See also Greenfield, N. 8 *supra*, (discussion of the new law by the Assistant Attorney General, State of New York).

¹¹ See Committee on the Law and Practice Relating to Charitable Trusts, Report, Cmd. 8710 (1952) (the "Nathan Report") and the Charities Act of 1960, Stat. 8 & 9 Elizabeth II, c. 58 (1960). See also Royal Commission on the Variation of Profits and Income, Final Report, Cmd. 9474, Ch. 7 (1955). It should be noted here that the tax benefits granted to charities and other

ada,¹² and other countries, similar debate, proposals, and some changes in public policy have also occurred.

To what can the continued and increasing interest in federal taxes and charity be attributed? The steady growth of indirect government support to charities and exempt organizations through tax deductions to donors and tax exemptions to organizations, now about \$5 billion annually at the federal level alone¹³ (enough to provide an across-the-board 10 percent reduction of all individual income taxes at 1965 levels), has undoubtedly led to increasing concern about whether all of such revenue loss is justifiable. This concern is buttressed by an increasing emphasis upon the need for analyzing the costs and benefits of alternative government expenditure programs as part of the preparation

exempt organizations by the United States are almost unique in their generosity. The English approach, for example, is to allow a refund to the charity of tax paid by the donor who is treated in effect as a withholding agent. The amount of tax actually paid by the donor is not affected by donations he may make. The system is also quite restricted in that it only applies if the donor undertakes, subject to certain allowable contingencies, to pay a certain sum annually for more than six years. See *Final Report*, *supra*.

¹² Report of the Canadian Royal Commission on Taxation, 222 Vol. 3, *et seq.*, and Vol. 4 at 128 *et seq.* (Queen's Printer, Ottawa 1967). In Canada, treatment of contributions by individuals is less generous and by corporations more generous than in the United States. Contributions by both are deductible to the extent of 10 percent of income and there is a one year carryover for excess contributions.

¹³ Kahn, N. 5 *supra*, at 56-59, estimated the annual cost of income tax deductions on individual itemized returns to be \$1.5 billion. By adding the costs of income tax deductions for corporate charitable gifts, estate and gift tax deductions for charitable gifts, income tax exemption of charitable organizations, and the portion of the standard deduct on allotted to philanthropic contributions, the total comes to \$2.6 billion, using 1936 data. The relevant amounts had all approximately doubled by 1965, and so even after taking account of the income tax rate reductions of 1964, the figure of \$5 billion as the total amount of revenues foregone through the various federal tax benefits seems quite modest. In 1967, the true tax equivalent is more likely \$6 billion. Some of the relevant comparisons are shown in N. 15-78 *infra*.

of the federal budget. That this kind of analysis can and must be applied to indirect expenditure programs provided by tax benefits was recognized in the President's 1966 Economic Report and more recently by the Chairman of the Committee on Ways and Means of the House of Representatives.¹⁴ The pressure of high tax rates since World War II has also led to what many consider abuses of the tax benefits which in turn have adverse side effects on tax administration, tax morality, and tax equity. The magnitude and nature of the tax benefits also give rise to concern over some competition by the tax-exempt sector with private enterprise, possible improper allocation of resources in our society and long-run erosion of the tax base. The increasing anxiety over state-church issues is also becoming one of the reasons for questioning the more than 50 percent portion of the \$5 billion that is attributable to the tax benefits granted churches and their donors.

14 "[W]e must review special tax preferences. In a fully employed economy, special tax benefits to stimulate some activities or investments mean that we will have less of other activities. Benefits that the Government extends through direct expenditures are periodically reviewed and often altered in the budget-appropriation process, but too little attention is given to reviewing particular tax benefits. These benefits, like all other activities of Government, must stand up to the tests of efficiency and fairness." Economic Report of the President 18 (Jan. 1966).

Address, "Back-door Spending," b. Rep. Wilbur D. Mills (Ark.), Chairman of the Committee on Ways and Means of the House of Representatives, 113 Cong. Rec. H. 16890 (daily ed., Dec. 13, 1967). See also Remarks of Stanley S. Surrey, Assistant Secretary of the Treasury, "The United States Income Tax System—The Need for a Full Accounting" (Nov. 15, 1967). The recent Report of the President's Commission on Budget Concepts (Oct 1967) unfortunately ignored the "back door" tax-incentive expenditure in its formulation of a new budget format for the United States. For a particular application of a cost benefit analysis to the area of individual charitable deductions, see Tausaig, *The Charitable Contributions Deduction in the Federal Personal Income Tax* (unpublished doctoral dissertation, Massachusetts Inst. of Technology 1965), and Tausaig, "Economic Aspects of the Personal Income Tax Treatment of Charitable Contributions," XX Nat. Tax J. 1 (1967).

The uneasy debate continues unabated. Few basic issues have been resolved or put to rest. A simple, but hopefully provocative, explanation is the absence of any real national policy in this area. Both the legislative history of and reasons for the existing federal tax provisions are murky and vague with only occasional illumination provided by the more recent legislative or administrative attacks on special problems or by significant court decisions.¹⁸ And the more recent considerations have centered on special urgent problems such as unrelated business income but not on fundamental revisions of the existing benefits.

The charitable and exempt sectors of our society are already significant economically and in terms of their role in our society and all signs point up. Too much is at stake to leave things to the ad hoc approach

¹⁸ For charitable law in general, see Fremont-Smith, N. 5 *supra*, at 430 *et seq.* See also Fremont-Smith, "Duties and Powers of Charitable Fiduciaries: The Law of Trusts and the Correction of Abuses," 13 U.C.L.A.L. Rev. 1041 (1966). As to the federal tax laws, the following is a brief historical account of the principal provisions of the Internal Revenue Code of 1954, as amended. The charitable deduction against individual incomes originated in 1917 (now Section 170). For a brief discussion of the legislative history, see Kahn, N. 5 *supra*, at 6-7, 9-11, and 46-47. See also N. 7 *supra*. The deduction from corporate income was not added to the law until 1935 and has remained substantially unchanged since then, allowing corporations to deduct charitable gifts up to 5 percent of their taxable incomes (now Section 170(b)(2)). The unlimited estate tax deduction for charitable bequests (now Section 2055, was added by the Revenue Act of 1918 without discussion. See H. Rep. No. 1037, 65th Cong., 3d Sess., 70-71 (1918). The corresponding gift tax deduction (now Section 2522) was contained in the Revenue Act of 1932, which is the origin of the present gift tax law. The main provisions of Section 501 which grants the exemptions for organizations themselves had their origins in the Corporation Excise Tax Act of 1909 which exempted "any corporation or associations organized and operated exclusively for religious, charitable, or educational purposes." However, some important changes have been made from time to time including additions to the list of qualified organizations (civic and social welfare organizations, Section 501(c)(4), and trade associations, etc., Section 501(a)(6), in 1913, without explanation).

of the past. The continuing debate and controversy indicate that there may be much that is wrong. Perhaps our ad hoc approach has resulted in the correct national policy. Perhaps we can, in an area fraught with so many intangibles and sensitive issues, expect nothing more than a series of compromises and a patch-quilt policy. But unless we make a comprehensive overall assessment we shall not know and shall not put the questions to rest. As one who has listened to and participated in the debate from many vantage points, I have attempted, with considerable humility, and for provocative reasons only, first to catalog some of the principal issues and then to formulate an outline for a long-range national policy that answers some of these questions. The contribution, if any, will be in turning the discussion from an analysis of special problems, a necessary step in the process, toward the formulation of debate over such an overall policy.

THE SIGNIFICANT ISSUES

Several major aspects of existing tax policy and related aspects of charitable law should be examined in any comprehensive reformulation of national policy:

A. What broad categories of organizations or purposes, if any, should obtain tax benefits, what should be the extent of such tax benefits, and what are the national reasons for such support?

(1) Charitable and other similar organizations (including educational institutions)?

(2) Religious institutions?

(3) Politically oriented organizations?

(4) Business- or profit-oriented organizations (for example, chambers of commerce, trade associations, labor unions, professional associations, and agricultural co-operatives)?

(5) Private nonprofit social clubs, lodges, and fraternal organizations?

B. What is the cost-effectiveness of existing tax benefits and should they be redesigned to operate more efficiently?

(1) What is the amount of additional donations generated by income, estate, and gift tax deductions? Is the ratio of such additional donations to the revenue loss an acceptable one? If not, can incentives with a better ratio be designed?

(2) Do the organizations result in sufficient expenditures for social purposes, as compared to competing governmental programs, to justify the revenue loss?

C. The problem of possibly excessive tax benefits to donors and others

(1) Should gifts of appreciated property continue to receive an "extra" incentive? (No tax on unrealized appreciation but charitable deduction at full fair market value.)

(2) If so, what of the "bargain sale" to charity (sale by donor at his cost)? (No taxable gain realized and deduction allowed for "pure" unrealized appreciation in value.)

(3) Other "complex" arrangements such as the contribution of property to charity in exchange for a life annuity.

D. The problems of legislative lobbying, "grass roots" lobbying, political activities, and the ideological organization

(1) Should deductions for gifts used for any or all of such purposes be granted?

(2) Should exemption be granted to organizations engaging in such activities?

(3) The serious problems of administration of rules in this area.

E. Should there be any controls on the investment behavior of exempt organizations and what should be the tax treatment of various kinds of possible receipts?

(1) Income from the performance of an organization's purposes—"related activities" (e.g., membership fees, student tuition, hospital charges).

(2) "Unrelated" income from "passive" investments of donated capital (e.g., dividends, interest, real estate rentals).

(3) Income from "active" unrelated business (e.g., operation of a macaroni factory by a university).

(4) Income from passive or active investments financed with funds borrowed either from a third-party lender or from a seller of property to the exempt organization on the installment plan, as in the "bootstrap purchase" (the property is paid for out of its own earnings).

F. Current charitable needs versus future needs—the problem of accumulations

(1) What delays should be allowed in the use of contributions for charitable purposes?

(2) What delays in the application of income earned by exempt organizations should be allowed?

G. Balancing the interests of donors and others in control of exempt entities against the interests of the public arising out of the quasi-public nature of most of these organizations

(1) What degree of public reporting and public accountability by trustees and officers should be required?

(2) The problem of donor control.

(3) The problem of "self-dealing" between exempt organizations and their donors, trustees and officers (e.g., lending to or borrowing from, renting to or from, selling to or buying from the organization).

(4) The role of counsel—in particular, the conflict of interest problem when, for example, counsel represents both donors and the organization.

(5) What degree of self-perpetuating control (by donors or others) should be allowed and for how long a period?

(6) Should all exempt organizations enjoy perpetual existence or should there be any time limit on the life of any exempt organizations?

H. What combination of federal, state, and private agencies should carry out public policy in this area?

(1) The role of Federal Government.

(a) What is the extent and nature of the interest of the Federal Government?

(b) Is this interest best implemented by the Treasury Department, the Departments of Health, Education and Welfare or Justice, or an entirely new agency? If best carried out by the Treasury Department, should the Internal Revenue Service

continue to carry the responsibility, or might a new agency within the Treasury be more appropriate?

(c) What relationship should the appropriate federal agency have to state or private regulating agencies?

(2) The interest and role of the states.

(a) The political jurisdiction under whose laws nonprofit organizations are typically organized.

(b) The traditional role of the attorney general of the state in enforcing the interest of charitable beneficiaries.

(c) The interest of the state in charity as a "local" matter.

(d) The interest of the state as a tax collector.

(e) How can the state's interests be best enforced?

(3) The possible role of private self-regulating mechanisms.

(a) The public interest in nongovernmental regulation.

(b) The interest of the exempt sector in private self-regulation.

I. Compliance

(1) What sanctions should federal, state, or private regulatory authorities be given to protect the public interest? Are these consistent with desired freedom for the conduct of charitable activities? Are these positively oriented (punish the culprits and not charity)?

(2) What should be the relationships and order of priority between the sanctions available to these three parties?

(3) How should the costs of obtaining compliance be financed?

FUNDAMENTAL VALUES

While it would be comforting to think that there is a "right" and a "wrong" logical answer to such questions, it must be conceded that the answers will, to a significant extent, depend on value judgments. Most important among these are one's views concerning the role of the exempt sector. One's conclusions about the relative importance of the federal and state interests involved and how they may best be carried out consistently with the role assigned to charity will also rest in part on values. The following are some of the values (or prejudices) that underlie the long range proposals outlined below.

First, the role played by nonprofit organizations is not only desirable but may very well be a prerequisite to the continuation of a democratic society. It is through such institutions that we harness the energies and finances of our private citizens to humane, experimental, creative, and controversial purposes. It is in this arena that new ideas may be tried out. It is often a unique pathfinder in social welfare and the sciences to be followed only at a later date by governmental or profit-oriented resources. It affords our citizens the opportunity to participate in public service while maintaining private employment. It organizes parts of our society for social purposes through nongovernmental means where governmental action is inappropriate, would be inconsistent with our way of life or is not possible because the purpose is too controversial. It allows individuals to voluntarily tax themselves in time and money to advance the good of society according to their individual preferences. In an increasingly complex world, where the individual feels frustrated because of his apparent inability to influence the policies of government, charity affords a clear arena in which an individual can act and make his influence felt for the social good. It provides a unique and flexible form of social organization that counterbalances the vast power

of government and the concentrated wealth of the private sector. Therefore, in regulating the conduct of the exempt sector and in its provisions for tax benefits, the purpose of government should be to maintain a maximum of freedom of action and the continued healthy growth and survival of this sector.

Second, we cannot ignore the fact that charities and other nonprofit organizations are directly and indirectly the recipients of substantial financial support from governments at all levels. The tax deduction for charitable contributions allows donors to allocate what would otherwise be government revenues (the income taxes that would normally be collected from their pretax income); so, too, with respect to the funds derived by the organizations themselves from their income, property, and other tax exemptions. It is not necessary to decide whether such benefits make government a "partner" of charity or are a "subsidy" in order to conclude that government does have a responsibility to all other taxpayers to make certain that these benefits are efficiently provided and applied to the intended purposes. This responsibility, at a minimum, extends to preventing the assets of charity from being diverted back to the donor (although there may be disagreement about when a private benefit arises). At the other extreme, the government should generally refrain from controlling the uses to which nonprofit funds are applied, so long as they are devoted to certain widely defined statutory purposes such as education or relief of the poor, and so long as they do not conflict with other countervailing policies (such as the prohibition on political campaign activities).

Governments, and the Federal Government in particular, also have the responsibility to prevent granting to the exempt sector through tax support an unnecessary competitive advantage over private enterprise. Private enterprise could conceivably satisfy all the needs of so-

ciety. But because we set our needs for certain services, such as hospitals and schools, higher than the profit system provides, many must be supplemented through the nonprofit sector or government. On the other hand, all instinctively feel that our needs for macaroni can be satisfied quite adequately by private enterprise. There is, therefore, no reason to encourage the manufacture of macaroni by the tax-exempt sector by providing it a competitive advantage through tax benefits. Furthermore, the needs of charity for revenues is not an adequate basis for providing such a competitive advantage. More equitable means for subsidizing charity can be found than the displacement of private macaroni manufacturers.

Third, although some optimists occasionally worry about surplus government revenues,¹⁰ it seems clear that short of the unfortunately unlikely event of total disarmament, the foreseeable demands for government expenditures will continue to be greater than the revenues generated by existing tax structures. Many of these government expenditures are competitive with those of the exempt sector—for example, in education, welfare, and medicine. The established character of these needs, their magnitude, and the obligation to assure their availability to the disadvantaged segments of our society dictate that they be satisfied primarily by government rather than on a private basis. There is, thus, a responsibility on the part of government not to provide tax and other financial benefits that might create an imbalance between these needs for tax revenues and the benefits provided the exempt sector.

¹⁰ Prior to Vietnam, and more importantly, prior to the awakening of this nation to the staggering funds needed to solve the problems of dense urban life, poverty, and the damage to our environment, among others, the fear existed that the federal revenue system might generate a surplus of as much as \$50 billion by 1970 with a deflationary effect on the economy. Report of the Committee on the Economic Impact of Defense and Disarmament 24 (July 1963).

Fourth, the Federal and other governments granting tax benefits have a responsibility to maintain a sensible balance between the wealth controlled by private and governmental hands and the wealth controlled by independent exempt organizations (for example, churches). A democratic society can be threatened by overcentralization of uncontrolled economic power in any sector. It is ironic, for example, that the combination of the federal estate tax, which has as one purpose the prevention of too great concentrations of wealth in private families, and an unlimited deduction for charitable bequests may be resulting in concentrations of uncontrolled wealth in exempt institutions.

Fifth, excessive influence of the Federal Government could detract from the pluralistic decentralized values of the exempt sector. These values might be better served if some of the regulation of the exempt sector were centered in the states and, if possible, in private self-regulatory organizations. Decentralized regulation might also lead to better, more flexible administration if appropriate sanctions and financing were provided.

Finally, in the case of charitable enterprises, the interest of the public must be paramount. Charity is largely accountable neither to voters, government, nor to owners. But accountable it must be and it is accounting should be to the public at large. Charity should, at a minimum, be required to operate in the full public limelight. This may be one of the best regulatory schemes that can be devised for this area. It is unlikely that one of the largest private foundations would have performed so poorly in the past had it been unable to take the position that its principal investment was "none of the general public's damn business."¹⁷

¹⁷ See Freedgood, "88,000 Golden Acres Waiting for the Dust to Settle," *Fortune Magazine* (Nov. 1963), quoting a trustee of the James Irvine Foundation. The principal asset of this foundation is apparently approximately

OUTLINE OF A LONG-RANGE SOLUTION

With the foregoing problems and values in mind, I should like to pose some policy guidelines for possible answers to the questions raised.

To which organizations and purposes should tax benefits be granted?

Nonprofit organizations differ in the degree to which their goals or purposes are deserving of public support and not all have equal need for government support. This is recognized under existing law, which does not grant exempt status to nonprofit organizations that simply provide a service to paying nonindigent members

53 percent of the stock of the Irvine Company, a large landholding corporation in Southern California. The value of this interest is said to be as high as \$500 million (Chairman Patman, *infra*) and probably not less than \$250 million (Freegood, *supra*). See also numerous materials contained in Patman Report, Fifth Installment, N. 3 *supra*, which is devoted entirely to an investigation of the Irvine Foundation. In a list of the fifty largest foundations contained in Nelson, N. 4 *supra*, the smallest foundation had assets with a fair market value of \$29.6 million. The tenth largest had assets of \$126.9 million. However, the James Irvine Foundation was not on this list because, the author understands, of a lack of information concerning it. For its year ended March 31, 1966, the Foundation's grants totaled \$364,000, which would be 0.5% of the Foundation's corpus (if \$100 million); or 0.25% (if \$200 million). The gifts were \$777,000 for 1965, but only \$385,000 for 1964. See Exhibits in "Fifth Installment," *supra*, at 803, 816, and 830. See also letter dated April 24, 1967, of the Foundation's counsel claiming that minutes of the Foundation are confidential "commercial or financial information" which should not be disclosed to the public, in *id.* at 1127. See also letter of the Irvine Company's General Counsel dated May 28, 1964 (in *id.* at 277). This apparent need for secrecy conflicts sharply with the "public's right to know" and is, in itself, an excellent reason for objecting to the control of businesses by foundations or other exempt organizations. In general, the performance (or lack thereof) of this giant foundation is probably the best example that can be mustered for the conclusions in the Treasury Foundation Report concerning the need to prohibit foundation control of business, the need to broaden foundation management, and the minimum distributions of income recommendations. Ironically, probably because of its penchant for secrecy, it was not used as an example in the Report.

such as an automobile emergency service club (and not recognized in the case of social clubs, for example). Deductions are allowed for gifts to some and not to others. The organizations exempt under existing Section 501(c) of the Internal Revenue Code of 1954 appear to fall into five broad categories and it may be useful to consider the merit of tax exemption and deduction in these five contexts. These categories are charitable, educational, and similar organizations, churches, social welfare organizations, business-oriented organizations, and private clubs.

Charitable organizations

This category covers the organizations, other than churches, that qualify under Section 501(c)(3) of the Code, such as hospitals, educational institutions, museums, symphony orchestras, and organizations for the relief of the poor. Since tax benefits for churches are based on different grounds and raise quite different issues, they are considered elsewhere.

Contributions to such organizations are deductible by the donors.¹⁸ Income of such organizations from the conduct of related activities and unrelated income consisting of interest, rents, royalties, and dividends are exempt from income taxes. Income from unrelated trade or business, on the other hand, is subject to tax.¹⁹

¹⁸ I.R.C. §§ 170, 2035, and 2522. The income tax deductions are provided by Section 170. Generally, gifts to Section 501(c)(3) organizations only are deductible. However, there are a few exceptions—e.g., posts of war veterans are not exempt under Section 501(c)(3) but are qualified donees under Section 170(c). Similarly, while under Sections 2035 and 2522, the organizations to which gifts may be made and deducted for gift or estate tax purposes are generally the same as those qualifying for Sections 170 and 501(c)(3), there are also differences here. See Lowndes & Kramer, *Federal Estate and Gift Taxes*, 350-351 and 846-848 (2d ed. 1962). The reasons for the differences are mysterious to say the least.

¹⁹ I.R.C. §§ 501(c)(3) and 511-515. "Feeder" corporations, corporations organized primarily to engage in business and whose profits are required to go to a charity, are also subject to tax under Section 502.

The principal justification for tax benefits granted to these organizations and their donors should be that they relieve the government of what might otherwise be necessary governmental functions which are better accomplished in this fashion than they would be through direct government expenditures or grants. Others have also contended that deduction is given as a reward for generous behavior or in recognition of the involuntary character of many charitable gifts. These latter reasons are less persuasive than the principal reason in a world of scarce resources and unfulfilled needs for public expenditures. In any event, there would appear to be a consensus that some level of the activities of these kinds of organizations merit public support, although most have candidates for elimination from the privileged group. (No effort is made herein to state any principles for separating the "meritorious" from the "worthless" other than to state that the objectives of pluralism and diversity require tolerance.)

The issue that is most troublesome, however, is the question of whether the deduction route is an effective and efficient diversion of federal revenues. If each dollar of revenue foregone resulted in one dollar donation to charity that would not otherwise have been made, the answer would most likely be that the pay-off was good. However, if the tax benefits to donors produced substantially less than a one-for-one increase in gifts, then they would have to be considered wasteful or inefficient unless one adhered to a "reward" or "involuntary expenditure"²⁰ theory. Recent studies seriously question the cost effectiveness of the existing incentives except in the

²⁰ An excellent general discussion of the various possible policies behind the tax measures and ways of analyzing the extent to which they fulfill these policies is in Kahn, N. 5 *supra*, Ch. 4.

higher income levels.²¹ They indicate that most of the revenue loss at middle and lower levels may be wasted in the sense that no diminution in gifts would follow from the elimination of the tax deduction. This is probably most true of gifts to churches which constitute more than one-half of total deductible contributions.²² Even in the highest income levels, the studies appear to indicate that the incentive effect may be small.

Obviously much more work is needed before these results, admittedly tentative, can be accepted. However, they indicate that a floor of, for example, 2 or 3 percent of adjusted income (substantially below the level of giving of wealthy donors) may be an advisable policy, with only gifts above this floor remaining deductible.²³

21 Taussig, N. 14 *supra*. See also Kahn, in *Taxation and Education*, N. 5 *supra*, at 15, and Harvey Brazer, *id.* at 44. Kahn, N. 5 *supra*, at 71-73 reached essentially similar conclusions from the apparent lack of change in the rate of charitable contributions following the introduction and expanded application of the standard deduction in the early 1940's. It is worth noting, however, that the Canadian Royal Commission thought that the loss of contributions by upper income groups attendant upon the substitution of a credit for a deduction would be unacceptably large. N. 12 *supra*, Vol. 3, pp. 222-224. The Commission was very much concerned with the over-reporting of contributions by taxpayers and suggested some very sensible means of reducing the amount of this overstatement. Vol. 3, p. 222. Kahn, N. 5 *supra*, pp. 62-69, also concluded that there was substantial over-reporting by United States taxpayers itemizing their deductions. Even if no other reforms were thought desirable, this problem of overreporting should be dealt with.

22 For example, in 1962 total deductions for contributions by individuals were \$7.5 billion, of which \$4.0 billion were to religious organizations. Of this latter amount, \$2.9 billion was attributable to taxpayers in the under \$10,000 adjusted gross income class. Treasury Foundation Report, N. 4 *supra*, Table 4 at 70.

23 See materials cited in Ns. 20 and 21 *supra*. See also Pechman, *Federal Tax Policy* 73-79 (Brookings Inst. 1966); Goode, *The Individual Income Tax* 172 (Brookings Inst. 1964), and Brazer, *A Program for Federal Tax Revision* 21 (Inst. of Public Adm., Ann Arbor, Mich. 1960). In 1963, President Kennedy's Tax Message recommended unsuccessfully a 3 percent floor on itemized individual deductions, including charitable gifts, N. 4 *supra*, at 18. The measure was rejected after considerable testimony in

Another approach is a tax credit (that is, a deduction from tax liability rather than income) of some percentage of the gifts to charity. This would have the equitable advantage of giving the same tax benefit to low- and high-income donors. Some have suggested that this is perhaps not desirable since the poor do not support the "right causes," such as higher education.²⁴ Perhaps this could be compensated for by giving different percentage credits for different causes.²⁵ However, in view of the fact that the tax deduction with a floor would probably save more unnecessary revenue loss while preserving a stronger incentive effect for those most sensitive to the tax benefits, namely the very wealthy, it would seem a more preferable approach than a tax credit.

Possibly a better approach than a tax credit or deduction would be a matching payment plan under which the government would automatically match gifts to these or-

opposition. See Hearings Before the Committee on Ways and Means, on the President's 1963 Tax Message, p. 1605 *et seq.* in particular. See also Digest of testimony presented and statements submitted to the Committee on Ways and Means with respect to the President's 1963 Tax Message 16-20. (Prepared for Use of Committee on Ways and Means, House of Representatives June 12, 1963.) The ratio of giving by donors in the over \$50,000 class ranged from 1.9% to 13.87% in 1962. Treasury Foundation Report, N. 4 *supra*, Table 4 at 70.

²⁴ For example, in 1962, one-half of all contributions to higher education by individuals came from taxpayers in the more than \$50,000 adjusted gross income brackets; but only 3% of total gifts to religious organizations were made by these high bracket taxpayers. Treasury Foundation Report, N. 4 *supra*, Table 4 at 70. See also Bruzer in *Taxation and Education*, N. 5 *supra*, at 47; Canadian Royal Commission Report, Vol. 3, N. 12 *supra*, at 222: "The credit approach would, however, tend to stifle charitable giving by upper income individuals and families."

²⁵ The political feasibility of such a solution is open to some question. Legislators are hardly likely to relish the idea of giving a 5 percent credit to church gifts and a 20 percent credit for higher education gift, for example. Furthermore, in the past, when Congress has raised the limits on the percentage of adjusted gross income deductible for gifts to only certain organizations there has been a gradual extension of the more liberal limits to the initially excluded groups.

ganizations at some fixed ratio. The matching plan would have the advantage over a tax incentive of having all governmental support end up in the hands of the organizations. It is very likely that this would be the most efficient means of government support, if administratively feasible. Some idea as to feasibility might be gained from study of a similar system used in the United Kingdom.²⁶

One of the principal advantages of a matching plan is that it would require appropriation action by Congress each year and would therefore require annual reevaluation of the funds so expended in terms of their cost effectiveness and their priority relative to other national needs.²⁷ A possible disadvantage is the pressure that this might lead Congress to exert on organizations that should otherwise be independent of such influences, as institutions of higher education. This presents a difficult choice, but to the author it seems that the long-run advantages of efficient government expenditures would outweigh the latter problem which already exists, albeit in lesser degree, since Congress "meets every year" and could change the tax laws.

Assuming that private benefits are effectively prohibited, the tax exemption of the nonprofit organization

²⁶ Described in *Royal Commission on the Taxation of Profits and Income, Final Report*, Cmd. 9474, Ch. 7 (1955). See also Kahu, N. 5 *supra*, at 87-89. The British system, however, differs in at least two respects from a matching plan. The amount of the matching funds is at a flat rate for those above a certain income level. For those below that level, the credit rate is reduced and it is wholly eliminated for those who have no tax liability. In addition, the matching funds are only made available if the donor undertakes to pay a specified sum annually for at least seven years, subject to certain contingencies. The combination of these two circumstances may well eliminate whatever democratizing effect the matching funds plan might otherwise be expected to have upon the sources of charitable giving.

²⁷ See Surrey and other materials cited, N. 14 *supra*. "The considerations which permit our sacrificing some of the integrity of the tax system for the values of private initiative and freedom do not also require that we be kept in ignorance." Wolfman, N. 6 *supra*, at 186.

itself does not present the "slippage" problem. Here all taxes foregone by the government inure directly to the charity's benefit. The problem of the absence of the taxes foregone from the federal budget could be taken care of by reflecting these amounts in the budget as "indirect" expenditures.²⁸

It seems clearly appropriate that the income from "related" activities of such organizations continue to be exempt from tax. When necessary to their performance, these organizations should also be permitted to maintain endowment funds. Income, therefore, from passive investment of the endowment funds derived from contributions should also continue to enjoy exemption. Such exemption is direct and efficient federal support of the exempt purposes of the organization.

However, the same justification is not easily applied to income derived from investments acquired with borrowed funds. In such situations, a charity grows from whole cloth and theoretically in unlimited fashion. Its size, economic power, and reduction of government revenues is limited only by the financial skills of its managers. It has no dependence on the support of its members through fees for related activities or donors for contributions. One of the principal factors assuring some limits or the relative sizes of the tax-exempt and taxable sectors—the sacrifice of the after-tax value of donations—is missing.²⁹ The opportunity to purchase

²⁸ "Unrelated trade or business" has most recently been defined in Treasury Regulations by T.D. 6939 published in the Federal Register for Dec. 11, 1967. See Reg. § 1.513-1 (effective for taxable gain after Dec. 31, 1967).

²⁹ It can be argued that there is a balancing sacrifice here as in the case of gifts to charity of property. The sacrifice is the income earned by the efforts of the charity's managers which they might otherwise have earned for their own account. However, this may circumvent the percentage limits on deductibility by individuals. In addition, it is no answer to the policy against allowing charity unnecessarily to compete with private enterprise and the possibility for substantial diversion of the organization from charity, discussed *infra*.

income-producing assets on borrowed funds has led to serious expansions of the exemption privilege through, for example, the purchase and lease backs of the 1940's³⁰ and the "bootstraps" of the 1950's and 1960's.³¹ The position in bills now pending before the Ways and Means Committee, prepared by the Treasury and Joint Committee on Internal Revenue, that income be taxed to the extent that the investment from which it is derived is allocable to borrowed funds seems entirely appropriate.³²

Gifts of appreciated property provide donors with an erratic extra tax benefit. While this extra incentive does result in some additional gifts to charity, its importance in the aggregate has been highly overrated.³³ The erratic nature of the incentive and the serious equity problems it poses make advisable limiting the charitable deduction to the donor's cost or treating the gift as a realizing transaction to the extent of the appreciation (or depre-

³⁰ See Cary, "Corporate Financing Through the Sale and Lease-Back of Property: Business, Tax, and Policy Considerations," 62 Harv. L. Rev. 1 (1948).

³¹ See Moore & Dohan, "Sales, Churches and Monkeyshines," 11 Tax. L. Rev. 87 (1956); Lanning, "Tax Erosion and the 'Bootstrap Sale' of a Business—I," 108 U. Pa. L. Rev. 623 (1960); and Hall, "The Clay Brown Case and Related Problems," 1966 So. Calif. Tax Inst. 337.

³² See Hearings, N. 2 *supra*, on H.R. 15942. The latest version of this pending legislation is H.R. 12663, 90th Cong., 1st Sess. (1967). In 1950, legislation was passed that dealt only with some aspects of the borrowed funds problem. I.R.C. § 514. Because it was tailored to the precise situations then prevalent, the sale on credit and leaseback, it was easily circumvented by new schemes such as that successfully employed in *Comm'r v. Brown*, 380 U.S. 562 (1965).

³³ Higher bracket taxpayers are probably the most sensitive to tax incentives granted and are the ones most likely to be making gifts of appreciated property. Tausig, Nat. Tax J., N. 14 *supra*, at 12, shows that gifts of property are most important in the highest income groups, amounting to 39.5 percent in value of the gifts of those with incomes of over \$1 million in 1962. His Table IV, however, indicates that gifts of property amounted to only 3 percent in value of all gifts made by taxpayers who itemized their deductions in 1962. See also Levi, *Taxation and Education*, N. 5 *supra*, at 23.

ciation). Either change in the law would also end the aggravated version of this problem, the "bargain sale." Another difficulty, the serious administrative problems involved in valuation of works of art, etc., would be removed only by the first alternative. This has led many to prefer limiting the deduction to basis even though it creates an obvious incentive to a donor to sell a capital asset which he might otherwise give to charity and which the charity would wish to retain.³⁴ On balance, the second alternative would be the better approach.

Control by nonprofit organizations of active business enterprises creates the potential for serious tax-subsidized competition with private enterprise, subtle and varied forms of self-dealing and private benefits, and possible distraction of the aims of an organization from its philanthropic purposes to commercial empire building. Because of these problems, and consistent with the investment principles of the vast majority of large charities with endowment funds, exempt organizations should be required to avoid control of active businesses.³⁵ They should instead maintain reasonably diversified passive investment portfolios. These could

³⁴ See materials cited in N. 33 *supra*, and Goode, N. 23 *supra*, at 171. The Canadian Royal Commission Report, N. 12 *supra*, proposed that gifts of appreciated property be allowed as deductions to the donor to the full extent of their value, but that he also recognize gain to the extent of the appreciation upon disposition. Vol. 3, pp. 225-226. Both modes of dealing with the problem would have the same effect in many circumstances. The Canadian solution would not remove the valuation problem which would still be present under United States law so long as the gain recognized were capital gain and the charitable deduction was taken against ordinary income. Under the alternative proposal in the text, the donor could sell at fair market value, report his capital gain and then make a cash gift to the charity which would be deductible against ordinary income. This would not be possible, however, where it was desired to give the asset to the charity to retain—for example, a work of art to a museum. For this reason, it is probably preferable to tax unrealized capital gain on gifts to charity and to allow a full deduction for the fair market value of the gift.

³⁵ See Treasury Foundation Report, N. 4 *supra*.

consist of investments in publicly traded corporate stock, probably rental real estate and secured real estate loans and various corporate and governmental bonds.³⁶

To these same ends, supervision of investment activities should include the prevention of speculation and other inappropriate types of financial activity. Exempt organizations, without any of the inexplicable exemptions now present,³⁷ should be made subject to anti-self-dealing rules. These rules should absolutely bar any financial dealings with their donors, trustees, or officers, except reasonable compensation of officers and trustees for their duties as such. This ban on self-dealing should also extend to the common ownership with donors, trustees, or officers of any kind of property. In the case of stock investments, foundations should not invest in organizations in which their trustees, donors, or officers have sufficient stock so that combined with that owned by the foundation, working control is achieved.³⁸ These kinds of situations create a severe potential for conflicts of interest and subtle private benefits. Since, in the aggregate, it is doubtful that self-dealing and common ownership benefits charity, the extreme administrative

³⁶ This end would be accomplished in another way by the proposal of the Canadian Royal Commission, N. 12 *supra*, that when a charity owned more than 10 percent of a business, its income from that source would cease to be exempt. Vol. 4, p. 144. If applied to our Code, this would cause dividends, interest, or rents, now not treated as "unrelated business income," to be so considered. Cf. the approach to debt-financed income in H.R. 19663, N. 32 *supra*. The solution would not be effective if the charity were engaged in loss businesses (see examples, Treasury Foundation Report, N. 4 *supra*, at 43) or accumulating funds indefinitely for expansion purposes. Minimum distribution recommendations discussed in text *infra* at N. 73 would be helpful in this regard, but again not entirely effective.

³⁷ Under present law, the rules limiting self-dealing do not, for example, apply to religious organizations, educational organizations, and publicly supported organizations. I.R.C. § 503(b). See also I.R.C. §§ 503(j) and 170(g)(4).

³⁸ Where such common ownership derives from gifts, appropriate time would have to be allowed for disposition.

problems associated with the existing arm's-length rules do not appear justified.³⁹

Churches

Under existing law, churches enjoy what is perhaps the most favored tax position of all nonprofit organizations.⁴⁰ On the other hand, it is likely that the tax benefits provided here are the least needed—most gifts to churches are small and would probably occur in the absence of tax deductibility.⁴¹ Furthermore, since the churchgoer normally receives substantial direct “services” in exchange, it is not clear why all church gifts are treated as donations.⁴²

Two tentative conclusions are possible. First, churches and other heretofore privileged exempt organizations should be required to file the same information now generally required of most exempt organizations, and should be made subject to the unrelated business rules applicable to other exempt organizations. To this author

³⁹ I.R.C. § 503(c)(3). Compare §§ 170(g)(4) and 503(j)(i) which place more restrictive prohibitions on self-dealing in the case of organizations which may receive donations from unlimited charitable donors and self-employed pension plan trusts. See also the Treasury Foundation Report which recommended that foundations not own more than 20 percent of any business, a virtually absolute ban on self-dealing, and no deduction if gifts of common controlled stock or other assets were given to a foundation until the foundation disposed of such assets. The Canadian Royal Commission similarly recommended a 10 percent ownership limit of any business. See also “Public Policy and Private Pension Programs,” A Report to the President on Private Employee Retirement Plans 76 (Jan. 1965), recommending that not more than 10 percent of pension funds be invested in the stock of the employer company.

⁴⁰ They and their donors enjoy the benefits described above for charitable organizations. I.R.C. §§ 170(e) and 501(c)(3). In addition, they are exempt from the tax on unrelated business income and they are not required to file any information returns. I.R.C. §§ 511(a)(2) and 6033(a)(1).

⁴¹ See N. 22 *supra*.

⁴² It is quite clear that there is no charitable deduction if, for example, a patient in an exempt hospital pays for services or a student pays tuition to an exempt educational institution. See also N. 57 *infra*.

it appears that basic equity between believers and non-believers requires that churches not be treated better than other charities. Second, the same cost-effectiveness studies that must be made for deductions to charitable organizations should be made for donations to churches. As noted, the greatest waste in terms of tax incentives may occur in this area. It seems singularly inappropriate under our system of separation of church and government to contend that church donations are "involuntary" and therefore not part of one's income. "Reward" theories are even more inappropriate in this context. The questions are particularly serious since as noted above, more than one-half of all private giving is to religious organizations. It may well be that as much as \$2 billion of federal revenues are annually foregone purely as a windfall or reward to church donors.

Aside from such questions, there is the question of constitutionality. If clear guidelines on the constitutionality permitted area of direct government support were available, development of policy in this area might be more feasible. Unfortunately, these guidelines do not exist, largely because of court decisions denying standing to test either direct or indirect expenditures. Hopefully, cases now pending as well as pending legislation will permit resolution of these issues.⁴³

⁴³ See Korbel, "Do the Federal Income Tax Laws Involve an 'Establishment' of Religion?" 50 A.B.J. 1018 (1967); Hammett, "The Homogenized Wall," 53 A.B.J. 929 (1967). For a layman's view, see Dalk, "God Is Rich," *Harper's Magazine* 69 (Oct. 1967). See also, "Constitutionality of Tax Exemptions Accorded American Church Property," Comment, 30 Albany L. Rev. 58 (1966); Comment, "State Tax Exemptions and the Establishment Clause," 2 Stan. L. Rev. 366 (1957); but see Survey Note, "Church-State Religious Institutions and Values: A Legal Survey—1964-66," 41 Notre Dame Law. 681 at 695 (1966). S. 3, 90th Cong., 1st Sess. (1967); also S. Rep. No. 85, 90th Cong., 1st Sess. (1967) and Hearings: Judicial Review, Subcommittee on Constitutional Rights, Committee on Judiciary, U.S. Senate, 89th Cong., 2d Sess. (1966); *Flast v. Gardner*, 267 F. Supp. 351 (S.D.N.Y. 1967), and 271 F. Supp. 1 (S.D.N.Y. 1967), 36 Law Week 3078, now docketed before U.S. Supreme Court.

The serious and sensitive problems of state-church relationships have been muted through the indirect support of tax benefits. However, it seems undeniable, to this author at least, that tax benefits are no less government support than are direct government expenditures. Any conclusions regarding direct subsidies should be equally controlling for tax benefits.

Social welfare and other organizations

"Civic leagues" and "social welfare"⁴⁴ organizations (e.g., Sierra Club, League of Women Voters, municipal government reform groups, etc.), like the previously described charitable organizations, also operate for the benefit of an undefined public at large, rather than to provide particular services to their members. They are distinguishable from the charitable organizations in that their aims may often be achieved only through substantial legislative or political means which would violate the limitations on such activities contained in Sections 501(c)(3) and 170(c)(2)(D). While such organizations are themselves exempt, deductions for gifts to them are not presently allowed. The philosophy here is probably the following. Wealth by itself carries with it a great ability to influence public opinion regarding pending legislation and political candidates. In a democratic society it is not appropriate to further increase this advantage by tax benefits. Thus tax deductions for gifts to so-called grass roots lobbying or other politically oriented organizations are inappropriate.⁴⁵ However, since the organizations typically have little income other than gifts, and since it is difficult to define what would

⁴⁴ I.R.C. § 501(c)(4).

⁴⁵ See Note, "The Sierra Club Controversy," 55 Calif. L. Rev. 618, and Comment, "The Revenue Code and a Charity's Politics," 73 Yale L.J. 661 (1963), discussing this area. See also S. 1023, 80th Cong., 1st Sess. (1963), which would allow propaganda directly related to an organization's purposes.

be "taxable income" of such organizations, it is simpler on administrative grounds to exempt the organizations themselves on their related income.

On the other hand, should the Congress decide to encourage small contributions to political candidates or parties from a wide public base through a tax deduction or credit, it would then be appropriate to reconsider the ban on deductions for gifts to civic and social welfare organizations. For example, if gifts up to \$100 were to be deductible when made to political candidates or parties, as President Johnson recommended in 1966,⁴⁶ perhaps a donor should be allowed to give part or all of that \$100 amount to an organization not strictly a political party, such as the Sierra Club or the League of Women Voters. However, since one of the main obstacles to soliciting small political contributions is the cost of such solicitations, perhaps the financial incentive should be directed at the political organizations themselves. A plan under which the government would match gifts up to amounts such as \$10 or \$20 would seem to be the efficient method for achieving the desired objective here. Any government funds expended would go directly to the political parties or candidates. By contrast, under any tax plan, the tax benefits to existing contributors could be a complete loss since there would be no guarantee that a single extra dollar of contribution would result. A matching plan was one possibility mentioned in President Johnson's Message to Congress in 1967.⁴⁷

⁴⁶ See S. 3435, 89th Cong., 2d Sess. (1966), introduced at request of the President, and Hearings on Financing Political Campaigns Before the Committee on Finance, U.S. Senate (Aug. 18-19, 1966).

⁴⁷ "The Political Process in America" (printed in Hearings Before the Committee on Finance on Various Proposals for Financing Political Campaigns, 91st Cong., 1st Sess. 2 (1967)). See also Financing Presidential Campaigns, Report of the President's Commission on Campaign Costs 31-32 (April 1969).

A policy of encouraging small gifts to social welfare organizations and political parties may have much to commend it. It will be of little value to the person of wealth and thus not exaggerate the already disproportionate power that such persons have to influence public opinion on political and legislative matters. At the same time, by encouraging participation in the affairs of government by a wider sector of our population, it would tend to reduce the present disproportionate reliance on large contributors and the evils that flow from this situation.

One further point of possible liberalization is that of so-called direct lobbying. This consists of presentations to members and committees of Congress or state and local legislatures. Prior to 1962, the cost of such presentations was not deductible by businessmen.⁴⁰ However, the Revenue Act of 1962 added Section 162(e) to the Code,⁴¹ which allows deductions for such activities if they are of "direct interest" to the business of the taxpayer or to the members of a trade association. Also allowed is communication by a trade association to its members with regard to such matters. "Grass roots" lobbying (for example, advertising directed to the public at large) remains nondeductible. This privilege of tax-deductible direct lobbying now granted to business, places organizations like the Sierra Club at something of a disadvantage to business interests in so far as direct lobbying is concerned. Since the assumption is that Congressmen can "take care of themselves" and furthermore should have all views made available to them before voting, serious consideration should be given to extending di-

⁴⁰ See *Cammarano v. United States*, 358 U.S. 498 (1959) (affirming 1939 I.R.C. Reg. 111, §§ 29.23(o)-1 and 29.23(g)-1).

⁴¹ See Lilien, "A New Look at 'Ordinary and Necessary' Business Expenses ('Lobbying and T and E')," 21 *N.Y.U. Inst. on Fed. Tax.* 1163 (1963).

rect lobbying privileges to exempt organizations. Repeal of Section 162 would seem a less desirable way of restoring balance. Because the costs of influencing the general public are much greater, it still seems wisest to leave this area in the nondeductible realm both for business and exempt organizations. The existing advantages enjoyed by the wealthy and business are already too great in this area and deductibility would most likely benefit these groups more than the exempt organizations. If the suggested liberalization were followed, many organizations now exempt only under Section 501(c)(4) could probably return to the more preferable status of Section 501(c)(3) organizations.

There is no reason for not subjecting Section 501(c)(4) organizations to the same rules regarding permitted investments as have been suggested for the Section 501(c)(3) organizations. Thus, they would not be permitted to engage in active business. Their unrelated income would then consist only of passive income which should, for reasons similar to those for denying deductibility of contributions, not be exempted from taxation. Since such organizations are rarely possessed of endowments, this should be of little import. They should also be made subject to the same anti-self-dealing rules suggested as well as full public information reporting.

Nonprofit business organizations

A fourth major category of nonprofit organizations exempted from tax under existing law consists of trade and professional organizations, chambers of commerce, and producers' cooperative marketing and purchasing organizations. Such organizations, while enjoying exemption, do not qualify as eligible recipients for deductible charitable gifts.⁸⁰ However, dues paid to such or-

⁸⁰ I.R.C. § 501(c)(4)(D). See also 44-521 and 1381-1383. *Dulles v. Johnson*, 273 F.2d 382 (2d Cir. 1959), cert. denied 364 U.S. 834 (1960), 11

ganizations ordinarily will be deductible as trade or business expenses except where the organization engages in prohibited "grass roots" lobbying activities.⁸¹

Since one of the principal purposes of these organizations ordinarily is to increase the business income of their members, the most generous tax treatment that should be extended to such organizations is a conduit type treatment.⁸² Thus, the expenses of the organization would be deductible on an allocable basis by the members. Income would be taxed on an allocable basis to members also. Since it may not be convenient to tax the members at the time income is earned but not yet distributed, perhaps the best solution would be to tax the members only on distributed income, relieving the associations of the tax liability on such income, and taxing the associations on any undistributed income at normal corporate rates, which in this case would be akin to a withholding tax. If this approach were followed there would be, of course,

was held that the city, county, and state bar associations of New York were "charitable, scientific, literary or educational" organizations so that contributions to them were deductible as charitable gifts. The Internal Revenue Service does not follow this case. See Annual Report, A.B.A. Sec. of Taxation 129 (1963). Since the bar associations can segregate their charitable and educational endeavors in separate entities to which contributions would be deductible (such as the American Bar Foundation), it would not be harsh if *Dalla v. Johnson* were overturned, as seems appropriate. Compare *Hammerstein v. Kelby*, 319 F.2d 928 (8th Cir. 1963) (medical association, not charitable), with *St. Louis Union Trust Co. v. United States*, 374 F.2d 127 (8th Cir. 1967) (bar association, charitable). See generally, for description of tax problems of associations, Webster, *Associations and the IRS* (U.S. Chamber of Commerce 1966). See also Fink, "Business Activities of Non-charitable Tax-Exempt Organizations," N. 6 *supra*.

⁸¹ Reg. § 1.102-20.

⁸² It could be argued that they are separate business corporations and should be subject to corporate taxation. This treatment would also require that they charge their members a fair fee for whatever services they provide (Section 182) and not offset losses from one service (e.g., lobbying) against profits earned in another area (e.g., advertising in a journal) so long as the losses are generated by less than full charges.

no need for tax-oriented supervision of the activities of such organizations.

On balance, except for the case where such organizations accumulate substantial amounts of income, the above recommendation should not produce results markedly different from existing law.⁵³ However, many troublesome questions under existing law, such as the appropriate treatment of trade shows, trade journal advertising, etc., could be handled more easily under this approach. In fact, existing law applied to most marketing and purchasing agricultural cooperatives is, in many respects, the model for this suggested approach. In general, since the Revenue Act of 1962, such cooperatives are taxed on their income but are allowed to deduct income distributed to their members.⁵⁴

Nonprofit social and country clubs and fraternal groups

Under existing law, social and country clubs are exempt from tax.⁵⁵ Contributions to such organizations are not deductible as charitable contributions. Fraternal societies and lodges are also exempt.⁵⁶ Contributions to such groups are deductible to some extent.⁵⁷ Neither

⁵³ See Webster, "The Mythology of Revocation," 8th N.Y.U. Biennial Conf. on Charitable Foundations 243, 260 (1967), pointing out that exemption may not be important to many associations and in fact may be detrimental to some.

⁵⁴ I.R.C. §§ 1381-1388. Some amendments pertaining to "per unit returns" were also made in 1966 by Section 211 of Public Law 89-209 (Nov. 13, 1966). Similar results would be reached under the proposals of the Canadian Royal Commission, N. 12 *supra*, that there be a postponement fee of perhaps 15 percent on income in the year in which received and that the income be taxed to the members when and if distributed.

⁵⁵ I.R.C. § 501(c)(7).

⁵⁶ I.R.C. § 501(c)(8).

⁵⁷ Section 170(e)(3)-(4) allows deductions for contribution "to a post or organization of war veterans" and gifts by individuals to "a domestic fraternal society, order or association, operating under the lodge system, but only if such contribution or gift is to be used exclusively for religious, charitable, scientific, literary or educational purposes, or for the

social clubs nor fraternal groups are subject to the tax on unrelated business income.⁸⁸ However, social clubs, unlike the fraternal organizations, may lose their exemption if more than a nominal amount of their income is from nonmember sources.⁸⁹

Tax benefits are perhaps more difficult to justify for either of these groups than they are in the case of trade and other profit-oriented organizations. They are, to state the matter simply, private swimming pools, recreation facilities, golf courses, etc. As such, they violate the normal rule that exemption is not available for organizations that only supply particular services to particular members (for example, accounting services) rather than serving a broader purpose (for example, advancing the standards of the widget business). At most, they should be exempted from tax on income from members in the form of dues and fees on a pure conduit theory. Thus, if one builds and maintains his own swimming pool, no income is created. If several people cooperate to do this, the same result could be justified. Analogous situations are consumer cooperatives.

However, it would seem inappropriate to exempt anything other than very minimal income from other sources. Such minimal exemption could be justified on administrative grounds. No deduction for gifts to such organizations should be allowed. If they wish to carry on

prevention of cruelty to children or animals." Dues to such organizations do not so qualify on the ground that benefits and privileges are received in return. See U.S. Treas. Dep't, *Your Federal Income Tax* 118 (1968). However, with ostrich-like innocence, the very same paragraph states that no benefit is received for dues, fees, pew rents, etc., paid to churches and that these are therefore deductible in full.

⁸⁸ I.R.C. § 511(a)(2).

⁸⁹ Rev. Proc. 64-36, 1964-2 C.B. 962; *United States v. Fort Worth Club*, 345 F.2d 52, *reaffirmed* 348 F.2d 891 (5th Cir. 1965). While the regulations purport to limit fraternal organizations to business activities receiving revenue only from members and their guests (Reg. § 1.501(c)(8)-1(b)), it is blatantly obvious that this provision is not enforced.

charitable activities, they may do so through separate but affiliated organizations.

Under the above approach, there would be little need for tax-oriented supervision although information returns should be required to insure that the organizations were in fact operating as noncommercial ventures.

IMPLEMENTING AND FINANCING REGULATION

Ultimate power must rest with Federal Government

Regardless of any delegation of power to either state agencies or private self-regulatory organizations, ultimate supervisory power over exempt wealth must remain with the Federal Government for a number of reasons.

The tax benefits the Federal Government provides are an enormous diversion of federal revenues and the Federal Government is responsible for assuring that they are devoted to the intended public purposes. It must also avoid undue erosion of the federal tax base. Because the federal tax benefits are so large, the Federal Government must not allow them to induce undesirable social and economic side-effects, such as inappropriate competition with private enterprise and undue concentration of economic power beyond the control of the market or the government.

Residual power must also be retained in order to prevent the development of a "Delaware for foundations" (Delaware being a favorable state for incorporation because of its liberal corporation laws). It can be expected that as some states increase the supervision of charities, there will be a tendency for organizations to be formed in states in which there is no such supervision. These, although perhaps few in number, will be those most in

need of supervision. The "ambulatory foundation" problem may already be with us.⁶⁰

The Federal Government also has the responsibility for maintaining public confidence in the federal tax system. If the public believes that the tax benefits to charity are "abuses" or "loopholes," continuation of these benefits could cause a breakdown in our self-assessment system. Alternatively, unless the public is confident that the tax benefits serve useful public purposes, do not inure to private benefit or create any other undesirable effects, unreasonable curtailment of the federal tax benefits to legitimate charity could result.

The question of *how* this power should be exercised remains. To date this power has been lodged in the Treasury Department and, within the Treasury, in the Internal Revenue Service. This may be an unsatisfactory arrangement for the long run. While the interest of the Federal Government stems in large measure from the tax benefits granted, it is, as noted, not limited to prevention of tax abuses in the normal sense of the word. While the Service has in recent years made heroic efforts to increase its auditing activities in this area,⁶¹ it remains better suited to raising revenue than to supervising the administration of the wealth of charity. The Internal Revenue Service would probably not disagree with this conclusion. On the other hand, because the interest of the Federal Government stems largely from the tax benefits granted, the federal power in this area should probably remain within the Treasury Department. This then may call for the creation of a separate division within the Treasury Department.

In view of the importance of his jurisdiction, the Commissioner of Charities, if that be his title, should be a

⁶⁰ See Greenfield, N. 8 *supra*, at 180.

⁶¹ See statement of Commissioner Cohen, N. 2 *supra*.

residential appointee like the Comptroller of the Currency, who supervises the commercial banking system, and the Commissioner of Internal Revenue. However, like them, he should remain a part of the Treasury to facilitate coordination and resolution of possible conflicts.

Compliance procedure

Registration and annual information filing

Adequate public reporting is the sine qua non of effective supervision of charitable funds. Since such funds are quasi-public funds, reporting can be justified solely on such grounds. However, there are other important reasons for this requirement, including the need for adequate information for budgeting and evaluation purposes of the revenues lost by reason of tax benefits. This reporting should extend to all organizations claiming tax benefits for themselves or their donors.

To avoid many of the problems that arise under existing laws, all charities and exempt organizations claiming tax benefits for themselves or their donors should be required to register with the Commissioner of Charities as a condition of claiming federal tax benefits. This registration should be in addition to the requirement of annual reports. Finally, a significant periodic review of charitable status could be assured by requiring re-registration as frequently as every three to five years. This procedure would be similar to the granting of licenses to use the airwaves for transmission of radio or television, which must be renewed periodically.

Flexible sanctions

To insure sensible and efficient administration, the powers of the Commissioner of Charities should be made flexible. Registration and the acceptance of federal tax benefits should carry an obligation to continue to devote

assets to either exempt purposes.⁶² Presently, in states where there is little supervision of charitable organizations, the only real danger to organizations that deliberately stray from their purposes may be loss of *future* tax benefits. This may punish the organization but does not guarantee that the assets already received or accumulated with the help of tax benefits will go to charitable purposes. In fact, if those in control of it desire to use the assets for their own benefit, they may prefer to leave their exempt status behind and thereby avoid the limited supervision of the Internal Revenue Service of them as exempt organizations and prefer the possibly greater privacy of normal taxpaying entities. Sensible and workable supervision requires equity powers, including the power, with court approval, to remove derelict trustees, add trustees, force the merger of charities whose original purposes have ceased to exist into active charities, and require the restoration to charity of property improperly taken from it. This latter requirement might also be better implemented if the law allowed for revocation of eligibility for the receipt of deductible charitable gifts without revocation of the organization's tax exemption.⁶³ With these powers, registration could then carry with it the *right* to tax exemption and there

⁶² Registration could be conditioned on appropriate terms in an organization's charter concerning disposition of its assets on liquidation or on loss of its tax exemption. Registration would also avoid "closing the barn door after the horses have escaped" in some cases. This would be in accord with the practice in California, Fremont-Smith, N. 5 *supra*, 321-322, Cal. Rev. & Tax. Code § 23703, as well as in Britain, Fremont Smith 419, Stat. 8 & 9 Elizabeth II, c. 58, § 5 (1960). Both of these jurisdictions condition enjoyment of tax benefits upon compliance with the registration requirements. Under California law, failure to file annual information returns can result in loss of tax exemption for such year (§ 23703), and even a late filing results in payment of the minimum corporate tax for such year (§ 23772(F)).

⁶³ Under present law and procedure, denial of tax deductions to donors requires revocation of the organization's tax exemption. This often creates a dilemma of "punishing" charity in order to punish the offending donor

would normally not be any occasion to revoke registration or exemption.

Federal deferral to state supervision

The most flexible and possibly the most important power that such a Commissioner of Charities should have is one to defer action pending state action or even, as discussed *infra*, to delegate regulatory authority to states or to private self-regulatory associations. The responsible federal agency should have the authority to enter into agreements with states that are willing to carry out the minimum rules called for by federal statute or established by the regulations of the federal agency.

To implement this, legislation would be required in many states not only to require the registration of charities, but also laws designed to give the appropriate state agency sufficient powers to formulate and enforce standards of charitable fiduciary conduct and investment behavior. In addition, legislation would be required in most states to override the effect of exculpatory clauses, both with regard to the kinds of investments a charity may make, and with regard to self-dealing and personal liability of trustees and officers. Furthermore, state laws might provide that the loss of federal tax exemptions can under some circumstances be treated as a breach of trust under state law, thus bringing into play the sanctions available to the enforcing agency.

So long as an appropriate federal-state agreement was in effect, federal supervision of charities within that state could be limited to overseeing the activity of the appropriate state agency.⁶⁴

or allowing the donor to escape any denial of benefits in order to avoid punishing charity.

⁶⁴ There are many areas in which this kind of relationship exists between the Federal Government and the states. Recent examples include pollution-control legislation and supervision of handling of meat. For a general discussion of some of the federal state issues, see Panel Discussion,

The possibility of deferral to private self-regulation

In recent years, there has on occasion been interest in the possibility of self-regulation of some charities through voluntary codes of ethics. For example, it has been frequently suggested in the last two years that private foundations adopt such a code of behavior. Private self-regulatory organizations operating with quasi-governmental powers and subject to some supervision by government, have on occasion been employed in the United States. This kind of mechanism may appear awkward and inefficient as compared to direct governmental supervision. But it often has significant advantages. It may be the best way to achieve a compromise in a situation where some forces contend strongly against any regulation. It may smooth the relationship between all-powerful government and the persons to be regulated.

One example is securities regulation. At the top of the present legal structure is the Securities and Exchange Commission. It has both direct and indirect regulatory powers over certain aspects of the sale and trading of securities. It supervises the various stock exchanges which in turn regulate their members and to some extent the companies who are listed on the exchanges. The SEC regulates certain security dealer associations which in turn regulate their members. Those not members are regulated directly by the SEC itself.⁶⁶ The SEC directly supervises the disclosure aspects of prospectuses and proxy statements. In addition, state

State Regulation of Tax Exempt Foundations, April, 1967 A.B.A. Bull., Sec. of Taxation, Pt. I, at 17.

⁶⁶ See generally Jennings, "Self-Regulation in the Securities Industry: The Role of the Securities and Exchange Commission," 29 Law & Contemp. Prob. 603 (1964), and Sterling, "National Association of Securities Dealers and the Securities Acts Amendments of 1964," XX Business Law. 313, 322 (1965).

regulation complements, and in some instances, replaces federal regulation.** There is also the experience of state bar associations who regulate the conduct of their members, but whose authority may derive from state law or which may ultimately be responsible to the state supreme court.

For the tax-exempt sector, the use of self-regulating mechanisms may be uniquely appropriate for several reasons including the following. The tax-exempt sector is important because of its role as a decentralized source of power that helps maintain a pluralistic society, avoids overcentralization of power in government and engages in controversial and new activities. Too much direct federal or state influence over this tax-exempt sector, even though largely limited to regulation of investment behavior and prevention of abuses, might defeat these values.

Serious consideration should therefore be given to the delegation of supervision and registration powers over charities to voluntary associations at least on an experimental basis. Charitable entities that desire to form and become members of such associations could avoid direct supervision from the state and federal governments so long as they remained in compliance with the rules of their association. This type of self-regulation might complement and would not necessarily exclude all federal or state direct regulation. It is likely that many organizations might not wish to join such an association. They would, therefore, remain subject to either full direct supervision of a state or of a federal agency, as the case might be. Also, where self-regulation was not effectively carried, the delegation of regulatory power would have to be revoked.

** See *Loss, Securities Regulations* 584-591, regarding Section 3(a)(10), Securities Act of 1933.

Financing the supervision of charities

The most promising method of financing the supervision of charities may be that recently adopted in New York. Recognizing the past lack of legislative interest in providing adequate financing,⁶⁷ the authors of New York's recent charitable registration and supervision law had the foresight to provide a self-financing mechanism—an annual license fee based on the size of each charity, with appropriate minimum and maximum fees.⁶⁸ The fees are rather modest for most organizations. However, it is estimated that there were, as of the end of 1966, about 12,000 private foundations in this country.⁶⁹ These account for only a small percent of organizations that might be subjected to such supervision.⁷⁰ The Service's master file of exempt organization now contains over 325,000⁷¹ organizations which are increasing at a rate of 20,000 per year. It would not require very large annual license fees to provide funds for adequate compliance personnel and appropriate registries.

⁶⁷ The Report on Charitable Trust Activities for the years 1964 and 1965 of the Trust and Trade Practices Unit of the California Department of Justice states that "[T]he steadily increasing backlog of incomplete investigations and pending litigation reflects the fact that neither investigative nor legal staffing has kept pace with the growth of charities in California as reflected in the workload of the Registry." Fremont-Smith, N. 6 *supra*, at 332 states that "the program established in California for the administration of the Uniform Act is the largest of any currently in existence." It seems apparent that with the exception of the New York situation, other state programs must be endowed well below the poverty level.

⁶⁸ See Greenfield, N. 8 *supra*. The fees range from \$10 for organizations whose net worth is less than \$50,000 to a maximum of \$250 for organizations whose net worth exceeds \$10 million. There are many examples in other regulatory fields of annual and other fees to support the regulation.

⁶⁹ *The Foundation Directory* 9 (3d ed. 1967).

⁷⁰ See statement of Commissioner Cohen, N. 2 *supra*.

⁷¹ *Ibid*.

This annual licensing fee should be imposed by federal legislation. But provisions could be made for the remittance of all or a large proportion of such fees to the states or private self-regulatory agencies.⁷² No state or private association would then be deterred from assuming responsibilities for lack of money.

The requirement of an annual license fee, although small in amount, might also result in better compliance with requirements for the filing of information returns. A charitable fiduciary is less likely to neglect to renew an annual license than to file an annual information return.

Having the tax-exempt sector finance its own regulation might encourage support for rules which are simple to administer. For example, the Internal Revenue Code now does not generally prohibit self-dealing. Rather, when applicable, the existing rules require only that dealings between a charity and its donors or trustees be conducted at "arm's length." Inherently, the standard of arm's-length dealing between nonarm's-length parties is one that is extremely difficult and expensive to administer. Those few charities which today argue that the benefits derived from self-dealing more than justify the costs of administering such a rule might have difficulty convincing the vast majority of charities that do not engage in such self-dealing that those somewhat questionable advantages are worth the expensive compliance costs they entail, both for the supervisory agencies and for the reporting organizations.

DELAY IN BENEFIT TO CHARITY

There remains the problem of delay in benefit to charity. Since *immediate* tax deductions (and therefore

⁷² For one analogy, see 26 U.S.C.A. (I.R.C.) § 3302 *et seq.*, under which federally imposed payroll taxes are used to fund state unemployment compensation programs.

immediate diversion of federal revenues) are granted for contributions to charitable organizations, it is not unreasonable to require that the donations result in charitable benefits within a reasonable period of time. Conceivably it might be required that the contributions themselves be applied to charitable purposes within a reasonable period of time. In the case of operating charities, such as hospitals and schools, this would require that the donations be currently invested in charitable facilities or expended. In the case of organizations that make grants, such as private foundations, the requirement could be that the donations themselves be currently given to other charities.

However, there may be good reasons for the maintenance of permanent endowments for the support of continuing activities. Most universities attempt to accumulate an endowment fund to avoid too great reliance on current gifts and other means of support. This undoubtedly adds to their vital independence. There is great merit in preserving intact the contributed capital of private foundations so that they may be a continuing source of grants for experimentation and innovation in the years to come. On the other hand, assuming justification for this degree of delay, it is difficult to justify the further postponement that results if the income from such contributions is also accumulated and added to capital. Such delay makes the present value of the contribution too remote to be deserving of immediate tax benefits. In fact, the staggering social problems of today could easily be used as the basis for a requirement that at least a portion of the donations themselves be devoted to immediate active charitable uses in order to obtain an immediate tax deduction since some of these social needs are left unsatisfied because of the revenues diverted to charity. Such a requirement already exists,

under Section 170(g)(3), for contributions by unlimited donors to private nonoperating foundations.

In its 1965 Report on Private Foundations, the Treasury Department recommended, in accordance with traditional common law, that charitable fiduciaries be required to make charitable property productive and to expend income within a reasonable period of time for charitable purposes.⁷³ The Treasury Report would require that all current income other than capital gains be expended within roughly one year after the year in which earned. Five-year accumulations for definite projects which could be accomplished only through such accumulations would, however, be allowed (with postponement for good cause).

To give reality to the duty to make property productive, the Treasury Report would also require that moneys would have to be spent out of capital if the actual income were less than a certain percentage of the fair market value of investment assets. This percentage would be determined from time to time by the Secretary of the Treasury, based upon the return then being earned by large university and other endowment funds. Thus, charitable fiduciaries would be allowed to invest in nondividend-paying growth stocks. However, consistent with the realities of the situation—a sacrifice of current dividends for income in the form of capital appreciation—they might have to sell some of the appreciated stock annually in order to provide cash for charitable purposes. If the flexible enforcement powers suggested above were made available, there would also be the power to compel trustees to make their capital productive by selling one investment and purchasing another under circumstances where a court might find

⁷³ N. 4 *supra*, at 23-30.

that it was unreasonable to retain the unproductive property.

When considered together with the other flexible supervisory powers previously suggested, the Treasury recommendations appear entirely appropriate for adaptation to most charitable organizations. Any consideration of a requirement that some minimum portion of donations themselves be expended or applied to charitable use immediately should probably be postponed until experience has been gained with the more limited Treasury recommendations.

CLOSE CONTROL OF CHARITABLE ORGANIZATIONS

It has been suggested by some that to avoid excessive accumulations of wealth, certain charities, namely private foundations, should be terminated after a period of years. Many do not share these views and see no reason for any automatic termination of any charitable organization so long as it is a viable and useful organization. For the rare situation where an organization ceases to function, in pursuance of its exempt purposes there should, however, be the powers in the relevant supervising agency to replace trustees or to force mergers with other organizations on cy pres principles. Otherwise, funds received or accumulated as a result of past tax benefits may never be put to the use for which the tax benefits were granted (as is often the case today when few states would take any action against the wayward organization).

On the other hand, there is great merit in the argument that nonprofit organizations, which may be subject to the control of neither owners, the market place, nor the electorate, should be encouraged to avoid parochialism and seek to rejuvenate themselves by drawing in-

dependent trustees from a wide segment of the public. There is usually no serious problem in this respect in the case of charitable organizations that must seek their support from the public since they normally are subject to the scrutiny and influence of a fairly large segment of the public. On the other hand, other organizations such as heavily endowed private foundations, or such as the National Geographic Society, which obtains sufficient income to meet its needs from its publications including about 5 million subscribers to its magazine, do not need or seek contributions from the public. Such organizations present the danger that after a period of years they may no longer be responsive to the needs of the public. The Ford Foundation has made this transition from family control to independent control in commendable fashion. The National Geographic Society, however, is still apparently under the control of one family after several generations. Perhaps that is why its financial statements indicate that the making of geographic exploration grants and the conduct of other similar activities appear of far less concern to it than membership promotion.⁷⁴

In the early years of a private foundation, close control will probably not be harmful, and in fact may often be desirable. It is during these years that the principal donors or founders are making their contributions, financial and spiritual, and are guiding the or-

⁷⁴ The public forms 990-A of the National Geographic Society for 1965 and 1966 show total gross revenues of \$43 and \$50 million, respectively. Membership promotion for these two years was \$1.1 and \$1.2 million. "Advertising" for these two years was \$4.8 and \$5.2 million. The 1965 return shows total research grants and expedition costs of \$593,000 as part of a total of \$1.2 million of Research and Public Service Grants. The comparable figures for 1966 were \$769,000 and \$2.7 million. Compensation to officers for 1965 was \$621,000 and \$639,000 for 1966. See also Kelly, "The Magic Mountain," 3 The Washingtonian, No. 2 (Nov. 1967), for an interesting description of the Society and its management.

ganization along the lines that inspired the donations. In later years, when the founder may be gone and those in control of the organization may consist of a group of self-perpetuating trustees answerable to no one, the interest of the public may require that management and direction be placed in the hands of a wider group of interests. The recommendation of the Treasury Report that no more than a minority, for example, 25 percent, of the controlling board of a foundation should consist of the creator or principal donor and related persons after a period of years (such as 25) is sound. However, if charitable supervising agencies were granted the kind of flexible equity authority which has been suggested, they should as a matter of policy be authorized and encouraged to do all in their power to insure a wide representation of public views in such organizations under any appropriate circumstances. Such a policy could perhaps obviate the need for mechanical rules and could, especially in the hands of private self-regulatory organizations, be flexibly administered with possibly better results.

CONCLUSION

The American public supports charity and other exempt endeavors in an unprecedented fashion. Reported contributions by living individuals alone totaled \$9.2 billions in 1966.⁷⁵ When charitable contributions by corporations, \$729 million in 1964,⁷⁶ charitable de-

⁷⁵ U.S. Treas. Dep't, *Preliminary Statistics of Income, 1966 Individual Income Tax Returns*, Table 5, p. 25. The corresponding amount for 1956 was \$4.878 billion.

⁷⁶ 1964 is the latest year for which this information is available. U.S. Treas. Dep't, *Statistics of Income, 1964 U.S. Business Tax Returns*, Table 24, p. 107. The corresponding amount for 1956 used by Kahn, N. 13 *supra*, was \$413 million.

ductions by fiduciaries, \$370 million in 1965,⁷⁷ and charitable deductions from estate and gift returns, over \$1.25 billion in 1965.⁷⁸ are taken into account, the indirect support borne by all taxpayers easily exceeds \$5 billion annually. The current tax revenues foregone through the exemption of income of the organizations themselves must also be a significant amount. The value of state and local real estate and other tax benefits would also increase the total very substantially.

These staggering sums inescapably lead to one conclusion: we cannot, as a sensible national policy, assume that "all is well." Even the embattled fund-raiser must consider the possibility that the present policy may not be one that channels the most support to charity.

Study, analysis, and debate are not easy in this area where the stakes are high and emotions run accordingly. For example, no depletion-fattened oil magnate ever squeals more audibly and in a more anti-intellectual vein than most respectable college officials when any tampering with their tax privileges is proposed:

"Economists can theorize and philosophize and undoubtedly can present statistics which may shed some light on longstanding tax systems and problems. But those of us who have responsibilities for the administration of higher education, and especially private higher education, have to be very much concerned about any suggestion that might impede or slow down private giving, which is the very life blood of our private institutions."⁷⁹

⁷⁷ U.S. Treas. Dep't, *Statistics of Income, 1965 Fiduciary, Gift and Estate Tax Returns*, Table 13, p. 25.

⁷⁸ *Id.*, Table 1, p. 41 (\$269 million), and Table 1, p. 58 (\$1 billion). The comparable figures for 1964, the year of Kahn's computations, were substantially less than one-half of the 1965 figures.

⁷⁹ From statement of Clarence Scheps, Executive Vice President, Tulane University, *Taxation and Education*, N. 6 *supra*, at 58.

A voice from the past shows that this is not a new phenomenon, the result of today's fund-raising difficulties:

"It is at once apparent that . . . objection [to exemption of charities] is both illogical and mean; illogical, because if churches, colleges and hospitals subserve the highest public ends, there is no reason for making them contribute to the inferior public charges."⁸⁰

However, since we look to many exempt organizations—for example, universities and churches—for leadership in matters of morality and justice, it is "inconceivable [that they] should align themselves for the sake of some small gain, real or imagined, anywhere other than with those who honestly and determinedly seek" equity, rationality and efficiency in taxation and public expenditures.⁸¹ So let us get on with the work.

Our English and Canadian brethren have had great success with the use of Royal Commissions to explore national problems of this magnitude and significance. Typically consisting of men of unquestioned integrity, competence, and prestige, they are given a broad scope of study and return with detailed and complete long-range recommendations for national policy in troublesome but important areas. We have experimented with such commissions. Issues in the charitable and nonprofit area call for such a national commission. To give prestige, independence, inducement to significant accomplishment, and a sense of urgency to such a commission, it should preferably be created via the route of congressional legislation. It should be given sufficient financial support and sufficient investigatory powers to carry out its task. The

⁸⁰ The late President Eliot of Harvard in *Exemptions from Taxation in Massachusetts* 21-45 (1910), quoted in Griswold, *Cases on Federal Taxation* 1075 (6th ed. 1966).

⁸¹ See remarks of Professor Harvey Brazier in *Taxation and Education*, N. 6 *supra*, at 49-50.

members of such a commission should represent the interests of state attorneys general, the Treasury Department, the Department of Health, Education and Welfare, the Justice Department, and the charitable and nonprofit sectors. It should be allowed ample time, perhaps up to two years, to complete its work. Such a prestigious study could lead to the implementation of a consistent and effective long-range national policy which would assure continued vigorous growth and accomplishment by the charitable sector of our country.

The CHAIRMAN. Are there any questions of Mr. Stone?

Mrs. GRIFFITHS. I would like to congratulate you, Mr. Stone. I think you did an excellent job. Even while you were talking, we cast a vote where I was sitting and we have at least two votes for the filing fee already.

The CHAIRMAN. Mr. Bush.

Mr. BUSH. Mr. Chairman, maybe I wasn't clear, but in talking about dealing with the regulations through the States a question comes up which I asked the previous witness about—political activity. I would just like your views on the fact that a recent FCC decision said that TV stations had the duty to editorialize. In other words, they are encouraging political editorializing, taking a candidate maybe and backing one against another.

Now, do you see any conflict here as far as foundations owning public media in this regard, and how? I am not clear that this could be done through State regulation. It would seem to me that maybe it would have to be dealt with by this committee.

Mr. STONE. These organizations are now prohibited from engaging in any political activities at all.

Mr. BUSH. Do you see conflict between the ownership of a TV station if it is obligated to editorialize?

Mr. STONE. I think there would be. It seems to me that ownership of newspapers is also similar. I think there is one example in the Treasury report itself of a foundation that does own a newspaper and a TV station.

Mr. BUSH. Is this a widespread happening? Are there many such in your experience with foundations?

Mr. STONE. I don't really know how many there are, but we didn't have any trouble finding some examples. This is just one indication of some of the subtle ways in which you can get around some of the direct requirements on foundations. They engage in business and can run into conflicts of interest and self-dealing. In the situation which you point out they get into a political conflict.

Mr. BUSH. From your testimony I am not clear on why the IRS haven't moved when regulations are already on the books. I am not clear from your answer as to why they have not done something about existing problems.

Mr. STONE. Well, I think that it goes back to the fact that the IRS has its eye on the ball of raising taxes and that traditionally you don't raise much taxes in the exempt organization area, and therefore the exempt organization area is not always the liveliest part of the IRS.

I would agree that in the example you gave they can make some pretty good arguments under existing law that the foundation is violating the prohibition against engaging in political activities or grassroots lobbying if it owns a television station or a newspaper or magazine or what have you and editorialize on political issues.

Mr. BUSH. When you say owns, is there any precedent on how much it has to own? Would you say control might be the yardstick or is that spelled out in the regulations anywhere?

Mr. STONE. Well, the law says that a 501(c)(3) organization may not engage in any political activities whatsoever. It would be a question

probably of effective control and would not need to be 100 percent ownership certainly.

Mr. BUSH. I think maybe it would start with the concern from people who have to be elected. But I think many people from more than selfish reasons are concerned about foundations involving themselves in politics. I am very much concerned about it, and I think there will be testimony on it.

In this TV thing it seems to me that there are rules on the books and somebody ought to be doing something about that. I think you concur in that; is that correct?

Mr. STONE. I agree that this is an area where it would be worth while to litigate and to pass legislation if necessary.

Mr. BUSH. I have one last question, Mr. Chairman, on assets. I asked this question of one of the previous witnesses. On assets that are not listed assets which might fall into the category of privately owned corporations that the founder put into this, have you done enough research yourself to answer whether these assets yield substantially less to the foundations than listed securities or what would be identified as public?

A small part of the listed corporation, as I glance through the figures, has a yield comparable to maybe not Dow Jones, but somewhere a reasonably respectable yield, but as I look at some of the other assets in these foundations, it seems to me that there is no yield at all. I wonder whether they are being protected or held for growth and sold.

Have you enough statistical data in your memory to comment on that?

Mr. STONE. I don't have the facts at my fingertips and it is hard to generalize in this area because each situation is a different one. The collected evidence does not seem to show any conclusive case for diversified investments or nondiversified investments. For example, the following quote from Nelson, *The Investment Policies of Foundations* (Russell Sage Foundation, 1967) (pp. 16-17):

"The evidence on the success of diversification, or of nondiversification, is therefore mixed. The verdict appears to turn on the time period examined, and there is little basis for believing that one period is more valid than another. The findings provide as much (or as little) support to those who claim that the best policy is to entrust a foundation's fortunes to one tried and tested company as to those who claim that only through the active management and adjustment of a diversified portfolio can a foundation be made to keep up with changing times."

However, Professor Nelson then immediately goes on to say:

"One suspects that, were it possible to examine a longer period of time, the verdict might be more heavily in favor of diversification. For the present, however, this comment must be classed as speculative. The youth of so many of the endowments necessarily limits the period over which comparisons can be made. All that can presently be said is that, based on the fourteen years examined, no pronounced difference in performance has been observed. The record of the younger and nondiversified foundations and that of the older and diversified ones both suggest that, since 1950, their existing investment holdings have typically provided a high and growing income for their philanthropic programs."

But if you look at the list of foundations that he studied, and I think he mainly used the fifty largest foundations, some very large foundations are missing, such as the Irvine Foundation of California which may be worth \$200 million to \$1 billion. If so, this would put it among the 10 largest foundations in this group. This foundation has an extremely low earnings record.

Now, not including that foundation in the list of fifty largest foundations means that you could have some grave distortions. There may be others missing.

I understand they were not included because information was not readily available about them. Thus some of the poor performers perhaps are the ones that are the least anxious to disclose their results, and so the evidence may be very biased.

But there are situations where closely held stock has performed very well as you might imagine. But if the evidence is inconclusive, why should we run the risk of the abuses that are associated with closely held stocks? For example, there are other situations where foundations have hung on to investments which have been losers, but they have held on for reasons which were not those that independent trustees—

Mr. BUSH. For other than business reasons?

Mr. STONE. Yes. There is one example, I believe, in the foundation report itself of a foundation holding onto a newspaper that was losing money. It is possible that that was held on to for political reasons or, if the donor and the foundation owned it jointly, to dispose of it might hurt the donor and it is not likely that the foundation would sell if that would hurt the donor. The donor would have a conflict which is almost impossible.

He is not likely to think in terms of selling as would an independent trustee.

Mr. BUSH. One last question. Anywhere in the regulations or rules governing all this stuff is there any reference to voter registration as a political activity or did that ever come up downtown at all?

Mr. STONE. I am not sure.

Mr. BUSH. Would you classify it as political activity?

Mr. STONE. Well, if it is bipartisan, it might not be.

Mr. BUSH. In other words, if it was the whole legislative district or congressional district, but it is was one voting group, how would you classify it?

Mr. STONE. I am speculating. I am really not sure. One of the most difficult questions whether a foundation is an educational or ideological organization.

Now getting voters to register on a bipartisan basis might be considered to be something carried out for an educational purpose. If you merely inform people about who is entitled to vote and when they can register to vote and what it means to be a citizen, it might be educational.

Mr. BUSH. If it were widespread and treated all areas alike, you might make a good case for it, it seems to me; if it were focused on one particular area and only one area, then it would be a difficult case.

Mr. STONE. Then it would be a delicate operation for a foundation to get involved in.

Mr. BUSH. Thank you.

Mrs. GRIFFITHS (presiding). If you were holding a registration campaign and know who is not registered, and those who are not registered are all of one party, you can hardly say that you were conducting a bipartisan registration campaign. You were really assisting one person.

Did you have some other question?

Mr. UTT. Yes.

Mrs. GRIFFITHS. Mr. Utt.

Mr. UTT. Professor Stone, on a related subject, and the related subject is the donation of an appreciated property, either real or personal, without paying the capital gains tax and yet taking an operating income deduction by the donor, is that quite prevalent in trusts, in foundations as far as you know?

Mr. STONE. Well, yes, it is.

Mr. UTT. You mentioned an extreme one of the Irvine Foundation that it carried at \$2, I think Mr. Patman said, which probably had a historic value of \$100,000 for a \$100 million value at the time of the gift. Do you know whether the donor of that trust and foundation took operating credit for the incurred value of that trust when it was created?

Mr. STONE. Well, I think that there were tax benefits. I don't know the size of them because the Irvine Foundation was created many years ago, I think, in a series of gifts if I am not mistaken, both lifetime and at death. In any event the valuations must have been a lot lower at that time.

Mr. UTT. I think there was inheritance tax valuation shortly after that so that you can establish the value at probably \$100 million and probably at \$1 billion on today's market, but I want to know whether or not the donor or creator of that foundation took credit out of operating income to the extent of the then value of the donation?

Mr. STONE. I don't know that.

Mr. UTT. And would it be prevalent for an operator of a foundation either the Carnegie or any other foundation, to go to you and say, "You give us your great art collection worth \$1 million which only cost you \$100,000, and then you can take \$900,000 credit against your operating income over the next year or 2 or 3." Does that condition prevail?

Mr. STONE. Yes. Under existing law it is permitted and most charities openly solicit gifts of such appreciated property pointing out these tax advantages.

Mr. UTT. I know it is legal, but there is a loophole that I think could be plugged without hurting anybody. Either they pay the capital gains tax or value of the gift or they cannot take that appreciated value out of operating income.

Mr. STONE. In the article I submitted to the committee I take that position on the ground that this is just an aberration as between different taxpayers. One taxpayer has appreciated property, the other has taxable salary, and they each make a \$1,000 gift and the tax consequences to the two of them are very, very different. The man who has appreciated property has most of the gift paid through tax benefits. He gets an exaggerated tax deduction, if you will.

Mrs. GRIFFITHS. Thank you very much. Mr. Corman.

Mr. CORMAN. Mr. Stone, are you familiar with the purposes of H.R. 18464 of the 90th Congress?

Mr. STONE. Mr. Utt's bill?

Mr. CORMAN. Yes.

Mr. STONE. Yes; roughly.

Mr. CORMAN. Do you support that general purpose?

Mr. STONE. Yes; that was one of the recommendations I made in the statement.

Mr. CORMAN. May I ask if you think that might lead to more vigorous enforcement of State regulations?

Mr. STONE. I think it would because at times today it is possibly frustrating for an attorney general to go after a foundation or other charitable organization that is engaged in erring ways only to have the Federal Government come in and take most of the property away in taxes. So if the Federal Government were willing to waive its tax claim if the attorney general took steps to see to it that all the moneys were devoted to charitable purposes, then I think he would have more of an incentive to come in.

Mr. GIMMONS. Madam Chairman.

Mrs. GRIFFITHS. Yes.

Mr. GIMMONS. Let's talk a little more about regulation, whether State or Federal, as far as foundations. It seems that all we do if we encourage State regulations is we are going to bounce these foundations from one jurisdiction to the other because they are a national concern and if we are going to harass them with 50 State regulations plus the Federal regulations plus the District of Columbia and the possessions, don't you think it is wiser that we try to concentrate on the regulation of them in one area instead of spreading it all over the map?

Mr. STONE. Well, that might be, especially since you start from close to zero insofar as State regulation is concerned.

Mr. GIMMONS. The whole philosophy of the foundation is really a Federal gift of tax exemption, either a benefit in Federal taxation or inheritance or income taxation, other than actual cash that some man might put in there.

I just think that if you encourage the 50 States to strenuously regulate the foundations you are going to find out that the foundations are spending most of their capital to file returns to keep up with the laws in 50 States and have lawyers and accountants in all those 50 States to advise them what to do with a horrendous harassment to these people.

Mr. STONE. It might be, and perhaps I have given too much credence to all the arguments that are put forward for the advantages of having the State regulation.

Mr. GIMMONS. In my State you go around and see the circuit judge and really all you do is pull something out of the form book that worked someplace else and you can send it off to the State capital and what you do is get some tax benefit from it. It is right here that the life is breathed into the foundation and it is that benefit that controls the foundation rather than some formal-type thing which you can get many States to fill out.

Mr. STONE. You wouldn't get too many complaints from the States if the Federal Government took over the job.

Mr. GIBBONS. The States have really no incentive for regulating this.

Mr. STONE. No, they do not. Even though the States waive some of their own taxes they would much prefer to follow in the footsteps of the Federal Government, as they often do in the income tax area, because they assume that the Federal Government has much more to fight about and will arrive at the right result.

Mr. GIBBONS. Thank you.

Mrs. GRIFFITHS. Thank you very much.

I am sure that all the committee feels that you brought light and learning to them.

The committee will adjourn until 10 o'clock in the morning.

(Whereupon, at 5 p.m., the committee adjourned, to reconvene at 10 a.m., Wednesday, Feb. 19, 1969.)

Subject I. TAX EXEMPT ORGANIZATIONS:
Foundations and Treasury Report on Foundations

TAX REFORM, 1969

WEDNESDAY, FEBRUARY 19, 1969

**HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
Washington, D.C.**

The committee met at 10 a.m., pursuant to notice, in the committee room, Longworth House Office Building, Hon. John C. Watts presiding.

Mr. WATTS. The committee will come to order.

The first witness is not only the honorable but very distinguished Congressman from New York, Mr. John Rooney. John, welcome. You may proceed as you desire.

Subject. TAX EXEMPT ORGANIZATIONS:
Foundations and Treasury Report on Foundations

**STATEMENT OF HON. JOHN J. ROONEY, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF NEW YORK**

Mr. ROONEY. Mr. Acting Chairman, my distinguished friend from Kentucky, and all the distinguished members of the great Committee on Ways and Means, I very much appreciate the opportunity to testify today concerning a personal experience which I thought would be enlightening not only to members of this respected committee and the Congress, but also to other elected officials, local, State, and Federal, and to every citizen who is interested in the preservation of the democratic institution of free elections.

Mr. Chairman, I come here with a rather dubious distinction, one which I did not seek, and one which I frankly would rather not have.

I am the first known Member of Congress to be forced to campaign for reelection against the awesome financial resources of a tax-exempt foundation.

Mr. Chairman, I didn't like the experience in the least—and I want to emphasize that I am not complaining simply because I had to cope with an extremely well-heeled opponent. I have tried to give faithful representation to residents of my district during my 25 years in the House of Representatives, and during the recent primary campaign I never entertained any serious doubts about reelection. I know the people of my district, and the people know John Rooney.

The fact that John Rooney, by happenstance, became the first Congressman to have to run against a tax-exempt foundation is irrelevant. What is important to this Congress, and to this Nation, is the fact that

next election this could happen to each of you—or to any other officeholder in the country.

That is why I am here today to tell you the story of the 1968 primary election in the 14th Congressional District of New York, in the hope that from my account you can find a way to bring these tax-exempt foundations under proper supervision.

Mr. Chairman, you and the other members of this distinguished committee and this Congress have known me long enough to know that I am no alarmist—but this is one instance in which I want to scare you, and through you the people of this country, because I believe that we are up against something that warrants a swift and vigorous crack-down.

My opponent established a dangerous precedent in the 1968 election—and one which I say flatly will be repeated unless Congress does something about it. All of us are aware of the increasing power of money in politics today—money from big private fortunes, and money from big business.

The Republicans' national fund-raising committees, for instance, reported collecting a record \$21 million for President Nixon's campaign last fall. The Federal Communications Commission says the presidential candidates spent \$7.4 million for network television time in 1968—almost twice the amount spent during the 1964 campaign.

And now we have the use of a tax-exempt foundation as the conduit for campaign spending in a congressional campaign—a frightening new factor in political fund raising.

The opponent to whom I refer is Frederick W. Richmond, a wealthy businessman, industrialist, and coffin manufacturer. He owns the National Casket Co., among many other companies.

Just why Frederick W. Richmond decided he should be the Congressman from my district of Brooklyn where I was born is something I have never been able to figure out. Richmond lives in a plush apartment at 25 Sutton Place, in the silk-stocking district of Manhattan—climes far removed, socially and economically, from my middle and lower income, rugged, all-American district in Brooklyn.

But Richmond decided he wanted to be Congressman from Brooklyn, and he went after my seat with flying checkbook. I quote from an article which appeared in the New York Times of June 12, 1968:

Mr. Richmond does not dispute reports that he has spent \$250,000 in this campaign, mostly on 16 storefront headquarters, paid workers, and an array of brochures.

Further down the Times quotes Richmond as boasting: "This is the first well-financed primary in the history of Brooklyn."

Now just think about that figure for a moment—and remember, this is the New York Times quoting the candidate from the silk-stocking apartment on Sutton Place: "Mr. Richmond does not dispute reports that he has spent \$250,000 in this campaign * * *

A quarter of a million dollars to run for a House seat!

The figure, gentlemen, is more likely \$400,000.

How did Frederick W. Richmond manage to scrape together this kind of money for a campaign kitty?

Right out of the taxpayers' pockets, that is how he did it. I suppose to be fair we should give Frederick W. Richmond "G" for gall—

although the Brooklyn voters gave him another "G"—for "Go home."

Richmond's vehicle was a foundation which he created on June 15, 1962, for the apparent primary purpose of self-promotion. With his customary modesty he named it the "Frederick W. Richmond Foundation." The foundation applied for Federal tax exemption in August 1963 and received it in December 1963.

The early history of the Frederick W. Richmond Foundation is somewhat confusing. According to its own statements, provided by the Subcommittee on Foundations of the House Small Business Committee, its income for the fiscal years 1964-66 consisted of grants from Richmond totaling \$63,872 and loans totaling \$121,210: \$51,210 from Richmond; \$50,000 from the Carol W. Haussamen Foundation, Inc., of New York and \$20,000 from the H. R. H. Construction Co., 515 Madison Avenue, New York.

However, tax returns of the Carol W. Haussamen Foundation identify the \$50,000 as a "charitable contribution" to Richmond's foundation, not as a loan, as he claimed it to be.

Between 1964 and 1966 the Richmond foundation made grants totaling \$53,109 and loans totaling \$130,208 to various organizations with which it was "completely interlocked, financially and through their directors, members, or officers," according to the Subcommittee on Foundations.

The Subcommittee on Foundations, after attempting to make sense of the Frederick W. Richmond Foundation's various machinations in a report dated March 26, 1968, concluded: "If this mixture of high finance and tangled directorate and officers appears baffling, it is because it is baffling."

Mr. Chairman, I would respectfully like to insert in the record an excerpt from the Subcommittee on Foundations study of March 26, 1968, pertaining to the Frederick W. Richmond Foundation, which appears on pages 20-23, under the heading of "Another Debt-Ridden Fund."

Mr. WATTS. Without objection that will be included.
(The excerpt referred to follows:)

TAX-EXEMPT FOUNDATIONS AND CHARITABLE TRUSTS. THEIR IMPACT ON OUR ECONOMY—SIXTH INSTALLMENT

SUBCOMMITTEE CHAIRMAN'S REPORT TO SUBCOMMITTEE NO. 1, SELECT COMMITTEE ON SMALL BUSINESS, HOUSE OF REPRESENTATIVES, 90TH CONGRESS

MARCH 26, 1968.

ANOTHER DEBT-RIDDEN FUND

Over the past several years, we have cited numerous examples of how foundations borrow heavily for a variety of purposes, some times with little benefit to the foundation. Here is another example of a debt-ridden fund.

The Frederick W. Richmond Foundation, Inc., of New York City was organized on June 15, 1962, with no assets. For purposes of opening a bank account, the Foundation borrowed \$500 from its founder, financier Frederick W. Richmond, without interest or security. The loan was repaid during fiscal year ending June 30, 1963. Assets of the Foundation were \$82.00 cash at June 30, 1963.

The Foundation applied for Federal tax exemption in August 1963, and was granted exemption 4 months later, on December 9, 1963.

During the 3 fiscal years 1964 through 1966, the Foundation had no income from dividends, interest, royalties, capital gains, etc. It received grants from Frederick W. Richmond totaling \$63,872.30 and borrowed \$121,210.63; \$51,210.63 was borrowed from Frederick W. Richmond; \$50,000 from the Carol W. Hausamen Foundation, Inc., of New York City (formerly Carol & Crane Hausamen Foundation; and \$20,000 from H. R. H. Construction Corp., 515 Madison Avenue, New York City.

The Frederick W. Richmond Foundation states that the \$50,000 owed to the Carol W. Hausamen Foundation, Inc. consists of four loans made during the period January 7, 1965-February 2, 1965, and that those loans had not been repaid as of June 30, 1966. This is contradictory to the information appearing in the 1965 and 1966 tax returns of the Carol W. Hausamen Foundation. Those returns indicate that the latter did not hold any accounts or notes receivable at the close of 1965 or 1966, and that its assets consisted solely of \$1,356.47 cash on December 31, 1965 and \$21,333.75 cash on December 31, 1966. Moreover, the returns of the Carol W. Hausamen Foundation show very plainly that it did not lend \$50,000 to anyone but it did make a \$50,000 charitable contribution to the Frederick W. Richmond Foundation in 1965.

\$53,100 in grants were paid out by the Frederick W. Richmond Foundation during the fiscal years 1964 through 1966. In addition, the Foundation made loans to three "non-profit organizations" totaling \$130,206.51, as follows:

Debtor	Amount
Community Improvement Corp. of Manhattan, Inc.....	\$96,063.51
Park Slope North Improvement Corp.....	26,225.00
Strong Place Community Center.....	4,000.00

These loans were still outstanding at June 30, 1966. Information submitted by the Foundation indicates that the loans to the Community Improvement Corp. of Manhattan consist of 45 separate advances of varying amounts which were made between April 2, 1965 and June 30, 1965 in the aggregate amount of \$85,462.88, as well as \$14,520.63 which was advanced during fiscal year ending June 30, 1966. The \$85,462.88 in advances "were made directly by the Foundation on behalf of Community Improvement Corp. of Manhattan to creditors since Community Improvement Corp. of Manhattan at that time did not have its own bank account." The interest on the loans to Community Improvement Corp. of Manhattan and Park Slope North Improvement Corp. was 5 percent per annum and the purpose for which the loans were used by the debtors was "to acquire and/or rehabilitate and/or construct non-profit low and moderate income housing pursuant to Section 221(d)(3) of the National Housing Act." The address of these debtors is the same as that of the Frederick W. Richmond Foundation: 743 Fifth Avenue, New York, N.Y.

The Frederick W. Richmond Foundation, the Community Improvement Corp. of Manhattan, the Park Slope North Improvement Corp. and the Carol W. Hausamen Foundation are completely interlocked, financially and through their directors, members, or officers. In addition to being donor, president, member and a director of the Foundation, Frederick W. Richmond was president, a director, and a member of the Community Improvement Corp. of Manhattan and the Park Slope North Improvement Corp. during fiscal year ending June 30, 1966. Furthermore, at least three of the five officers of the Community Improvement Corp. of Manhattan and three of the five officers of the Park Slope North Improvement Corp. were officers, members or directors of the Frederick W. Richmond Foundation during fiscal year ending June 30, 1966.

Mrs. Carol W. Hausamen, founder of the Carol W. Hausamen Foundation, is not only locked into the Frederick W. Richmond Foundation as a substantial benefactor but also as a director and member of the latter's largest debtors.

Despite the fact that Treasury regulations require that the names and addresses of officers and directors, their compensation, etc. must be listed in a foundation's tax return, the information does not appear in the Frederick W. Richmond Foundation's returns. We, therefore, asked Mr. Richmond to furnish the data, but discrepancies in the replies we received have effectively confused the picture.

Following is an undated list of officers and directors of the Frederick W. Richmond Foundation which Mr. Richmond sent us on January 5, 1966:

Name	Office	Business address (New York City)
Frederick W. Richmond.....	President and director.....	743 5th Ave.
Robert T. Dormer.....	Vice president.....	Do.
Paul D. Schurgot, Jr.....	Vice president and secretary.....	Do.
James M. Lynam.....	Vice president.....	Do.
Paul Malloff.....	Treasurer.....	95 Broad St.
Don Greenberg.....	Assistant secretary.....	743 5th Ave.
William J. Butler.....	Director.....	400 Madison Ave.
Mrs. Albert D. Lasker.....	do.....	
Roger Stevens.....	do.....	
Jack deSimone.....	do.....	

Although the Minutes of a February 1, 1965 special meeting the Members of the Foundation state that Messrs. Roger Stevens, Jack deSimone, and Mrs. Albert D. Lasker were nominated and unanimously elected as directors effective February 1, 1965 and Mr. Richmond has also confirmed this in conversation with H. A. Olsher, Director of the Foundation Study, those persons were omitted from directors' lists which were forwarded to use on February 16, 1968 and February 23, 1968 (see lists shown below). In response to our inquiry about these discrepancies, the Foundation informed us, by letter of February 29, 1968, that, according to its Minutes, "certain individuals" who appear on the above list "worked closely with the Foundation, but were never formally elected as Directors."

The following resolution which was unanimously adopted by the Members of the Foundation on February 1, 1965 adds to the muddle since only three directors are named in the lists sent to us on February 16 and February 23:

Resolved, that the Board of Directors of this organization shall consist of five (5) persons and elections for same be held forthwith.

Following are the officers and directors of the Foundation for the period July 1, 1963-February 23, 1968, as submitted to us by letters of February 16, 1968 and February 23, 1968:

July 1, 1963-June 30, 1966:

Frederick W. Richmond.....	President and director.
Jack deSimone.....	Vice president.
Robert T. Dormer.....	Do.
Paul Malloff.....	Treasurer.
Paul D. Schurgot, Jr.....	Secretary and director.
Floy Moore.....	Assistant secretary.
William J. Butler.....	Director.

July 1, 1966-June 30, 1967:

Frederick W. Richmond.....	President and director.
Jack deSimone.....	Vice president.
Robert T. Dormer.....	Do.
Paul Malloff.....	Treasurer.
Paul D. Schurgot, Jr.....	Secretary and director.
William J. Butler.....	Director.

July 1, 1967-February 23, 1968:

Frederick W. Richmond.....	President and director.
Jack deSimone.....	Vice president.
Robert T. Dormer.....	Do.
James M. Lynam.....	Do.
Paul Malloff.....	Treasurer.
Paul D. Schurgot, Jr.....	Secretary and director.
William J. Butler.....	Director.

¹ Mr. Lynam states that he has held this office since August 1966.

On February 29, 1968, approximately 1 week after the above information was forwarded to us, we were advised that the officers of the Frederick W. Richmond Foundation were as follows, effective February 1, 1968:

Name	Office	Business address (New York City)
Frederick W. Richmond.....	President.....	743 5th Ave.
Robert T. Dormer.....	Vice president.....	Do.
Paul D. Schurgot, Jr.....	Vice president and secretary.....	Do.
James M. Lynam.....	Vice president.....	Do.
Paul Malloff.....	Treasurer.....	95 Broad St.
Don Greenberg.....	Assistant secretary.....	743 5th Ave.

Another complicating factor is added with the following information which was sent to us by the Foundation's general counsel on March 7, 1968:

"Regrettably there has been some confusion as to the members, directors and officers of this Foundation. Hopefully, this letter will clarify the situation and we, in behalf of the Foundation, apologize for any inconvenience caused you. We might add that the trouble, at least in part, was caused by incorrectly filed minutebook pages which have now been placed in order. In this respect we are enclosing herewith Xerox copies of the minutes of a Special Meeting of the Members of The Frederick W. Richmond Foundation, Inc. held on February 1, 1968.

"We have examined the Foundation's minutebooks and now submit to you the following information as to its members, directors and officers.

MEMBERS

Name	Address
Frederick W. Richmond.....	743 Fifth Ave., New York, N.Y.
William J. Butler.....	400 Madison Ave., New York, N.Y.
Jack de Simone.....	205 West End Ave., New York, N.Y.
Paul D. Schurgot, Jr.....	743 Fifth Ave., New York, N.Y.
Stanley Geller.....	400 Madison Ave., New York, N.Y.

Each of the above members have been and are still the only members of the Foundation from its inception to the date of this letter.

DIRECTORS FROM JANUARY 12, 1962, UNTIL FEBRUARY 1, 1965

Name	Address
Frederick W. Richmond.....	743 Fifth Ave., New York, N.Y.
William J. Butler.....	400 Madison Ave., New York, N.Y.
Paul D. Schurgot, Jr.....	743 Fifth Ave., New York, N.Y.

FROM FEBRUARY 1, 1965 TO DATE

Name	Address
Frederick W. Richmond.....	743 Fifth Ave., New York, N.Y.
William J. Butler.....	400 Madison Ave., New York, N.Y.
Jack de Simone.....	205 West End Ave., New York, N.Y.
Mrs. Albert D. Lasker.....	20 Beekman Pl., New York, N.Y.
Roger Stevens.....	50 East 77th St., New York, N.Y.

OFFICERS

Office	Name	Address
President.....	Frederick W. Richmond.	743 Fifth Ave., New York, N.Y.
Vice President.....	Jack de Simone.....	205 West End Ave., New York, N.Y.
Treasurer.....	Paul Malloff.....	1841 Central Park Ave., Yonkers, N.Y.
Secretary.....	Paul D. Schurgot, Jr.....	743 Fifth Ave., New York, N.Y.

"James M. Lynam has been acting as a Vice President of the Foundation but has not been formally elected or appointed as such. However, he will be duly elected to such position at the next duly convened meeting of the Foundation.

"Because of Mr. Lynam's intimate knowledge of the Foundation's fiscal affairs he has, with the unofficial consent of the members, served as a Vice President since 1960.

"We believe the foregoing is accurate and any information that you have to the contrary should be superseded by the information supplied herein."

The Frederick W. Richmond Foundation has not had an Internal Revenue Service field audit at any time during its existence, and, throughout its history,

its tax returns fail to provide much of the essential information required by Treasury regulations.

These are the ingredients that have been baked into the Frederick W. Richmond Foundation's financial p.c. If this mixture of high finance and tangled directorate and officers appears baffling, it is because it is baffling. Mr. Richmond is reportedly a successful businessman, so it is difficult to understand why his foundation should be constantly in debt. Does it benefit Mr. Richmond? Just who does profit from this type of activity? These are the kind of questions that the Treasury should be answering through its own investigations, and which it is not answering, despite our inquiries of the past 5 years.

Mr. ROONEY. I would also like to offer for the record letters from the Internal Revenue Service in 1961, 1963, 1964, and 1965 pertaining to a predecessor of the Frederick W. Richmond Foundation, named "The Richmond Foundation."

Mr. WATTS. Without objection they will be included.
(The letters referred to follow:)

MAY 5, 1961.

THE RICHMOND FOUNDATION, INC.,
743 Fifth Avenue,
New York, N.Y.

GENTLEMEN: Your application for exemption from Federal income tax is presently under consideration. Some further information is necessary to a determination of your status.

1. Please explain how you acquired the three promissory notes of your President, Frederick W. Richmond, dated June 1959, in the amount of \$28,000, which formed part of the consideration given for the New England Industries Contract. Show what consideration if any, was given for them, and how they were secured.

2. Show the form of donations received by you in each year, and if any donations were in form other than cash, describe the property fully, and show the fair market value at the time of donation.

3. Show how and when you acquired the shares in Landers, Frary & Clark, Houston Oil Field Material Company, and Textar Corporation. Submit a complete history of all investments held and all loans made or received since your inception, giving full particulars, including fair market value of securities at time of acquisition. If any securities were not income producing, show the reasons underlying your decision to acquire or to retain them.

4. Submit any evidence available to you tending to show that the fair market value of your interest in the New England Industries contract at the time you acquired it equaled or exceeded \$53,420.

5. In this connection, show the amount of the net profit or loss before taxes of the Detroit Kellering Co. for the years 1967, 1968, 1969 and 1960, as determined for purposes of the stock sales contract.

6. In order that our determination may be based on current information, please submit complete financial statements for 1960.

The above information should be submitted within thirty days from the date of this letter to the attention of T:R:EO:4-PLK.

You have requested a conference in the event that our tentative conclusion is adverse. We are not yet in a position to make any judgment on the merits, however we wish to point out that Announcement 61-16, Internal Revenue Bulletin 61-7, 29, provides that there will normally be only one conference on a request for ruling. On applications for exemption it is the practice that such conference take place after exemption has been denied, and the Service has had the opportunity to study applicant's protest, directed to the specific issue involved. An adverse ruling is not finally affirmed until after there has been opportunity for such protest and conference. At this point we do not see any factors in the case that would give reason to depart from this procedure, however you are at liberty to set forth any special reasons that you believe may justify extraordinary procedure in this case.

Very truly yours,

Chief, Exempt Organizations Branch.

AUGUST 9, 1963.

THE RICHMOND FOUNDATION, INC.,
745 Fifth Avenue,
New York, N.Y.

GENTLEMEN: We have considered your application for exemption from Federal income tax as an organization described in section 501(c)(3) of the Internal Code of 1954.

From the information before us it appears that you were incorporated December 16, 1958, under the New York Membership Corporation Law. Your charter recited a purpose to disburse funds for charitable purposes. Your activities since your inception have consisted of receiving contributions and making cash contributions to various organizations.

In June 1960, some six months after your organization, you paid \$28,000.00 to your president, Frederick W. Richmond, taking his promissory notes. Collateral for these notes was the assignment of his interest in a certain sales agreement with New England Industries, Inc., under which he had a contingent right to receive up to \$177,000.00, depending on the extent of profits of a subsidiary company, Detroit Kellering Co., that will be realized by 1967.

The information before us shows that on September 2, 1959, you purchased this contingent payment contract outright, paying your president \$53,420.00, consisting of \$28,000.00 additional cash and the release of his promissory notes. At that time he guaranteed the payment of the contract to the extent of your cost, thus making himself personally liable to the extent of \$53,420.00 plus 6 percent interest. Detroit Kellering has not earned any profits since then and no money has become due under the contract. It appears that Detroit Kellering has had substantial losses, and has liquidated part of its assets at a loss.

It also appears that Detroit Kellering Co., was operating at a loss prior to the assignment of the contract. There is no evidence that at the time of the assignment the contingent contract had any substantial value, except the statement of your president that in his opinion the company had good management and good potential, and that "opportunity for appreciation existed to a great extent." As the assignee of this contract you have a claim to no more than 9 percent of any profits that may be earned in any year, until the cumulative payment reaches \$177,000.00 or until all payment rights expire in 1967.

Since you were organized your only other investment has been in certain stocks that yielded you no income, and that have since been liquidated at a loss. Your only income has been interest paid to you by your creator in discharge of his contract obligation. As of December 31, 1960, you had no assets other than your interest in the above-described contract.

Section 501(c) of the Code describes certain organizations exempt from Federal income tax under section 501(a) and reads, in part, as follows:

"(3) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office."

"(a)(1) In order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt."

After a consideration of all the information before us, it is our conclusion that the payment of \$28,000.00 to your president in June 1960, in exchange for his promissory notes and a security interest in the New England Industries contract constituted a loan to a substantial contributor without the receipt of adequate security, within the meaning of section 503(c), and was therefore a prohibited transaction. It also constituted a failure to operate exclusively in furtherance of the charitable purposes set forth in section 501(c)(3).

Also, the purchase of the New England Industries contract for \$53,420.00 constituted a purchase of property for more than adequate consideration from a substantial contributor. The information before us does not support a conclusion that the contract rights were worth \$53,420.00 or that they had any substantial fair market value. The file shows that the entire equity in the company was transferred for only \$150,000.00 as a modest percentage of profits, at a time when the company was in considerably better condition financially than when you acquired your interest in it.

The guarantee executed by your president did no more than add to the consideration of his unsecured personal liability. Therefore, viewed in any light, this transaction constituted not only a prohibited transaction under section 503, but a failure to operate exclusively for the purposes set forth in section 501(c)(3).

For the above reasons, we conclude that you are not operated for the exempt purposes set forth in section 501(c)(3). We therefore hold that you are not exempt from Federal income tax as an organization described in that section.

Contributions made to you are not deductible as charitable contributions under the provisions of section 170 of the Code.

If you do not agree with these conclusions, you may, within thirty days from the date of this letter, file a brief of the facts, law and arguments, in duplicate, which will clearly set forth your position. In the event you desire an oral discussion of the issues, you should so indicate in your submission, and a conference will be arranged after we have had an opportunity to consider the brief and it appears that the conclusions reached are still unfavorable to you. Any submission must be signed by one of your principal officers. If the matter is to be handled by a representative, the Conference and Practice requirements regarding the filing a power of attorney and evidence of enrollment to practice must be met.

If we do not hear from you within the time specified, this communication will become our ruling in the matter and copies of this letter will be forwarded to the District Director, Manhattan, New York. Thereafter, any questions concerning your status or the requirements for filing Federal income tax returns should be addressed to his office.

Very truly yours,

J. F. WORLEY,
Chief, Exempt Organizations Branch.

NOVEMBER 12, 1964.

THE RICHMOND FOUNDATION,
743 Fifth Avenue,
New York, N.Y.

GENTLEMEN: This is in further reference to your application for exemption from Federal income tax as an organization described in section 501(c)(3) of the Internal Revenue Code of 1954.

At the conference held in this office on October 6, 1964, Mr. Stanley Geller stated on your behalf that financial statements for the years 1961 through 1963 and supplementary information descriptive of your operations would be submitted to further pursue your application. We have not received this information to date.

Therefore, if we do not hear from you within fifteen days of the date of this letter, action will be taken on the basis of the evidence of record.

Very truly yours,

R. J. STAKEM,
Chief, Exempt Organizations Branch.

DECEMBER 20, 1964.

THE RICHMOND FOUNDATION,
743 Fifth Avenue,
New York, N.Y.

GENTLEMEN: This is in further reference to your application for exemption from Federal income tax as an organization described in section 501(c)(3) of the Internal Revenue Code of 1954.

For the reasons stated in our ruling of August 9, 1963, it was held that you had engaged in a prohibited transaction within the meaning of section 503(c) and that you were not operated exclusively for an exempt purpose. Therefore, you were not entitled to exemption as an organization described in section 501(c)(3) of the Code.

Having submitted a protest to this ruling, a conference was held in this office on October 6, 1964, whereat Mr. Stanley Geller stated on your behalf that financial statements for the years 1961 through 1963 and supplementary information descriptive of your operations would be submitted to further pursue your application.

Inasmuch as we had not received this information, we subsequently informed you on November 12, 1964, that action would be taken on the basis of the evidence of record in the event we did not hear from you within fifteen days. We still have not received this information to date.

In view of the foregoing, it appears that you are no longer interested in pursuing your claim for exemption from Federal income tax. Accordingly, no further action will be taken on your application for exemption under section 501(c)(3) of the Code, and our ruling of August 9, 1963, is affirmed.

Your District Director, Manhattan, New York, is being advised of this action.

Very truly yours,

JOHN W. S. LITTLETON,
Director, Tax Rulings Division.

U.S. TREASURY DEPARTMENT,
INTERNAL REVENUE SERVICE,
Washington, D.C., May 14, 1965.

THE RICHMOND FOUNDATION, INC.,
745 Fifth Avenue,
New York, N.Y.

GENTLEMEN: This is in further reference to your application for exemption from Federal income tax as an organization described in section 501(c)(3) of the Internal Revenue Code of 1954.

For the reasons stated in our ruling of August 9, 1963, it was held that you had engaged in prohibited transactions within the meaning of section 503(c) and that you were not operated exclusively for an exempt purpose. Therefore, you were not entitled to exemptions as an organization described in section 501(c)(3) of the Code.

Having submitted a protest to this ruling, a conference was held in this office on October 6, 1964, whereat your attorney, Mr. Stanley Geller, stated that additional information and evidence would be submitted to further pursue your application. Inasmuch as we had not received this information by December 29, 1964, your case was closed in this office and our ruling of August 9, 1963, was affirmed. You were so advised of this action by registered mail.

We have now received your letter dated December 30, 1964, wherein you furnished supplementary information relative to the purposes for which you were organized and the activities in furtherance thereof. On this basis your case has been reopened for further consideration.

The information now available discloses that your charitable purposes are implemented primarily by making contributions to other organizations which are exempt from Federal income tax as organizations described in section 501(c)(3) of the Code. With respect to the transactions that have been determined to be prohibited within the intentment of section 503(c) of the Code, namely the loan of \$23,000.00 to your president in June 1959, and your purchase of the New England Industries contract in September 1960, for \$53,420.00, it has been shown that you did not commence these prohibited transactions with the intent of diverting income or corpus from its exempt purposes. In this connection, your president, Frederick W. Richmond, executed a guarantee to save you from any loss, he has paid interest on the investment to date, and he has also expressed a willingness to refund to you the amount paid for the contract, plus interest, in advance of the date specified in the assignment.

Upon reconsideration of your application in light of the additional information submitted, we have concluded that you are exempt from Federal income tax as an organization described in section 501(c)(3) of the 1954 Code as being organized and operated exclusively for charitable and educational purposes for the period beginning with the date of your incorporation through December 31, 1964. Our ruling of August 9, 1963, is hereby modified to the extent that it is inconsistent herewith.

However, we have further concluded that your loan without adequate security and your purchase of the New England Industries contract for more than adequate consideration from your president, a substantial contributor, constitute prohibited transactions within the meaning of section 503(c) of the Code. Therefore, in accordance with the provisions of section 503(a) of the Code, registered notice is hereby given that you are denied exemption from Federal income tax under section 501(a) of the Code for years beginning after December 31, 1964.

Your attention is invited to the provisions of section 503(d) of the Code with respect to establishing an exempt status for years subsequent to that in which exemption is denied.

You are not required to file Federal income tax returns for the period beginning with the date of your incorporation through December 31, 1964, unless you are subject to the tax imposed by section 511 of the Code and are required to file Form 990-T for the purpose of reporting unrelated business taxable income. Any changes in the character of your organization, the purposes for which you were organized or your method of operation should be reported immediately to the District Director of Internal Revenue for your district in order that their effect upon your exempt status may be determined.

You are required, however, to file information returns, Form 990A, annually, for the above mentioned period, with the District Director of Internal Revenue for your district so long as this exemption remains in effect. This form may be obtained from the District Director and is required to be filed on or before the fifteenth day of the fifth month following the close of your annual accounting period, which ends December 31.

Contributions made to you during the above mentioned period are deductible by the donors as provided in section 170 of the Code. Bequests, legacies, devise, transfers or gifts to or for your use during the above mentioned period are deductible for Federal estate and gift tax purposes under the provisions of sections 2055, 2106 and 2522 of the Code.

You are not liable for the taxes imposed under the Federal Insurance Contributions Act (social security taxes) for the above mentioned period unless you file a waiver of exemption certificate as provided in such act. You are not liable for the tax imposed under the Federal Unemployment Tax Act for the above mentioned period. Inquiries about the waiver of exemption certificate for social security taxes should be addressed to your District Director.

Every exempt organization is required to have an Employer Identification Number, regardless of whether it has any employees. If your organization does not have such a number, your District Director will take steps to see that one is issued to you at an early date.

Your District Director is being advised of this action.

Very truly yours,

JOHN W. S. LITTLETON,
Director, Tax Rulings Division.

Mr. ROONEY. In 1963 and 1965 the Internal Revenue Service had ruled that the Richmond Foundation had engaged in prohibited transactions and was not entitled to tax exemption.

When Mr. Richmond decided he wanted to become a Congressman for Brooklyn, the Frederick W. Richmond Foundation began taking on a political tone, and in ways that would make Richmond very attractive politically.

By means of background, the 14th Congressional District contains a number of minority groups. We have a large population of persons of Italian, Jewish, Irish, Polish, Puerto Rican, and Negro extraction. And thus, in late 1967, the foundation of unannounced congressional candidate Frederick W. Richmond suddenly discovered these citizens, and began taking an extraordinary interest in their welfare.

Although there are 19 congressional districts in the city of New York, the bulk of the amount of contributions made by Mr. Richmond's foundation in the year which ended June 30, 1968, was expended in the 14th Congressional District in that city.

The most conspicuous example was a series of six different contributions from the Frederick W. Richmond to the Yeshiva of Satmar-United Talmudical Academy in Brooklyn.

During the 5½ years from June 15, 1962 (the date of its incorporation) to November 21, 1967, the Frederick W. Richmond Foundation did not give a dime to the academy. But on November 21, 1967—7 months before the June 18, 1968, New York primary election, Richmond and his tax-free foundation began showering money on the academy. Here is the pattern of its contributions:

On November 21, 1967, the foundation donated \$1,000.

On December 20, 1967, it donated \$500.

On February 5, 1968, it donated \$1,000.

On March 19 another \$500; on April 19 another \$500; on May 15 another \$500.

Richmond's well-financed campaign organization was certain that his tax-free "philanthropy" received wide publicity. A campaign flyer distributed by "Williamsburg for Richmond, 208 Division Avenue, Brooklyn," Williamsburg being a section of the 14th Congressional District, depicted the silk stocking candidate in earnest conversation with Grand Rabbi F. Lowry and notes, "Fred Richmond * * * once considered becoming a rabbi himself * * *."

The flyer also reproduces a thank-you letter to the foundation for one of the \$500 gifts, and adds a note at the bottom:

This excerpt is from a letter thanking Mr. Richmond for the latest of his monthly contributions toward a \$20,000 scholarship grant made by the Frederick W. Richmond Foundation.

Mr. Chairman, I respectfully offer for the record a copy of the campaign flyer.

Mr. WATTS. Without objection it will be included.

(The campaign flyer referred to follows:)



FRED RICHMOND, who once considered becoming a rabbi himself, confers with Grand Rabbi F. Lowy at a series of meetings to arrange how to prevent foreclosure of the Rabbinical Seminary "Our Chaim Tasher Yeshiva" in Canada. When the Canadian government threatened to take over the institution, Richmond worked to prevent the closing of the only Hassidic and Orthodox rabbinical school in all Canada. Many young people from the Hassidic community in Williamsburg attend the school.



ישיבה תומכת תורה ויראה
 United Talmudical Academy "Torah V'Yirah"
 Central Office: 136 ROSS STREET
 Brooklyn, N. Y. 11211

EV 5349

March 26, 1969

The Frederick W. Richmond Foundation
 761 Park Avenue
 New York, New York

Gentlemen:

We wish to acknowledge with sincerest gratitude the receipt of your kind and most generous contribution of \$100.00 to our worthy Yeshiva.

It is with such cooperative spirit as you have shown to our worthy cause, that we are able to carry on our holy undertaking of affording more than 1100 needy children with a religious and toroidal education and to provide the hundreds of needy children with all their necessities.

In return for your kindness, may the Almighty reward you and yours, with health, happiness and prosperity and the ability to carry on your noble support in behalf of all worthwhile endeavors.

With Torah greetings and Shalom wishes, we

remain

Sincerely yours,

Leopold Friedman
 Rabbi Leopold Friedman
 Executive Vice-President

LF-4

Branches:

- o 140 Bedford Avenue, Brooklyn, N. Y. 762 1002 o 170 DuCane Street, Brooklyn, N. Y., MA 5 9042
- o 620 Bedford Avenue, Brooklyn, N. Y. 625 4706 o 225 Park Avenue, Brooklyn, N. Y. EV 7-3489
- o 1116-11st Street, Brooklyn, N. Y. 911-4816 o 1281 Dean Street, Brooklyn, N. Y. HY 3-9126

RABBI LEOPOLD FRIEDMAN of the United Talmudical Academy "Torah V'Yirah" knows Fred Richmond's generosity too. This excerpt is from a letter thanking Mr. Richmond for the latest of his monthly contributions toward a \$20,000 scholarship grant made by the Frederick W. Richmond Foundation.

WILLIAMSBURG FOR RICHMOND
 208 Division Avenue
 Brooklyn, New York

Mr. ROONEY. Many of our Italian, Irish, Polish, and Puerto Rican residents are Catholic. So, on May 15, 1968, one month before the primary election in which Richmond was a candidate, the Frederick W. Richmond Foundation gave \$5,000 to the Sacred Heart Day Care Child Center in the 14th Congressional District, and varying amounts to other Catholic organizations. The Foundation, I might add, had not made any grants to the Child Center during the six preceding years.

Again, Richmond's campaign managers tried to insure maximum publicity for this tax-free foundation large. Let me quote the caption from yet another campaign brochure which the Richmond campaign organization distributed throughout South Brooklyn in the last weeks of the campaign:

Rev. Pastor Francis Del Vecchio of Sacred Heart and St. Stephens R. C. Church, 108 Carroll Street, accepts \$5,000 contribution from Frederick W. Richmond, President of the Frederick W. Richmond Foundation, as initial grant to aid in the development of the Strong Place Child Care Center located at Degraw and Strong Place. The Center will provide needed services for children and their parents in the South Brooklyn community.

Mr. Chairman, I would like to respectfully offer this flyer for insertion in the record.

Mr. WATTS. Without objection it will be filed.
(The flyer referred to follows:)

Attachment #4

**FRED RICHMOND HELPING FATHER DEL VECCHIO
BUILD CHILD DAY CARE CENTER ON STRONG PLACE**



REV. PASTOR Francis Del Vecchio of Sacred Heart and St. Stephens R. C. Church, 108 Carroll Street, accepts \$5,000 contribution from Frederick W. Richmond, President of the Frederick W. Richmond Foundation, as initial grant to aid in the development of the Strong Place Child Care Center located at Degraw and Strong Place. The Center will provide needed services for children and their parents in the South Brooklyn community.

Mr. ROONEY. I suggest that members study it carefully, and ask themselves, "How would you like to have this political Santa Claus swoop into your district a month before election and start handing out tax-free dollars as a publicity stunt?"

We are not finished, for Frederick W. Richmond was a very active fellow.

His foundation's donations of \$500 to the Puerto Rican Trade Committee and \$50 to the Hispanic Society of the Fire Department were doubtlessly well-appreciated by Brooklyn residents of Latin ancestry.

Another last minute discovery by the silk stocking candidate was the Brooklyn Negro community—thus \$2,700 for the Urban League and \$50 for the Zion Baptist Church.

On and on Richmond rolled, running for congressional office with tax-exempt money—a good trick, but not the kind of trick that the Congress would want to see widespread, I think. And all of these contributions, I remind you, did not come from Mr. Richmond's pocket, but from his tax-exempt foundation.

Let us now move to another area which is perhaps even more clever—to use a charitable word—than the "contributions". I refer now to the "Neighborhood Study Clubs, Inc.," which clearly demonstrate the threat of a political machine oiled by "charity" dollars.

Richmond incorporated the Neighborhood Study Clubs, Inc., on July 11, 1966, less than 2 years before the June 1968 primary. Its application for Federal tax exemption is dated July 29, 1966, and the exemption was granted on August 23, 1966.

You will note the process took less than a month—something you should keep in mind, for it illustrates that these charitable politicians can go into business very rapidly indeed once they decide to run for office with tax-exempt dollars.

The application for tax exemption makes the bald claim that the purpose of "Neighborhood Study Clubs, Inc.," is educational. In actuality, this organization was nothing more than Richmond's version of the old neighborhood ward clubs. Almost \$43,000 was pumped into Neighborhood Study Clubs by the Frederick W. Richmond Foundation and various friends of Richmond.

The political competition from one who is supported by tax-exempt money is rough on an incumbent—but perhaps even more unfair to other candidates who want to get into the race. In my successful effort for the Democratic renomination I was opposed not only by Richmond but also by a young attorney, 34-year-old Peter Eikenberry.

Mr. Eikenberry accepted in good grace the obvious disadvantages that a challenger faces in running against an incumbent but he was very upset about the gross unfairness of having a third opponent who relied upon tax-exempt financing.

So, in early April, a Mr. Paul Kerrigan, apparently a friend of Mr. Eikenberry's whom I have never met, charged that Richmond had put political workers onto the payroll of the foundation's supposedly "charitable" operations in the 14th Congressional District. To offset this charge, Richmond offered to permit a disinterested accountant to examine the books of the Frederick W. Richmond Foundation.

This offer turned out to be about as shallow as some of Richmond's "charity." When Mr. Kerrigan attempted to take up Richmond on

the offer, he was blocked. So the charge of using tax exempt charity money to pay for political work remains unanswered, by decision of Richmond.

Mr. Chairman, I offer for the record Mr. Kerrigan's letter of challenge to Richmond, which is attachment No. 5, and which is a very interesting document entitled, "Public Challenge to Frederick W. Richmond."

Mr. WATTS. Without objection it will be included.
(The letter referred to follows:)

A PUBLIC CHALLENGE TO FREDERICK W. RICHMOND

Dear Mr. Richmond: On April 4, 1968, I stated at a public meeting that you had placed your political workers on the payrolls of so-called "charitable" undertakings which are under your control. The spectacle of wealthy men using their money to attempt to buy public office has unfortunately become common in the United States. However, you have come into Brooklyn to present yourself to the voters of the 14th Congressional District as a "Reformer." If you have in fact used tax exempt groups to pay your political workers, obviously you can have no claim to being a genuine Reformer.

In reply to my charges on April 4, 1968, you publicly offered to allow my accountant to examine the books of the Richmond Foundation. Since then, through my attorney Milton H. Friedman of Friedman and Perlin, I have been attempting to obtain this promised examination.

To date you have not permitted it.

You have now sent me what purports to be an accounting of the affairs of the Richmond Foundation. Among the notable points of this accounting are the following:

1. On March 31, 1968, the cash assets of the Foundation were \$30.00.
2. The Foundation has debts of \$70,000, partly interest-bearing, to a company and to another foundation, with both of which you are associated; your accounting in this respect is in conflict with that foundation's tax return.
3. The Foundation has made "loans" totaling over \$115,000 to companies controlled by you.
4. No explanation is offered of to whom and for what purpose any of the "contributions" of \$93,482.63 have been made.

Far from proving that the affairs of the Richmond Foundation have been properly conducted, this inadequate accounting raises further questions about the Foundation.

Since you have failed to fulfill your two-month old public offer to permit my accountant to examine the books of your "charitable" undertakings, you give me no choice except to raise these questions publicly and to challenge you to answer them:

1. I challenge you to permit a complete impartial audit of all "charitable" undertakings which are under your control. Since you do not seem to want to fulfill your promise to permit my accountant to make that examination, I would suggest that it be made under the supervision of a committee of distinguished citizens of whom we would both agree.

2. I challenge you to include in such an audit the following "charitable" undertakings which are under your control.

The Frederick W. Richmond Foundation, Inc.
The Park Slope North Improvement Corporation
The East Island Corporation
Neighborhood Study Clubs
The Community Improvement Corporation of Manhattan
Richmond House
The Citizens Committee for Medicaid

3. I challenge you to include in such audit the sources of the salaries of the following persons, who have been among your political workers for the past several years; William Castleberry, Frank Montero, James Gallagher, Dan Greenberg, Murray Scharfstein, Joe Torres, Bernard Kleeger, Sally Leonard.

As you are fully aware, the affairs of the Richmond Foundation have been under investigation by the Select Committee on Small Business of the U.S. House of Representatives. In a report of March 20, 1968, the House Committee details

the extraordinary history of loans, debts, and revolving-door directorships which have characterized the Richmond Foundation. In conclusion, the House Committee asks a question:

"If this mixture of high finance and tangled directorate and officers appears baffling, it is because it is baffling. Mr. Richmond is reportedly a successful businessman, so it is difficult to understand why his foundation should be constantly in debt. Does it benefit Mr. Richmond? Just who does profit from this type of activity?"

The answer to that question seems to be obvious—it is the political aspirations of Frederick W. Richmond that benefit from the manner in which the affairs of the Richmond Foundation and his other "charitable" undertakings are conducted.

If the charges made here are false, Mr. Richmond, you can easily prove that by permitting the kind of impartial and complete examination which you have already publicly promised.

I challenge you to permit such an impartial and complete examination.

Very truly yours,

PAUL KERRIGAN.

Mr. ROONEY. In passing let me mention one other point. Recently, I received a copy of Frederick W. Richmond's post election financial report to the New York City Board of Elections. The report shows that a Daniel Greenberg received \$6,153.76 for campaign services during the period March 18, 1968, to July 5, 1968.

By letter of February 29, 1968, the Subcommittee on Foundations was advised that a Dan Greenberg was Assistant Secretary of the Frederick W. Richmond Foundation effective February 1, 1968.

We now come to a point to which I hope you will pay particularly close attention: The source of the foundation funds upon which Frederick W. Richmond relied to finance his campaign.

During fiscal years 1967 and 1968—through May 15, 1968, the Frederick W. Richmond Foundation received \$113,500 from the Walco American Corporation, which is controlled, not surprisingly, by none other than Frederick W. Richmond.

The foundation's treasury was also enriched on May 3, 1968, 6 weeks before the primary election—by a \$1,000 donation from the National Valve and Manufacturing Co., of Pittsburgh. According to the Dun & Bradstreet million dollar directory, Richmond is a director of National Valve & Manufacturing Co.

Although it is against the law for a corporation to contribute to a political campaign, Richmond found an easy way to get around that law, and to violate its intent, and most probably its letter as well. The corporation simply makes a donation to a tax-exempt foundation, which in turn supports the candidate.

Here, as it must be evident to everyone, is a bonanza of the type that one seldom encounters in business. The corporation is not only allowed to take a deduction on its tax return for a "charitable contribution," but it is also permitted to undercut one of the most sensitive laws in campaign politics—the Corrupt Practices Act which prohibits political contributions by corporations.

Now, what relevance does all this have to your career and to the principle of fair play that we have worked to maintain in American politics?

Permit me to spell it out for you, step by step, for this is important, and I want to make sure that I am clear:

Step 1. A man of wealth decides, for whatever reason, that he would like to enter politics. Perhaps he likes the Congressman in the district where he lives, so he decides to challenge a Congressman somewhere else—in any other district in his State.

As I noted earlier, Richmond doesn't live in my district, he lives in Manhattan. He just decided to play politics in my district.

Step 2. To prepare for the eventuality of some day entering politics, this rich man sets up one or more tax-exempt foundations. It can be done swiftly and easily. Remember that it took Frederick W. Richmond only 4 months to obtain Federal tax exemption for his foundation, and less than 1 month for the Neighborhood Study Clubs, Inc.

Step 3. Then the business the rich man controls, and those of his friends, pour money into the foundation in such a way as to get corporate tax advantages. Mr. Richmond did this, with funds from the Walco American Corp. that I mentioned earlier.

Step 4. Next, the rich man and his friends start making unlimited personal contributions to the foundation, all of which are deductible on their tax returns as charity.

For instance, Thomas G. Wyman, a Richmond fundraiser, donated \$3,500 to the Frederick W. Richmond Foundation on February 5, 1968. Less than 5 months before the primary. This contribution is no doubt eligible for charitable deduction status. Of course, Wyman had not previously contributed to the foundation during its 6-year history.

Step 5. And, finally, although tax-exempt foundations are prohibited from making grants to political candidates, nothing seems to prevent friendly foundations from making gifts to one another, irrespective of the fact that the donee foundation may be helping a political candidate in some way.

Thus, we find the Frederick W. Richmond Foundation receiving substantial gifts from the Carol W. Haussamen Foundation, of New York City, and \$5,000 from the John Lindsley Fund of New York City, while the Neighborhood Study Clubs, Inc., received considerable funds from other foundations, including \$15,000 from the Edward John Noble Foundation of Washington Depot, Connecticut, and \$7,500 from the New York Foundation.

Step 6. Then we have the spectacle of a free-spending candidate spreading his tax-exempt money through the target district, building an image of a "man of good deeds." The district is saturated with scores of thousands of political propaganda leaflets, some of which we showed you this morning, showing him making his contributions to charity. (As we have seen, Richmond's charity was invariably accompanied by well-trumpeted publicity.)

Step 7. The candidate may even hire campaign workers with funds supplied by the tax-exempt foundations. Challenged on this point, Richmond offered no proof to the contrary.

In other words, to sum up my experience in the primary campaign of 1968, for the first time in anyone's knowledge, a congressional political campaign was subsidized by all United States taxpayers and in defiance, if not in violation, of laws governing campaign moneys.

As I said at the outset, I didn't like it - not one bit. But 1968 is past history, and I am not here to cry about my own experience. As I demonstrated to Frederick W. Richmond, it does take more than money and gall to win a congressional election.

But the precedent he set in the 11th Congressional District last year represents a clear and present danger to our election system and, further, the Internal Revenue Service, which supposedly "regulates" these tax-exempt foundations, did nothing to stop him. I quako at the

thought of the foundations getting into the campaigns where there is really big spending—meaning, of course, the presidential elections.

This time, Mr. Chairman, it happened in my district. It can—and probably will—happen in your districts. In fact, the appeal of this political gimmick is a threat to every officeholder, in Congress or elsewhere, who does not have access to a fat bankroll or to a business or to a tax-exempt foundation.

Unless the Congress works out procedures that will prevent the use of the gimmick perfected by Richmond, it will become dangerously widespread. And, as I have done previously, I invite the Commissioner of Internal Revenue to take the necessary and proper action in the circumstances I have outlined above.

Thank you, Mr. Chairman and each of you gentlemen, for affording me the opportunity to appear here today. I am confident that your committee will find a way of correcting a situation which threatens the integrity of our electoral system.

(The transcript of CBS Broadcast, Channel 9, referred to on p. 233 follows:)

(This commentary by Tom Braden was aired on WTOP-TV February 18, 1969.)

Why is Congress so worried about tax-free foundations? In addition to fraud and tax loopholes, Congress has some reasons which might be termed personal.

Let's take the case of Herbert Hustler. Herbert is a mythical businessman in a mythical city, who has made a lot of money.

He has always wanted to run for Congress, but—like many middle-aged men with a lot of money—he hasn't had time to get himself known.

Moreover, he's not a spender, and he knows that politics is wasteful of money. So, Hustler consults his attorney, whose name—shall we say—is Arthur Angler.

Angler forms the Herbert Hustler Foundation—with Hustler as President—exclusively for scientific, cultural, charitable, and educational endeavor.

It is at this point that Hustler's picture begins to appear in the newspapers and on TV. Before long, there is not a synagogue, nor a church, nor a boys' club, nor a Lithuanian Society, nor a chapter of CORE which has not benefitted from the largesse of the Hustler Foundation.

The incumbent Congressman is overwhelmed by this blitz, and when the election is over Hustler accurately reports that he has spent one thousand dollars on his campaign.

In fact, his foundation has spent two hundred thousand dollars of tax-free money. If Hustler is in the eighty per cent bracket, he has saved himself one hundred and sixty thousand dollars in taxes, and has bought a Congressional seat for a paltry forty thousand dollars.

And it's all perfectly legal.

That's what Congress is worried about.

Mr. ROONEY. Thank you, Mr. Chairman and gentlemen.

The CHAIRMAN. Mr. Rooney, we thank you for bringing this information to the committee. You will recall that sometime after the primary to which I referred in your statement I joined you in inviting the Commissioner of Internal Revenue to take the necessary and proper action in the circumstances.

Am I to understand that nothing yet has been done?

Mr. ROONEY. I haven't as yet heard of anything, Mr. Chairman.

The CHAIRMAN. Are there any further questions? Mr. Vanik?

Mr. VANIK. I want to compliment the distinguished gentleman from New York. I think he has rendered a great service to the Congress of the United States, to the electoral system, and free institutions. I think our institutions should be free, available to all citizens, but I don't think they ought to be freely acquired through foundation

funds and I think the gentleman has done a marvelous job of nailing down facts which may have eluded others.

I have a particularly keen understanding of the points that were made. I hope, Mr. Chairman, we can in some substantial way put an end to the use of personal or other tax-free foundation funds that are used for personal political purposes, either through tax legislation or through some revisions of our political practices code.

I think we should endeavor to prohibit either election or nomination by purchase, either directly or indirectly, or through foundations or through any other device.

Last evening, Mr. Chairman, the local Columbia Broadcasting System outlet in the Washington area, channel 9, had a documentary pointing out this identical problem and it pointed out the great danger of foundation-financed political campaigning.

I would like permission to see if I can have transcript of that broadcast, and if I can obtain it I would like to ask unanimous consent that it be inserted in the record at the point immediately following Mr. Rooney's statement.

The CHAIRMAN. Is there objection?

None is heard. (See p. 232.)

Mr. ROONEY. I thank the distinguished gentleman from Ohio. I thank you, Mr. Chairman.

The CHAIRMAN. Mr. Broyhill.

Mr. BROYHILL. Mr. Rooney, I would like to associate myself with the remarks of the gentleman from Ohio and compliment you in connection with your statement.

You mentioned there was a \$250,000 expenditure by your opponent in the campaign. That was \$250,000 in addition to the money expended by the foundation?

Mr. ROONEY. That is correct, I believe.

Mr. BROYHILL. He actually acknowledged that \$250,000?

Mr. ROONEY. He filed with the Board of Election a statement that he expended \$193,000. He did not deny to the New York Times reporter that he had spent \$250,000 as of a bit more than a week before the primary election, and it is my judgment that he must have spent \$100,000 by primary day.

Mr. BROYHILL. You didn't estimate in your statement the total amount that was spent by his foundation during the campaign. Was the \$250,000 his personal contribution, a personal expenditure, or was the entire \$100,000? Was this in addition to the support received from the foundation?

Mr. ROONEY. That is not so easy to get at. As I said in one part of my statement, the bulk of the contributions were expended in the 11th Congressional District, although there are 19 congressional districts in the city of New York. I have a copy of his foundation's tax return for 1967 and this indicates that contributions to the extent of \$20,523 were made in the year ended June 30, 1968.

Now this does not agree with other filed papers of the foundation which have been received by the Foundations Subcommittee of the Committee on Small Business of the House of Representatives.

Mr. BROYHILL. How much do you normally spend in your congressional district in a primary race or in a general election campaign?

Mr. ROONEY. Let me answer you by saying, first, it was unheard of

that anyone running for a seat in the U.S. House of Representatives in New York City would have a situation such as this confronting him. My campaigns over all the years never ran into but very small money, maybe \$10,000, \$15,000.

Mr. BROTHILL. You never had a real challenge, I don't imagine, during your 25 years.

Mr. ROONEY. Yes, I had. I had one in 1946 and I had one in 1962.

Mr. BROTHILL. You spent about \$10,000 in 1968? Was that your expenditure?

Mr. ROONEY. 1968, no; when we ran against Mr. Richmond in the primary we spent much more than that. I found that I had more real friends than I knew and I also was surprised to find that many of them were in the State Department. However, I did not personally solicit a single campaign contribution.

Mr. BROTHILL. Well, I sympathize with you for the difficulty you had in this 1968 campaign, since the last two campaigns in my congressional district there have been \$125,000 and \$135,000 spent in campaigns against me, respectively. If this situation has started in addition to the use of large amounts of personal funds to win elections, a grave precedent has been set.

Mr. ROONEY. Of course, you folks are big money people, there on the other side of the Potomac. Mine is the waterfront district of Brooklyn.

Mr. BROTHILL. I would like to point out that they are grassroots all-American people over there.

Mr. ROONEY. Of course, they are all all-Americans.

Mr. BROTHILL. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Burke.

Mr. BURKE. Do you think it is possible that some foundations may be conducting programs that would influence legislation before Congress and may be expending large sums of money to influence legislation and yet, possibly, may not be filing reports of their expenditures?

Mr. ROONEY. Of course, an answer would only be surmise on my part for the reason that I have not delved into that subject to the extent that I have into this matter of Mr. Richmond's foundation. However, I wouldn't be surprised.

Let me put it that way.

Mr. BURKE. Do you think it is possible?

Mr. ROONEY. I certainly do.

The CHAIRMAN. Mr. Ullman.

Mr. ULLMAN. I want to add my commendations. Did you bring this matter to the attention of the New York attorney general, Mr. Lefkowitz?

Mr. ROONEY. No, I did not.

Mr. ULLMAN. I understand the New York attorney general has been quite active in the surveillance of foundations and I certainly would suggest that you do that.

Mr. VANIK. Mr. Chairman, one other question. I was just wondering whether the gentleman from New York knows whether or not the Internal Revenue Service has it in its capacity right now under its regulatory power to deny a tax-exempt status to any foundation which uses its funds to influence legislation or the outcome of a political election?

Mr. ROONEY. Yes; and as a matter of fact, in connection with Mr. Richmond, he had the Richmond Foundation and some years back—it must have been about 1964 or 1965—the Internal Revenue Service of its own volition withdrew the tax-exempt status because it found out there were certain irregularities such as an unsecured loan from the foundation to himself. It was amazing to find out it was only a matter of months before he had a new foundation with a tax exemption called the Frederick W. Richmond Foundation.

Mr. VANIK. Thank you.

Mr. ROONEY. The chairman is familiar with this situation. We have been over it.

The CHAIRMAN. Mr. Bush.

Mr. BUSH. Mr. Rooney, it was an excellent statement I have one question. Do you feel that voter registration drives have been financed directly or indirectly by the Richmond Foundation in your district?

Mr. ROONEY. Most certainly.

Mr. BUSH. They were.

Mr. ROONEY. Most certainly.

Mr. BUSH. Do you feel that this is an appropriate avenue of expenditure for foundations?

Mr. ROONEY. I certainly do not. So far as I know there was not one single volunteer worker for Mr. Richmond in connection with that primary campaign. Everyone was paid, including the people that he used to get a lot of people to register.

Mr. BUSH. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Morton.

Mr. MORTON. Mr. Rooney, if these facts came before the director of the Internal Revenue Service who has jurisdiction in your district it would seem that there would be a specific obligation on the part of the director not only to investigate the validity of these facts but also to take some direct action. I think we all know enough of the code to know that the actions of this foundation in this case are not in concurrence with the law. My question is, Has the Internal Revenue director in the district in which you live taken cognizance of these facts, and has any action been taken?

Mr. ROONEY. I personally know of no action. I might say that I spoke with the chairman of the distinguished Committee on Ways and Means and the matter was subsequently brought to the attention of the U.S. Commissioner of Internal Revenue. It was thoroughly discussed with him but the results of that discussion have not come to my attention.

The CHAIRMAN. May I interpose? You and I were told, however, that the matter would be investigated.

Mr. ROONEY. We were, yes.

The CHAIRMAN. Mr. Byrnes.

Mr. BYRNES. Mr. Rooney, you mentioned the Neighborhood Study Clubs and characterized them as neighborhood ward clubs, the old ward clubs. Have you been able to develop any information as to what they really do as part of this Neighborhood Study Club operation?

Mr. ROONEY. Well, they are open in the evening and people in the neighborhood go in and have an ice cream cone or maybe a hot

dog or something like that, and it is a very nice way of getting the goodwill of the people.

Mr. BYRNES. What do they study?

Mr. ROONEY. I am not familiar with the subjects. I suppose politics.

Mr. BYRNES. That is what I was wondering. Did they use this as a basis of a real card organization?

Mr. ROONEY. It is an anomalous situation.

Mr. BYRNES. Did they have campaign literature of Mr. Richmond's as well as the coffee and the doughnut?

Mr. ROONEY. I haven't observed that. I have no knowledge.

Mr. BYRNES. You don't know that?

Mr. ROONEY. No; I have no knowledge. It is ironic that the areas in which he had the study clubs were the areas in which Mr. Rooney did better than some other places. I don't understand that myself.

Mr. BYRNES. But you haven't been able to develop any pattern of specific operations of these clubs?

Mr. ROONEY. No.

The CHAIRMAN. Mr. Schneebeli.

Mr. SCHNEEBELI. Mr. Rooney, did this flow of funds stop at the end of the primary?

Mr. ROONEY. As far as I know. I haven't heard of anything since.

Mr. SCHNEEBELI. Nothing since.

Mr. ROONEY. Except that I have heard by hearsay that some people to whom he made promises of foundation money were seeking his attention.

Mr. SCHNEEBELI. But there has been no followthrough on this contribution?

Mr. ROONEY. Not that I know of.

Mr. SCHNEEBELI. So it is quite obvious what it was to do during the campaign.

The CHAIRMAN. Mr. Landrum.

Mr. LANDRUM. Mr. Rooney, do you have any idea how many of these Neighborhood Study Clubs were established in your district?

Mr. ROONEY. I believe I learned of three.

Mr. LANDRUM. And what is the area covered by your district? I don't mean population.

Mr. ROONEY. My district is the Brooklyn waterfront from Greenpoint or the Queens boundary line to almost the Verrazano-Narrows Bridge.

Mr. LANDRUM. How many square miles?

Mr. ROONEY. Oh, I would say it must be 8 or 9 miles in distance along that waterfront.

Mr. LANDRUM. So it would not take many of these Neighborhood Study Clubs to saturate an area that small and give everyone an opportunity to participate.

Mr. ROONEY. The Neighborhood Study Clubs that I know of were all in the Williamsburg section and not in other sections.

Mr. LANDRUM. I want to associate myself with the others who have complimented Mr. Rooney on his statement and the presentation of it.

The CHAIRMAN. Any further questions?

If not, without objection the entire list of appendices to the statement will be included in the record at the appropriate place in your statement.

Mr. ROONEY. Thank you very much, Mr. Chairman and gentlemen.

The CHAIRMAN. Thank you, Mr. Rooney for bringing to us this case history of your experience.

Mr. ROONEY. Thank you.

The CHAIRMAN. Our next witness is our colleague from Massachusetts, the Honorable Silvio O. Conte. Mr. Conte, we appreciate your coming to the committee this morning. If you want to sit down you may do so. If you want to stand you may do so, either way.

STATEMENT OF HON. SILVIO O. CONTE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MASSACHUSETTS

Mr. CONTE. Mr. Chairman and members of the committee, I will be very brief.

I am pleased to have the opportunity to testify before you today on the subject of tax-exempt foundations.

It is quite significant that the House Ways and Means Committee has decided to consider a broad tax reform package at this time which has begun with these hearings on foundations. A great deal has been written and said recently about the very serious inequities which exist in our highly intricate tax laws. These inequities have created today the possibility of what former Secretary of the Treasury Joseph Barr termed a "taxpayers' revolt."

Affirmative action by Congress to correct inequitable and indefensible provisions in our tax laws is essential, in my belief, to fully restore the confidence of the American taxpayer in our tax system.

I might add here that we have a tax system in this country which is dependent on voluntary compliance for success.

A vitally important factor in achieving that voluntary compliance, in turn, is the full confidence of the taxpayer in our tax system and particularly in its fairness.

One area of our tax structure which is clearly in need of reform and revision is the area being considered today--the matter of tax exempt foundations.

I have served on the House Select Committee on Small Business since 1961 and during the last 2 years as the ranking Republican member of its Subcommittee on Foundations.

This is the subcommittee chaired by our colleague from Texas, Representative Wright Patman, whose testimony led off these hearings yesterday.

My experience in the area of tax-exempt foundations has convinced me of the vital need for corrective legislation to deal with significant abuses and problems which have developed and exist today in this field.

At the same time, however, it has convinced me that it is of the utmost importance to keep in mind at all times the extremely valuable role that foundations play in our country.

By eliminating the abuses which now exist and by providing appropriate legislative controls to prevent the misuse of the tax exempt foundation structure for unintended personal profit or gain or for unintended purposes such as we have just heard, we can insure that these important contributions to our society will not only be continued but in fact will be increased.

The abuses of private foundations, as we know, were extensively considered by the Treasury Department in 1965. At that time Treasury issued a comprehensive report discussing the major problems and their proposals to remedy these problems. Many of those findings have been incorporated in the Treasury studies and proposals presently pending before this committee.

I do not intend to go over each one of these recommendations. I would, however, like to discuss some of the more important ones within the context of what I have just said about the need for reform to improve, not eliminate, the role of the tax-exempt foundation.

Section 501(c)(3) of the Internal Revenue Code of 1954 defines the term "private foundations" as, in effect and with certain exceptions, corporations or trusts formed and operated for religious, charitable, scientific, or educational purposes, or for public safety or the prevention of cruelty to children or animals.

The Treasury Department in its 1965 report has stated with regard to these tax-free entities that—

Private philanthropic organizations can possess important characteristics which modern government necessarily lacks. They may be many-centered, free of administrative superstructure, subject to the readily exercised control of individuals with widely diversified views and interests. Such characteristics give these organizations great opportunity to initiate thought and action, to experiment with new and untried ventures, to dissent from prevailing attitudes, and to act quickly and flexibly. Precisely because they can be initiated and controlled by a single person or a small group, they may evoke great intensity of interest and dedication of energy. These values in themselves justify the tax exemptions and deductions which the law provides for philanthropic activity.

Congress, by virtue of the Internal Revenue Code, has given its "blessing" to entities devoted to the noble purposes enumerated in section 501 because it feels that the loss in tax revenue is far outweighed by the benefits such institutions confer upon society. As I have indicated earlier, I agree with this basic philosophy.

I, similarly, agree with the conclusion of the 1965 Treasury report that "prompt and effective action to end the specific abuses extant among foundations is preferable to a general limitation upon foundation lives."

But prompt and effective action, however, to end abuses, unfortunately, has not been taken yet. The need for this action furthermore has continued to grow as the use of this tax-exempt structure has become more and more popular throughout the country.

Thus, while the number of these foundations in existence today, approaches some 30,000 institutions according to Treasury's figures, there is no effective system presently in existence to oversee these institutions and insure they are being run in a proper manner and for the purposes intended by Congress.

Steps must be taken to provide a system of effective oversight.

Another important flaw which exists today is the absence of any Federal prohibition against self-dealing, which you just heard Mr. Rooney speak about, and our committee has had ample evidence in regard to self-dealing. The lack of such a provision leaves the way open for interested parties to deal with their foundations in a manner designed to bring direct personal benefits to them at the expense of their foundation.

I agree with Treasury's position here, that the best way to eliminate this large area of potential abuse is by enacting a prohibition against financial transactions between a foundation and its founders, contributors, officers, directors, or trustees.

Still another problem has been the practice of some foundations to simply accumulate millions and millions of dollars and large amounts of wealth rather than expending their resources on the beneficial purposes which were the basis for their creation.

In order to serve the purposes intended by Congress, these resources should not be sitting around and gathering dust. They should be employed in a positive meaningful way on behalf of the purposes which constitute the basis for granting tax-free status to these organizations.

Treasury has proposed that all private nonoperating foundations be required to distribute all their current net income by the end of the year following the year of receipt. This is a proposal which I believe deserves very serious consideration with the caveat that I think a somewhat longer period of time for distribution may be more appropriate.

Nonoperating foundation is defined here as one which does not have substantially more than half of its assets devoted directly to, or does not directly expend substantially all of its income for, the active conduct of charitable activities.

Treasury has also recommended that the business involvement of foundations be limited to 20 percent direct or indirect ownership of any business unrelated to its tax-exempt purposes.

I endorse this proposition and would point out that serious competitive disadvantages can exist for commercial enterprises, especially small business who are faced with competition from foundation owned and controlled businesses.

I also would like to express my agreement with the proposal for a tax upon unrelated debt-financed income. This is designed to remedy the Clay-Brown situation whereby a foundation finances its acquisition of property with the future earnings of that property, thus allowing the seller to turn what would otherwise be ordinary income for him into capital gains. I would emphasize as the Treasury does that this would apply only to borrowing which is done in pursuance to non-exempt activities.

In 1967 our Small Business Subcommittee on Foundations investigated a group who was charging large sums of money up to \$10,000 per person, to "educate" individuals about the tax laws on tax-exempt foundations.

What they were in fact doing was teaching individuals how to misuse our present tax laws on foundations for their own personal profit.

It is our obligation to eliminate the opportunity for such misuse and abuse of the tax-exempt foundation entity.

Congress is faced with the clear need for action to revise and improve the laws governing the creation and operation of tax-free foundations. In so doing, we will be strengthening the very important role that foundations have to play in our Nation. I applaud the action of the chairman and this committee in undertaking this indepth study of the problems and look forward to your recommendation of meaningful corrective legislation to deal with them, and you certainly have my wholehearted support and cooperation.

The CHAIRMAN. Thank you, Mr. Conte. We appreciate your very fine statement. Any questions? Mr. Burke.

Mr. BURKE. I wish to commend you, Mr. Congressman, for your excellent statement. I was wondering if you would like to elaborate your remarks on self-dealing by foundations.

Mr. CONTE. Well, you just heard here at great length this morning Congressman Rooney talk about one kind of a potential self-dealing situation. He described an individual who sets up the foundation to benefit himself and gets money from individuals who can deduct this money as a charitable contribution of the foundation.

Then the foundation uses some of its funds for his political purpose by giving contributions to individuals or groups or societies in this political campaign, with the founder reaping the benefits and the publicity as a result of these contributions.

We went in depth into an outfit in Chicago which was educating mainly doctors on how to set up tax-free foundations. They would set up a foundation to be a foundation to study some research project or have a research project on medicine.

Actually what they would have would be an open clinic where people would come in and be treated and be charged for their services. That was the research that they were doing.

In turn they were taking funds from the foundation, sending their children to college with those funds, buying Cadillacs, buying their homes, and actually supplying all of their needs through money derived from the foundation. That is just one type of a self-dealing foundation.

Mr. BURKE. Thank you.

The CHAIRMAN. Mr. Collier.

Mr. COLLIER. I agree to a great extent with everything you said here today. In order to ask this question, let me put it in the form of sort of a hypothetical case.

Say we have the corporation that would realize at the end of a given year a profit of \$1 million that would establish a self-established foundation. Normally on that million dollars the corporate tax would come to \$520,000.

Recognizing basically what the functions of most of the foundations are in varied education, scientific research, and so on. That being the case, would you feel that through the channels of the existing machinery of government and the numerous programs in these fields which have been established, if that portion of the \$1 million that would go into the foundation would come in as a result of revenues from the corporate tax, could just as well be directed into those channels by the legislative and administrative process of government, and then in those areas the balance of \$480,000 in this area would be open to the free choice of the foundation in pursuing these laudable and necessary philanthropic programs?

Mr. CONTE. If you are advocating that we impose—

Mr. COLLIER. I am not advocating anything. It is just a question.

Mr. CONTE. If the hypothetical question that you asked advocates that we impose a tax on the net profit of the foundation I am for it only to the extent that it is imposed upon profits improperly used or unused, as the case may be.

Mr. COLLIER. What I am asking is, Do you think that the whole service in contribution of the total funds involved could be as efficiently administered and expended if that portion which would otherwise be

paid in corporate tax would be done through government and the balance which would provide a wider freedom of choice outside of the direction of the Government be performed by the foundation?

Do you think the net result would be good, or do you think we would be impairing the contributions of foundations in those circumstances?

Mr. CONTE. The net result would not be good because, as I have stated, foundations are so much more flexible than Government.

Mr. COLLIER. Thank you.

The CHAIRMAN. Mr. Schneebeli.

Mr. SCHNEEBELI. Congressman, were the summary and recommendations of your subcommittee made available to us through Congressman Patman's testimony, or are they separate?

Mr. CONTE. As long as I have been on the committee we have never made any recommendations.

Mr. SCHNEEBELI. Would it be proper to suggest that your subcommittee might make some recommendations to this committee in this area because you have been specializing in this field for quite a long time and I would like to, if possible, ask that your subcommittee might give us some sort of outline of your thinking in this area.

Do you think this is in order, Mr. Chairman, to ask?

The CHAIRMAN. It is certainly in order if Mr. Conte and other members of his committee want to do so.

Mr. CONTE. I certainly would be glad to take this up with the chairman.

The CHAIRMAN. If you would yield to me, we have had your statement and we have had Mr. Patman's statement. I don't know whether other members of your subcommittee will appear as witnesses here or not, but there is some difference between your position and Mr. Patman's position, I assume from what you say and what he has said, Mr. Patman has introduced a bill.

Whether or not your committee after having made these studies would concur in his bill and the recommendations made in it I think would be helpful to us. Whether you think we should do what he, as the chairman of the subcommittee, has set forth in his bill should be done.

Mr. CONTE. Well, as I mentioned in answer to Mr. Schneebeli's question, the subcommittee itself has never made any recommendations. They have come out with reports. I think that this committee here is well equipped to come out with recommendations.

I certainly, as an individual, would be glad to cooperate with the chairman and the members of the committee, given you my thinking on the subject matter, as I have done this morning. We can go into it in depth if you like, and I would be glad to give you further recommendations.

You have on this committee a very distinguished member of that subcommittee by the way, Mr. Morton, who served with me on that committee. I am sure that he will make a very valuable contribution as he did on my subcommittee.

The CHAIRMAN. Mr. Schneebeli, I think, is posing this in the form of a request. Please treat it, however, as though we would welcome such a recommendation if your subcommittee should deem it advisable to make a recommendation.

We are not going to hold you at fault if you don't.

Mr. SCHNEEBEL. It is quite obvious they have gone into this for quite a long period of time, much longer than we have considered it, and I think we can benefit from your studies.

The CHAIRMAN. If you will yield to me——

Mr. SCHNEEBEL. Surely.

The CHAIRMAN (continuing). Your discussion and consideration of it was not confined to just the hearing of witnesses.

Mr. CONTE. No.

The CHAIRMAN. And more or less ours is. You did make some degree of investigation through your staff or otherwise.

Mr. CONTE. We certainly did, Mr. Chairman.

The CHAIRMAN. And of course we do have available to us the files that you developed as a result of those investigations, that is, Mr. Patman has graciously let our staff people see them. It may be that all that you would recommend perhaps would be detectable by your staff from the files in the study of these cases.

I don't want to put the subcommittee to some task that it doesn't want to assume. But if you want to do it I would join Mr. Schneebeli in assuring you that we would appreciate any suggestions that you want to make other than those in your two statements that may represent the feeling of the subcommittee.

Mr. CONTE. Thank you, Mr. Chairman, I will take this up with Mr. Patman.

The CHAIRMAN. Mr. Morton.

Mr. MORTON. First, I would like to compliment the distinguished gentleman from Massachusetts. I had the privilege of working with him on the Subcommittee on Foundations of the Select Committee on Small Business and he certainly did a lot of work as did other members of the committee, as did the staff of the committee itself.

I would feel that the most valuable thing that the subcommittee could make available to this committee would be the hearings, or perhaps selected testimony from the hearings, as well as the summaries of the investigations that were made.

I believe that those documents contain a great deal of valuable material, and some points are made therein that would be helpful to this committee.

One of the things, Mr. Conte, that you did not touch on, and one of the things that concerned us in the work of the subcommittee, was the question of capital moving from private hands where it is taxable to eleemosynary institutions where it is not taxable and what the impact of this is on total revenue of the country.

I would like to get away, again, from the misuse and the unethical use of foundations and institutions and turn to the economic impact of these organizations on the country and its future.

Do you feel that there is an obligation for a return of capital to meet a responsibility to Government in the form of taxes, or do you feel generally that we should tax human energy as opposed to that energy which is produced by capital?

As you know, I have been a very strong advocate of taxing capital wherever it appears, and I don't believe that avenues should be provided for that capital to be sterilized from the obligations of the Nation. I would like to have your own personal opinion on this matter because I think it would be worth a great deal to this committee to know

how you feel about the whole idea of diverting large sums of money, regardless of the purpose for which they are to be used, into channels that are tax free?

Mr. CONTE. Well, I certainly think that this is an area that this committee should definitely look into because it has become more serious every day. Billions of dollars are being piled up by foundations throughout the country. Much of this money is never taxed by the Internal Revenue Service. I think that those amounts which are unreasonably accumulated and thereby improperly used or unused, as the case may be, should be subject to some type of tax. I hope this committee will bring forth recommendations on how best to tax this money.

Mr. MORTON. I certainly thank the gentleman. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Broyhill.

Mr. BROYHILL. Mr. Conte, as I understood you, and correct me if I am wrong, your answer to Mr. Collier's question was that you would support the idea of taxing the income of the foundation.

Would you support the idea of taxing them, just as a corporation is taxed, on all their earnings?

Mr. CONTE. Based on present information, I would not. I am not prepared to tell you at this point what specific taxes should be imposed on various elements of foundation holdings. I think the committee is well qualified to make this decision.

Mr. BROYHILL. And Mr. Patman suggested that a tax on net income limited, I believe, to a maximum of 20 percent.

Mr. CONTE. I did see that in his statement.

The CHAIRMAN. Mr. Burke.

Mr. BURKE. I don't believe you mean to tax a foundation but to tax those moneys—

Mr. CONTE. To tax their net earnings at the end of the year which are improperly used or unused.

Mr. BURKE. Net earnings. But in the case of foundations which are expending this money in a reasonable time for the charitable purposes, there has to be some flexibility. I don't believe you want to go all the way, do you? You want to go only as far as is reasonable; is that correct?

Mr. CONTE. I want to be reasonable and I think this committee wants to be reasonable and I think you will come out with something reasonable.

Mr. BURKE. The reason I asked the question is that I don't believe you want to take the hard line of taxing foundations as such.

Mr. CONTE. That is correct. That's the reason, Mr. Burke, that I haven't made any specific recommendations in this area and I think that I would leave that to this committee.

Mr. COLLIER. Will the gentleman yield?

The CHAIRMAN. Mr. Collier.

Mr. COLLIER. Are you saying, therefore, if we did tax all foundations, that the Congress of the United States in its wisdom would not be able to divert a portion of the tax on foundations to serve mankind just as well as the existing channels that we have with the foundation in its private selectivity; in other words, if you tax the foundation?

Mr. BURKE. Are you asking me a question, Mr. Collier?

Mr. COLLIER. That was the general idea.

Mr. BURKE. I am merely pointing out that I think what we are trying to get at here is to tax income derived by foundations engaged in private business and also to get the foundations to expand their money for charitable purposes for which they were formed in the first place. I think that what we are trying to get at are those foundations which are sterilizing the funds and are not spending them for charitable purposes but which are also engaging in self-dealing as a result of their profits from these private sources.

Mr. COLLIER. Will the gentleman yield further to just follow this up briefly with the witness? Let's assume that we have a foundation that would normally spend if it were not taxed, again take the figure of a million dollars.

If it were taxed let's presume that the tax would be 20 percent or \$200,000. The purpose of the use of resources of all foundations falls into areas of health, and welfare, education, scientific research, conservation, the arts, et cetera, et cetera. My question is; If that foundation were taxed let's say at a rate of 20 percent it would have obviously 20 percent of its foundation fund less to spend for these purposes?

Do you think that through the many programs we have in these same areas we couldn't put this money that came in as revenues into as valid or as helpful a purpose in these specific areas through the machinery of government?

Mr. CONTE. You certainly can, but again I want to reiterate, going back to my original statement, I don't want to fault all foundations. They have certainly made a very valuable contribution to this country in this particular area and they have done so because they are flexible and their hands aren't as tied as working through a bureaucracy.

Mr. COLLIER. I want to make it clear I haven't made any statements at all. I am just asking questions.

Mr. CONTE. I want to thank the gentleman from Illinois.

The CHAIRMAN. Any further questions?

We thank you, Mr. Conte, again for coming to the committee.

Mr. CONTE. Thank you, Mr. Chairman.

Mr. LANDRUM. Mr. Chairman, before we have the next witness may I be recognized for unanimous consent?

The CHAIRMAN. You are recognized.

Mr. LANDRUM. I ask unanimous consent to include in the record immediately following the statement of Mr. Patman yesterday a copy of the statement that I have received from former Member of Congress Ralph Harvey, who served as the ranking member of the Small Business Committee with Mr. Patman, and who has included in a personal letter to me some of his views about these tax-exempt foundations and his recommendations.

I think it appropriate that his statement go into the record.

The CHAIRMAN. Without objection the statement will go in the record at that point. (See p. 78.)

Our next witness is Mr. George Harrar. Mr. Harrar, you are president of the Rockefeller Foundation located in New York City, I believe.

STATEMENT OF J. G. HARRAR, PRESIDENT, THE ROCKEFELLER FOUNDATION

Mr. HARRAR. Yes, sir.

The CHAIRMAN. You are recognized, sir. Would you prefer to be seated, or do you want to remain standing?

Mr. HARRAR. This is fine.

The CHAIRMAN. It makes no difference.

Mr. HARRAR. Mr. Chairman, for the record my name is J. George Harrar. I am a biologist. I have been associated with the Rockefeller Foundation since 1943 and have been its president since 1961.

You have been kind enough, Mr. Chairman, to offer private foundations an opportunity to be heard with respect to the Treasury's proposal for revisions of the law affecting their tax exemption.

The Rockefeller Foundation is glad to take advantage of this opportunity, not because it would be affected by any of the revisions proposed in the Treasury report of 1965, but precisely because it would not be.

That is, it may be useful to the committee to have before it the views of a major foundation which is, so far as the impact of the proposed legislation goes, disinterested. In the course of my remarks I shall express our general views upon the several proposals. With your permission, I am filing as an appendix to my own statement a memorandum by our counsel commenting more specifically on the Treasury proposals, as well as a copy of our most recent annual report.

The CHAIRMAN. Would you like those included in the record?

Mr. HARRAR. I would appreciate it.

The CHAIRMAN. Without objection they will be included at the conclusion of your statement. (See p. 253.)

Mr. HARRAR. Thank you very much.

The Rockefeller Foundation was chartered in 1913, before income and estate taxes as we know them had come into being. Only four members of the Rockefeller family have ever served on its 21-man board of trustees, and no more than two at any one time.

We believe that the foundation has never made investments of a type that would not meet the closest critical scrutiny. Except for such bank accounts, Treasury bills and notes, corporate bonds, and commercial paper as are needed for liquidity—to assure the foundation's ability to pay its obligations as they come due—our portfolio is entirely invested in common stocks virtually all of which are listed on the New York or the American Stock Exchange.

In its early years the foundation received from John D. Rockefeller, Sr., large blocks of stock in a number of oil enterprises. Subsequently, a policy of diversification has been pursued with such effect that the foundation now holds no more than 3.39 percent of the stock of any company.

The foundation has never engaged in any of the activities characterized in the Treasury report as "self-dealing." It has spent all its ordinary income on its charitable activities. In addition, it has appropriated more than \$230 million of its principal for those activities. It has never become involved in the operation of any business enterprise. It has never been used as an instrument for family control of corporate or other property. It does not borrow, make loans,

or engage in active trading of securities or speculative practices. Since the foundation's earliest days it has not been under "donor influence" as defined by the Treasury report.

The foundation has always issued and distributed an annual report of its activities, listing all its grants and administrative costs and providing other information of use to members of the public who wished to appraise its program.

The annual report has always carried a complete list of the securities in the foundation's portfolio, and the foundation's financial statements have been audited annually by a firm of independent certified public accountants.

During the 55 years of its existence, the Rockefeller Foundation has built up a professional staff both in its operating programs and in its New York office that has enabled its work to be done—we believe—at a high level of efficiency and objectivity. As I shall indicate, it has addressed itself over the years with some success to a number of problems of great human importance.

With your permission, I shall cite a few examples. The first major campaign of the foundation was against hookworm disease in the rural South. Though it rarely killed its victims, hookworm stunted and weakened hundreds of thousands of people and sapped the strength of whole counties.

Its cause was known, and a cure had been developed in the late 1800's. What was needed was education in sanitary practices and availability on a wide scale of the simple chemical dosage that would drive the worms from the body.

Working closely with State and local governments, the foundation supplied most of the funds and much of the trained personnel for an effort which, in about 5 years, demonstrated that hookworm infection could be conquered wherever sufficient resources could be brought to bear upon it. Thereafter, similar campaigns against hookworm were carried out in 52 countries in six continents and on 29 islands in the "hookworm belt" that girdles, or then girdled, the globe.

Among the lessons learned by the officers of the foundation in the hookworm work was the importance of preventive medicine in preserving human health. It is not surprising, therefore, that the foundation turned next to malaria, which at the time was responsible for more sickness and death than all other diseases combined. The chance of eliminating malaria from human populations by drug treatment appeared remote, but it seemed possible that within practical limits of cost the mosquitoes that carry the infective agent might be eradicated from substantial areas of the world. By 1921 the foundation was convinced that the costs of control were within the reach of many communities affected by malaria, and there ensued years of work, always in cooperation with national or local governments, which concluded with the virtual elimination of malaria from the United States, Italy, Sardinia, Cyprus, and Greece.

The problem of malaria cannot be said to have been solved; but methods for its solution were brought into being and refined through the foundation's efforts, and by the 1940's and 1950's many of the countries affected had developed sufficient capacity in the field of public health to continue with the application of those methods.

The foundation's interest in preventive medicine, and particularly in encouraging a type of medical or paramedical education that would produce effective public health officers and sanitary engineers, was born in the hookworm campaign and increased in the course of the campaigns against malaria and other epidemic and endemic diseases. Grants began to be made in support of education in public health and preventive medicine, and in due course those fields became recognized areas of study and provided viable careers.

In 1916 the foundation had begun to investigate the problem of yellow fever, an epidemic disease that had struck recurrently as far north as New Hampshire and was present almost continuously in some cities of the Southern United States as well as in the more tropical parts of the world. A high-death rate made the disease a virtual plague. Like malaria, it was known to be transmitted by the bite of a mosquito—a different species from the malaria mosquito—and the foundation set about to show that that mosquito could be eliminated from cities, such as Rio de Janeiro, which were focal points for the urban type of yellow fever. The work of elimination progressed steadily for nearly two decades but did not succeed in preventing periodic local epidemics in Latin America and Africa. Fortunately, in the mid-1930's after a number of foundation scientists had contracted yellow fever and six had died of it, a vaccine was developed in the foundation's New York laboratories. Starting in 1937, the foundation produced the new vaccine on a large scale and distributed it widely for testing. In World War II, the foundation expanded its production facilities and manufactured the now-proven vaccine for the Allied Armed Forces. By 1946, some 34 million doses of the vaccine had been produced and distributed at the expense of the foundation. It goes without saying that untold numbers of lives were saved by the discovery of the yellow fever vaccine.

The yellow fever campaign is an outstanding and dramatic example of work by a foundation that resulted in outright solution of a problem. Not many foundation efforts present even the possibility of such outcome. Assistance in the formulation and establishment of better medical education, to which the Rockefeller Foundation devoted substantial energy for many years, is a kind of enterprise that can have neither an obvious terminal point nor a spectacular or even readily visible success. Yet, some observers believe, that the foundation's work in medical education has been more important to the well-being of mankind than all its attacks upon particular diseases. The same assessment might be applied to the foundation's broad dedication, throughout the 1930's and 1940's and well into the 1950's, to what its trustees described as "the advancement of knowledge." Working in a number of fields, in physics and chemistry, in the life sciences, in the social sciences, and in the humanities, the foundation supported an extremely wide range of research upon the principle that human progress and betterment could only come from a more complete understanding of the environment and of man's nature and history. If the success of such a program may be judged by the achievements of the individuals who were assisted to carry on their research, it is worthy of note that between 1930 and 1960, 22 scientists and scholars who had received fellowships from the foundation were awarded the Nobel Prize. A

number of other Nobel Prize winners had received minor foundation assistance.

In 1943 the foundation undertook another specific campaign which has continued to the present day with important results. By the invitation and with the cooperation of the Government of Mexico, the foundation initiated the Mexican agricultural program, the intent of which was to reduce or eliminate Mexico's dependence upon importation of essential cereal grains and to alleviate the country's chronic malnutrition. Using the techniques of basic genetic research, foundation scientists working with their Mexican colleagues developed varieties of corn and wheat that would grow well in the Mexican soil and climate and that would respond to fertilizers, which the traditional native varieties could not. In the years since 1943, Mexico has become self-sufficient in corn and wheat production, even though its population has risen some 60 percent. Mexico is no longer a food-deficit nation.

The lessons learned in the Mexican agricultural program have been carried into other Latin American countries as well as into Asia and Africa, and have been applied to a considerable number of crops. Perhaps the most successful international efforts have been those with wheat and rice. The program of wheat breeding in Mexico has developed strains that far outyield traditional varieties in all of the less-developed countries into which they have been introduced. In 1966 the Government of India purchased 18,000 metric tons of the new Mexican wheat not for consumption but for planting in India. In 1967 the Government of West Pakistan purchased 42,000 metric tons for the same purpose. Those plantings have now been harvested, and their average yield was three times the usual experience in those countries.

The International Rice Research Institute in the Philippines, established and operated by the Ford and Rockefeller Foundations jointly, has developed a rice variety widely described in Southeast Asia as "the miracle rice." This variety produces yields in tropical and subtropical rice-producing regions, under traditional methods of cultivation, of up to twice what the farmers are accustomed to. With modern techniques, including adequate fertilization, its yields sometimes exceed customary yields fivefold.

A revolution in the nourishment of Asia is thus at hand, and a few years have been won against the threat of widespread starvation. In order that the world's capacity to produce food for its increasing population may advance as rapidly as possible, the Rockefeller and Ford Foundations have now established four autonomous agricultural research institutes—in the Philippines, in Mexico, in Colombia, and in Nigeria—the intent of which is to enable the tropical belt not only to feed itself but also to move from subsistence economics to something approaching the economics of Europe and North America.

I have emphasized the past accomplishments of the Rockefeller Foundation partly because, being past, they are demonstrable, and partly to suggest the continuity of the foundation's efforts. Our current program springs from what we have done before, but also responds, we believe, to contemporary needs.

The work in agriculture and nutrition continues and is becoming increasingly worldwide. It emphasizes education, research, and the

application of new methods and biological materials to the increased production of more nutritious food.

Another major part of the foundation's current program is the other half of the Malthusian formula: population increase. Working both at home and abroad, we have supported research in human reproductive biology, programs of family planning, and the training of medical and paramedical personnel for service in this field.

Recognizing the critical importance of the orderly and effective development of major universities in the emerging parts of the world, we are working closely with a number of such institutions and are providing substantial support, chiefly for visiting faculty and for equipment, to university centers in Colombia, Nigeria, East Africa, the Philippines, and Thailand.

In the United States we have carried on since 1963 a program aimed at equalization of opportunity for Negroes, members of other minority groups, and deprived citizens generally. This program has concentrated on higher education, high school and elementary education, leadership development, and school-community relations, as well as on many other points of stress. It includes support for a major study, now in progress, of two characteristic urban ghettos, which it is hoped will suggest ways of accomplishing the transformation of the ghetto.

Also in the United States, the foundation carries on a program focused on the qualitative improvement and geographic extension of the performing arts, on training in those arts, and on encouragement of the creative individual in those arts and in the art of writing. This segment of the foundation's activities reflects our trustees' belief that in addition to adequate nourishment, reasonable security against disease, and education satisfactory for practical purposes, man requires the stimulation of the esthetic experience.

Much has been omitted from this brief chronicle of achievements of the Rockefeller Foundation; but I hope that my point is sufficiently made. The observer of these achievements will have to decide for himself what their dollar value is to the human race, and how many millions in national and international productivity the foundation has generated through the exercise of its philanthropic mandate. Health, nutrition, and education have the common effect of contributing in a wide variety of ways to the economic well-being of a community. Is it unreasonable to suggest that if the Rockefeller Foundation and other foundations had not been at liberty to carry out their tax-exempt activities the gross national product and tax base of the United States and of other countries would be substantially lower than it now is?

Being free under its charter to move from field to field, as its trustees direct, in pursuit of "the well-being of mankind," the foundation has been at liberty to turn from problem to problem as necessary rather than being committed in advance to act within a given set of geographical or subject-matter limits.

Over the years the foundation has gained a body of experience which seems to its officers to have a beneficial cumulative effort. That is, far from being fettered by experience, we are instructed by it, and there is no doubt in our minds that when we turn to a new problem we are the better for having already dealt with other—perhaps quite different—problems. So the longevity of the foundation is vital to it in attacking problems that did not exist or were not visible in 1913, c.

even in 1940, or 1960, and in producing results after protracted effort on problems that resist rapid solution.

We believe that the way the Rockefeller Foundation is operated is a good way to operate a foundation, but we do not believe that it is necessarily the only way. In a statement I filed with the committee commenting on the 1965 Treasury report, I suggested that primary attention be given to establishing the degree of surveillance needed to insure observance by all foundations of the requirement—applicable to them today under the Internal Revenue Code—that they be “operated exclusively” for the charitable purposes for which tax exemption was granted. I believe it to be true that most of the practices described in the Treasury report against which specific remedial legislation is sought, are objectionable when they result in the diversion of a foundation’s assets or energies from its charitable purposes, but not otherwise.

That is, even so-called self-dealing if it conforms to the existing statutory standard of arm’s-length negotiations, may increase a foundation’s capacity to carry out its charitable purposes. So may a temporary—even a fairly long—accumulation of income, if the purpose of the accumulation be good. So may donor control, as the Treasury report itself points out.

The risk is that to write into the tax laws of the United States prohibitions against certain ambiguous practices, and strictures of various kinds—which must inevitably be somewhat arbitrary—applicable to others, may do more harm than good. I do not say that this will be the result of adopting the recommendations of the Treasury report; I say only that it might be, and that there may be a simpler and less restrictive technique for insuring the exclusive devotion of foundation assets and executive energies to the foundation’s charitable purposes.

A number of commentators have remarked on the anomalies inherent in the policy of controlling organized philanthropic activity through the Internal Revenue Code. Among the disadvantages of so doing is the fact that the primary remedy for offenses is withdrawal of tax exemption. Withdrawal of exemption can only diminish the charitable power of the offending organization.

A better way to compel foundations to operate exclusively for charitable purposes might be to look to the States, which have always had the power of affirmative enforcement. The exercise of such power is now in sight in a number of States. California and Massachusetts pioneered with legislation to this end, and in 1966 New York—the home of more foundations than any other State—adopted a charities registration law with supervision by the attorney general. According to the attorney general of the State of New York, as quoted recently in the New York Times, the reporting requirements of the new law have turned up a substantial number of acts and omissions on the part of foundations that violate acceptable standards of behavior. I am informed by our counsel that under New York law the attorney general can move to enjoin improper acts or omissions by charitable organizations. He can, therefore, without jeopardizing the tax exemption that shelters the charitable commitment of a fund, compel the exercise of that commitment. It may be that this is the better way to remedy the problems described in the 1965 Treasury report.

One cannot help being shocked at particular examples of foundation misbehavior given in the Treasury report. But before one reacts to that shock by endorsing the prohibitions and strictures recommended in the report one must consider the well-known and respected foundations that have been under the control of donors and donors' families for more than 25 years and are conceded to have done an excellent and dedicated philanthropic job. And one must consider the many foundations whose original assets consisted entirely of a majority of the stock of a donor's company, which have been prevented from diversifying by the limited market for the stock but have carefully stood apart from undue solicitude for the company or the donor and from participation in the company's affairs and have devoted themselves wholly to their charitable purposes.

That is, one can agree that certain examples of misbehavior set forth in the Treasury report are inexcusable and still not acquiesce in the broad and indiscriminate restrictions that the report recommends. Those restrictions would presumably prevent recurrence of the practices cited. On the other hand, because of their indiscriminate application to good and bad alike, they might interfere with the functioning of many useful foundations that have never indulged in those practices to the detriment of their philanthropic objectives.

Pluralism is generally conceded to be desirable in the American society. There is an interesting parallel here with the field of biology. To the biologist the health of an ecological system—a lake, for instance—may be measured most effectively in terms of the number and diversity of the species that flourish within it, each supporting the others. I suggest that the same observation can be made for the ecology of social institutions: that the work of government toward human well-being is supported and enriched by a flourishing private philanthropy, and that within the institution of private philanthropy it is equally desirable to have a wide variety of forms and interests.

One who proposes legislation affecting foundations should be very sure, therefore, that what he proposes will not limit their diversity. He should also take care that his proposals will not inhibit the birth or stunt the growth of foundations, and it appears likely that two of the recommendations made in the Treasury report would do just that. Those two are, first, the recommendations of a prohibition upon ownership by a foundation of 20 percent or more of a business unrelated to its charitable activities, and second, the recommendation that the donor—to a foundation—of an interest in a business controlled by him or related parties be denied a tax deduction for his gift until he ceases to control the business or until the gift is disposed of or put to charitable use by the foundation.

It is significant, I believe, that neither ownership by a foundation of 20 percent or more of a business unrelated to its charitable activities nor ownership of an interest in a donor-controlled business would of itself impair the foundation's capacity to do good. In reaching out to prevent a limited number of abuses, the Treasury recommendations on these points would inhibit a wide range of charitable giving. It is often impossible or improvident for a foundation to liquidate closely held stock. So also, charitably minded proprietors of closely held corporations, who wish to give stock to a foundation in situations such that its sale by the foundation is impossible or improvident, may find

themselves unable to do so if they are not permitted to deduct the value of the gift.

This committee, in the course of its general review of the income tax law of the United States, has presumably addressed itself to the problems presented by foundations primarily because of a concern that in some cases foundations are being used by unscrupulous men either to avoid or to evade taxes or, at the least, to further their own ends in derogation of the charitable mandate on which tax exemption rests. No responsible foundation officer can be sympathetic with such men; on the contrary he has an evident interest in preventing abuse of the privileges foundations are given under the tax laws. Every responsible foundation officer has also a concern for the effectiveness of the foundation he serves and for the health of foundations as an institution. I applaud such legislation as may be necessary to insure the health of the institution; I am concerned that the legislative proposals in the Treasury report might inhibit the creation of useful new foundations and handicap the operations of those already in existence, without being the only or even the best means toward the control that is desired.

Mr. Chairman, I have a brief addendum which arose out of the hearings yesterday. If I may have your permission I would like to read it.

The CHAIRMAN. You may do so.

Mr. HARRAR. In the course of yesterday's hearing, it became clear that members of your committee were interested in receiving not only views about the six proposals in the Treasury report, but also positive recommendations to curb the abuses cited in that report.

The Rockefeller Foundation's suggestions are, of course, implicit in the statement I have just read.

To make them explicit, we suggest that the Congress should consider the following course of action:

(1) Foundations should be required, as a condition of tax exemption, to publish annually a report giving full information concerning their operations and finances. These reports should be freely available to all interested parties so that all foundations, large and small, would operate in full view of the public.

(2) The Treasury Department should be required to police and enforce vigorously the present requirement that foundations be operated exclusively for the charitable purpose for which tax exemption was granted. This means that the Treasury, in IRS form 990A should require whatever information is needed to enable it to determine whether this requirement has been satisfied.

Provided that complete information is available, we believe the Treasury now has the legal equipment it needs to enforce the rule that foundations must be operated exclusively for their declared charitable purposes. What it evidently does not have is the money and manpower to review the information it has or could have, and to move against foundations that appear to be violating the exclusive-operation rule.

It lies within the power of the Congress to supply the Treasury with the additional strength it needs to enforce the present law, and we believe strongly that this should be done.

(3) References have been made to a number of hypothetical foundation practices that raise questions of violation of Federal laws that lie within the jurisdiction of the Department of Justice, the Federal Trade Commission, the Securities and Exchange Commission, the Federal Communications Committee, or other agencies, either on the part of the foundations themselves or on the part of corporations with which they have some actual or assumed connection.

We believe that if such abuses exist, they can and should be halted immediately through strict enforcement of existing laws by those agencies. The possibility of such offenses points up the inadvisability of seeking to guide and control foundation activity exclusively by means of the Internal Revenue Code.

(4) As has been pointed out, the States are beginning to perform an important role in policing abuses which have developed within charitable organizations. On the other hand, the Federal Government obviously has a major responsibility for assuring that tax exemption is not abused.

Accordingly, it is important to make certain that there is close cooperation and coordination between Federal and State authorities, to insure that enforcement is effective in all situations and that no abuses fall between Federal and State interests.

We believe, Mr. Chairman, that adoption of these positive recommendations would be helpful in the correction of the abuses which have been cited by the Treasury report, without disrupting the flow of funds for philanthropic purposes.

Thank you, sir.

The CHAIRMAN. Mr. Harrar, there is also some material appended to your first statement you delivered. Without objection, that will be included in the record at this point.

(The appendix referred to follows:)

APPENDIX

MEMORANDUM RE TREASURY DEPARTMENT REPORT ON PRIVATE FOUNDATIONS, PREPARED FOR THE ROCKEFELLER FOUNDATION BY ITS COUNSEL

Four years ago in response to the invitation of the Committee on Ways and Means The Rockefeller Foundation submitted comments on the Treasury Department Report on Private Foundations, which have been published in Volume I of the Committee's collection of Written Statements on the Report. In that statement the Foundation disclaimed any self-interest as motivating its comments, since none of its policies or activities would be affected by the adoption of the Treasury's proposals. Their general objective, to protect the tax-exemption privilege against abuse, was, of course, endorsed by the Foundation. At the same time, the Foundation expressed its concern that the measures proposed would in varying degrees place such obstacles in the stream of American philanthropy as to be, on balance, against the public interest. The Treasury's six major proposals were touched upon only briefly.

As counsel for the Foundation, we have now been asked to submit this supplemental statement dwelling with greater particularity on certain legal aspects of the Treasury's proposals which have given rise to the Foundation's concern, even though, as has been said, they would in no way affect its operations or interests.

We take as our point of departure the existing provisions of the Internal Revenue Code under which the test of a foundation's right to tax exemption, and of a donor's right to tax deduction, is whether the foundation is organized and operated "exclusively" for charitable, educational or other specifically authorized tax-exempt purposes. For decades the application of this standard has supported and stimulated such an outpouring of private funds for public purposes as the world has never witnessed in any other time or place. In 1960 the general criterion

of "exclusive" operation for tax-exempt purposes was supplemented by legislation specifically restricting self-dealing and income accumulation, and taxing unrelated business income. Before our lawmakers move to develop additional specific restrictions, which can hardly fail to restrain the philanthropic impulse of donors, we urge them to weigh the possible benefits which may accrue from such legislation against what Justice Holmes called the "interstitial costs" of such action.

In the discussion which follows reference will be made to the roles of state attorneys general and state courts in the supervision of foundations. Laws based upon the Uniform Supervision of Trustees for Charitable Purposes Act, or having the same general purposes, have been enacted in recent years by twelve states, including such important jurisdictions for foundations as New York, California, Illinois and Michigan. This pattern of legislation is likely to become more widespread.

In New York, where many of the larger foundations are either organized or have offices, a Charitable Foundations Division has been established in the Attorney General's office. We are informed that during 1968 more than 10,000 charitable corporations and trusts filed with that office the required annual reports, which generally include all of the information in the Treasury's Form 990-A plus certain additional material. During 1968 filing fees collected by the Division amounted to over \$300,000, which helped to maintain an efficient staff that examined the returns of organizations having aggregate assets of eight billion dollars. Not all of these, to be sure, were private foundations, but it is safe to say that their funds made up a substantial part of the asset figure.

Thus it is evident that the states are rapidly assuming their responsibility for the supervision of foundations. There is no longer the vacuum in this area which in the past the Federal government tried to fill through the exercise of its taxing powers. While doubtless well adapted for the protection of the revenue, those powers are clumsy and ineffectual instruments when it comes to the supervision of charitable organizations. The only penalties which the Federal government can impose for misconduct in the operation of a tax-exempt foundation are the revocation of its tax exemption or the imposition of a tax on part of its income. Who bears the brunt of these penalties? Not the trustees or officers who were the wrongdoers, but the intended beneficiaries of the violated trust. By diverting income away from the charitable purposes of the fund, the remedy compounds the wrong. Under state law, on the other hand, even in those states which have not yet adopted legislation requiring registration and reporting by charitable organizations, the attorney general is armed with a whole arsenal of weapons which he can use against the individual wrongdoers, for the benefit rather than the detriment of their victims.

The trustees of a charitable foundation are, of course, fiduciaries, charged as such with the responsibility for prudent employment of its resources to further the charitable purposes specified in its charter. The state attorney general (unlike the Treasury) may invoke the equity jurisdiction of the state courts to enforce these fiduciary responsibilities. Traditionally the court of equity may tailor its remedy to fit the wrong. For example, it may remove a trustee from office, surcharge a trustee for causing a pecuniary loss to the foundation, and in extreme circumstances even appoint a new trustee or trustees. It is not contended that the availability of such state action diminishes with the need for appropriate provisions in the Federal tax laws. The urgency of the need has, however, been reduced by the states' assumption of responsibility in this area, and the state is in a far better position than the Treasury to exercise and enforce supervisory powers over private foundations.

We now turn to a discussion of the Treasury's six "Major Problems" (in the order followed in the Report) and the remedies proposed for those problems.

A. SELF-DEALING

When a donor has contributed funds to a tax-exempt foundation and taken a tax deduction for his gift, the funds are irretrievably committed to the tax-exempt purposes of the foundation. Any use of the funds for the benefit of the donor or his family or associates, since it would be inconsistent with the requirement of operation "exclusively" for the authorized tax-exempt purposes, would expose the foundation to the loss of its tax exemption and would make its trustees who participate in the misuse of funds liable for the breach of their fiduciary responsibilities. In the light of evidence that these sanctions were not a sufficient deterrent against such abuses of the tax-exemption privilege, the Congress

In 1950 enacted the supplemental legislation already mentioned requiring that certain transactions between a foundation and its donor must be conducted at arm's-length and upon reasonable terms. Contending that even these provisions are too difficult and expensive to enforce, and stating that "[t]he belief is becoming more widespread that the creation of a private foundation is a tax dodge used by some taxpayers to obtain tax advantages," the Treasury Report urges a sweeping prohibition of all transactions between a private foundation and a donor involving the transfer or use of the foundation's assets (subject to three minor exceptions).

Perhaps there is no serious objection to forbidding a foundation to make loans to its donor. However, he might be pardoned for a wry note of protest against a rule quarantining him as ineligible to borrow the same amount that the foundation was willing to loan to others, if he was willing to furnish similar adequate security and pay the same reasonable rate of interest as the others.

In its effort to scotch the bad-actors, the Treasury would even deny to private foundations the right to employ a technique which private universities have found productive in their fund-raising efforts, the purchase from a donor at his cost of securities having an appreciation in market value which the donor may claim as a tax deduction. Is it necessary to deny to private foundations this opportunity to increase their charitable funds? The Treasury supports this proposal on the ground not that such transactions are improper for foundations but that they "give unusual benefits to the donor. . . ." But assuming the donor would be entitled to the benefit of a tax deduction for the entire value, cost plus appreciation, if he gave a block of stock outright to a foundation, what are the "unusual benefits" in allowing him to make a gift of the amount of the appreciation alone and take a deduction for that amount? The donor has parted with the value, the foundation has received it. The amount of funds donated to the tax-exempt purposes of the foundation has been increased by the amount of the appreciation in value. On balance, how would the public interest be served by forbidding such transactions or other arm's-length transactions between a foundation and its donor which involve no departure from the basic standard of operating "exclusively" for its authorized tax-exempt purposes?

B. DELAY IN BENEFIT TO CHARITY

The second of the Major Problems discussed in the Treasury Report relates to the income and investment policies of private foundations. The Treasury proposes that in order to qualify for tax exemption a private non-operating foundation be generally required to expend for its tax-exempt purposes the full amount of its current net income (other than long-term capital gains) by the end of the year following the year such income is received, and that such expenditure in any event shall be not less than a fixed percentage (the "income equivalent") of its investment assets. The existing law denies exemption if an organization's accumulation of ordinary income is "unreasonable" in amount or duration, or if the organization's income accumulation is invested in such a manner as to "jeopardize" the tax-exempt purposes of the organization.

In place of the rule of reason which now governs the distribution of a foundation's income, the Treasury's new proposals would substitute a fixed deadline for the distribution of current income that has been actually received and would apply that deadline also to non-existing income in such additional amount (determined by the "income equivalent") as would have been received if the foundation had chosen to invest its funds in accordance with the Treasury's judgment as to a proper yield.

Both of these proposals, the deadline for income distribution and the "income equivalent" rule, would control foundation trustees in areas of major fiduciary responsibility.

The accumulation of income by trustees of a charitable fund has never been regarded as an abuse *per se*. On the contrary, the postponement of income distributions and the reinvestment of the accumulated income under competent management has often given public causes far greater eventual benefits than would have been derived from immediate distributions of the current income as it was received. The charitable bequest in the will of Benjamin Franklin, providing for income accumulation during a period of 200 years, is only the most famous example.

Is it not more important to have foundation income spent wisely, after judicious appraisal of competing needs, than to force a foundation to meet a deadline

which may be incompatible with a well-considered philanthropic program? The existing standard of reasonableness allows for some flexibility, which is often highly desirable in the administration of foundation funds.

The proposed "income equivalent" rules would tend to influence trustees of private nonoperating foundations to invest in securities having a yield of not less than a rate fixed by the Internal Revenue Code or Treasury regulations. The Report suggests, "[b]ased upon existing market conditions" a range of 3 to 3½ percent. We are not aware of any previous effort by government, Federal or state, to impose by law any penalty on a charitable trust if its fiduciaries fail to realize a specified yield on its investments. It has, we believe, been generally recognized that the public interest is best served by allowing trustees of charities the greatest possible freedom of choice in selecting their investments, limited only by the "prudent man" test.

Admitting that the "income equivalent" rule is intended to discourage foundation investment in growth stocks, the Treasury Report argues that such investments result in an "indefinite postponement of benefit to charity" which is "inconsistent with the principle that charity should receive some current benefit from gifts to private nonoperating foundations." When and by whom was this "principle" emphasizing "current" benefit established?

The growth investments made in the past decades by foundation trustees who regarded long-range benefits as at least as important as the current return have helped many foundation endowments to meet the expanding needs of today. What about the next generation? Should similar long-range provision for their needs be discouraged by law? Reportedly the stock most widely held at present by institutional investors is IBM, with a current yield of considerably less than the suggested "income equivalent" of 3 to 3½ percent. The former treasurer of Harvard University is quoted as regretting that some of the University funds had not been put into Xerox—an even lower yield stock.

Such growth stocks are not the only investments which the "income equivalent" rule would tend to exclude from foundation portfolios. Minority groups, seeking to help themselves by establishing their own business enterprises, are finding that the conventional sources of loans and equity funds are seldom open to such high-risk and low-yield ventures. In these circumstances foundations are being urged to furnish the needed capital, subordinating considerations of risk and yield to the hoped for long-range social benefits. Questions have been raised as to whether such "social investments," as they have been called, would be consistent with the tax-exempt purposes of a charitable foundation and with the fiscal responsibilities of its fiduciaries. If these questions are satisfactorily resolved, however, the "income equivalent" rule would still create a further deterrent against making such potentially low-yield investments.

Would not the public interest be better served by continuing the existing rule against unreasonable accumulations, which gives foundation trustees some leeway in the exercise of their fiduciary responsibilities, rather than by adopting the more rigid controls proposed by the Treasury?

C. FOUNDATION INVOLVEMENT IN BUSINESS

Noting a number of examples of foundation activity which are clearly inconsistent with the requirement of operation "exclusively" for tax-exempt purposes, the Treasury under this heading proposes that no private foundation be permitted to own 20 percent or more of the voting power or of the value of the equity of any unrelated business.

We agree with the provisions of existing law and regulations which restrict a foundation's right to engage in business activities and impose partial or complete loss of tax exemption as the penalty for such conduct. It is our view, however, that the Treasury should be supplied with the funds needed to enforce those provisions and to deny tax exemption where they are disregarded, and we question the need for the extreme measure which is proposed. A prohibition against holding 20 percent of a business would not only in a number of cases raise serious problems for foundations required to dispose of existing holdings in excess of that amount. The 20 percent limitation would also deter potential donors, naturally unwilling to create such problems, from making future gifts of this dimension. Many of the foundations which have a record of major contributions to the well-being of mankind, a record unblemished by any of the abuses described in the Treasury Report, were established by the contribution of a block of stock which would violate the proposed limit. A number of them

still hold shares in excess of the proscribed amount, which thanks to the donor's management of his business often show a large appreciation over the value on the date of gift.

Is the Congress prepared to cut off for the future this major source of charitable funds? As has happened so often in the past, the wealth of a philanthropic-minded donor may consist almost exclusively of his interest in the business he has built up from scratch. Whether it has become a giant industry or a prosperous family enterprise, it is all he has to give. The 20 percent limit may be far less than he is willing to part with, if we measure future probabilities by the action of donors with the great fortunes of the past. Is it necessary for society to accept this loss as the price of avoiding foundation involvement in business? Why not first put teeth into the enforcement of existing law, which as we have seen already restricts a foundation's engagement in business? Before placing this proposed obstacle across the stream of American philanthropy, let us at least take the time to find out whether the desired result cannot be attained at lesser cost.

B. FAMILY USE OF FOUNDATIONS TO CONTROL CORPORATE AND OTHER PROPERTY

The Treasury Report, citing examples of the family use of foundations to control a business, proposes that where a donor gives an interest in a family corporation or other controlled property to a foundation and the donor and related parties maintain "control" of the corporation or other property after the gift, no income-tax deduction for the gift will be allowed until the foundation disposes of the gift or devotes it to active charitable operations or the donor's control over the corporation or the property terminates.

The Report also suggests, as a possible alternative, that the donor's income-tax deduction be postponed only where, in addition to control of the business or property by the donor and related parties, there is a retention of "substantial influence" upon the donee foundation.

The Report indicates that one of the principal evils which this proposal is intended to prevent is delay in the passing of a benefit to charity, after the allowance of a deduction to the donor. But is this freedom from delay such an essential factor that the law should in effect block the gift by postponing the donor's tax deduction, rather than tolerate the delay in the interest of the eventual increase in the total of charitable funds? And is it true that delay in enjoyment of the benefit will necessarily or even ordinarily result from a gift of an interest in a family corporation, even though the donor retains control of the business? The donated interest may be one which is productive of a reasonable rate of income without further action on the part of the donor or the corporation as, for example, in the case of preferred stock or of interest-bearing indebtedness. Or suppose that a gift is made of a part interest in a piece of rent-producing real estate or some other income-producing property. In each instance the donor's retention of control of the business or property will quite clearly prove to be no obstacle to the foundation's receipt of a fair return on its property, which it will be obliged to pass on to charity in due course.

The postponement of a tax deduction to the donor under the conditions set forth in either of the Treasury's proposals can hardly fail to deter potential gifts to foundations and thus impede the flow of charitable funds. But as has been seen, it is entirely possible for gifts made under these conditions to be devoted exclusively to a foundation's tax-exempt charitable purposes. In these circumstances we believe the provisions of existing law are adequate to protect the public interest.

C. FINANCIAL TRANSACTIONS UNRELATED TO CHARITABLE FUNCTIONS

Under this head the Treasury has proposed limitations on certain financial transactions by foundations which are felt to be nonessential to either their charitable or their investment activities and may result in the exposure of foundation assets to unnecessary risk of loss. The transactions in question are as follows:

Borrowing.—Here the proposal is for a flat prohibition against borrowing by foundations for investment purposes and limitation of foundation investments to contributions and income produced by contributions.

Lending.—The Treasury proposes that foundation loans be confined to categories which are "clearly necessary, safe, and appropriate for charitable beneficiaries."

Trading and speculation.—It is proposed that there be a prohibition against "any kind of trading or speculation" by foundations with any of their assets.

We are of course in accord with the underlying concept here of assuring prudent stewardship of foundation assets and protecting them against unreasonable risks of loss. While borrowing and lending are common techniques of everyday usage in the investment world and not necessarily at all speculative in nature, we believe the Treasury proposals with regard to these two types of transactions would be generally acceptable limitations upon the uses of foundation assets in the investment context.

With regard to trading and speculation, we believe that any legislation which is enacted in the area of this proposal should define the scope of the proposed limitation with extreme care, having in mind that "trading" and "speculation" are terms which are capable of many different shades of meaning. Short sales, or dealing in "puts," "calls," and "straddles," are obviously inappropriate maneuvers for fiduciaries responsible for the investment of a charitable foundation's funds. But the Treasury Report condemns in the same context "[f]oundation trustees . . . who shift their positions in securities frequently . . ." and in a discussion of an example of what the Treasury considers an excessive rate of turnover, reference is made to a Securities and Exchange Commission report indicating "average rates of turnover for foundations to be from 1 to 2 percent." Statutory controls on security turnover, if they had adopted such "average rates" as a standard, would have hampered The Rockefeller Foundation's policy of diversifying its investment portfolio by periodic sales reducing the large blocks of stock received from Mr. Rockefeller and replacing them with other stock. Largely as a result of these transactions The Rockefeller Foundation has had annual turnovers in some years of from 5 to 10 percent. Instances may also occur when conservative investment policy would dictate quick turns in the market.

These examples point to the difficulty of drafting restrictions which would not hamstring honest and competent trustees in dealing with a foundation's portfolio. So also, any new legislation should be so drawn as not to inhibit a foundation's use of its funds in a manner which, although not meeting the fiscal criteria of prudent investments, would nonetheless qualify, as, for example, the "social investments" referred to earlier in this memorandum.

F. BROADENING OF FOUNDATION MANAGEMENT

The Treasury proposes that after a private foundation has been in existence for 25 years its management should be independent of the donor and "related parties." This independence is to be achieved by limiting the donor and related parties to 25% of the managing board.

The "abuses" at which this proposal is aimed are said to be three fold: the exertion by donors of influence over foundations which results in the diversion of foundations to purposes not entirely charitable; the perpetuation of the existence of foundations; and the dangers inherent in narrowness of foundation management.

In the case of the first of these, the exertion by donors of improper influence over foundations, the present Federal tax law and, in many states, the provisions of local law already contain the means of correcting abuses of this kind. Thus, every foundation's continued tax exemption is dependent upon its operation "exclusively" for charitable or related purposes—and a foundation which is being misused by a donor for his personal ends has clearly ceased to satisfy this basic requirement for tax exemption. Moreover, conduct such as this is certainly a matter over which the states should exercise and, in increasingly large numbers are in fact exercising, their regulatory jurisdiction. Is it likely that the enactment of the Treasury's proposal would accomplish significantly more than can be accomplished under existing Federal and state law and regulations, if strictly enforced?

In any event, we seriously question whether the proposed reduction of the donor's "representation" on the board of trustees will be substantially productive of the claimed beneficial effects in any of the three problem areas to which the proposal is addressed or that it is generally desirable that a revenue statute should impose uniform restrictions of this nature upon foundations. Experienced foundation executives could cite many examples of boards of trustees on which the fidelity to the founder's broad philanthropic ideals exhibited by members of his family and by his associates has been a major influence preventing instead of promoting the development of the "narrowness of view and parochialism"

which the Treasury regards as a threat. And the Treasury's thought (which is no more than an assumption) that an "independent" board might be more favorably disposed towards winding up a foundation's affairs, thereby reducing the number of tax-exempt organizations over whom the Internal Revenue Service must exercise surveillance, does not convince us of the soundness of the underlying premise that a short life is preferable to a long one.

CONCLUSION

The Treasury Report has made an undeniable showing that some tax-exempt foundations and their donors have abused the favored treatment presently accorded them by the Federal tax law. It is equally undeniable that much of the misconduct exposed in the Report involved action by foundation trustees in violation of their fiduciary obligations enforceable under state law. The best means possible should be sought to bring these abuses and offenses to a halt and to prevent their recurrence.

In examining the Treasury's proposals to that end, this memorandum has raised questions as to the need for such sweeping and indiscriminate rules, having an impact on good and bad alike, when the existing provisions of the tax law already provide sanctions that might be enforced rigorously, but selectively, against the wrongdoers, and when state officials are exercising, to a rapidly increasing degree, their even more effective supervisory jurisdiction over charitable fiduciaries.

We repeat our concern that the adoption of the Treasury proposals would unnecessarily stem the tide of philanthropic giving.

Mr. HARRAR. Thank you, sir.

The CHAIRMAN. Let me ask you, it is your view, I take it, that so long as a foundation is acting strictly in accordance with the provisions of section 501 of the Internal Revenue Code no part of its income should be taxed to any degree.

Mr. HARRAR. Mr. Chairman, I have for a long time lived under the conviction that private philanthropy of the highest type has long been encouraged by our pluralistic society, including Government, as a very important aspect of the American cultural and democratic way.

I have felt that wealthy people, less wealthy people, individuals, the man on the street, have throughout our history been encouraged to share their sustenance with others less fortunate. There are a variety of ways this can be accomplished. One of them under consideration here today, is the foundation large or small.

If someone cares to establish a foundation and furnishes proper evidence of his intent and purposes and all financial details, and if its charter purposes are approved by the Government of our country, then it does not follow to me that it should pay part of its income in taxes.

Surely, all the resources are still insufficient—along with those of foundations of Government—to totally satisfy the vast needs of our Nation and our friends elsewhere for economic, social, educational, and other important developments of the human condition.

The CHAIRMAN. One of the things that I wanted to ascertain in connection with the 17 or more areas to be covered in the hearings is whether or not conditions today justify a continuation of the preferential treatment which was accorded by Congress sometime in the past.

Now, evidently, Congress felt with respect to foundations when the initial provisions of section 501 were written into the law that there should be no tax with respect to the income of a foundation because of the charitable nature of its activities. You are saying to me, I assume, that the situation that existed then continues to exist today. That regardless of the changes that may have occurred otherwise in our

environment and in our world there should be no tax paid to any degree by a foundation upon any of its income or because conditions now are similar to or at least sufficiently like the conditions that existed at the time this exception was written into law.

Is that your position?

Mr. HARRAR. Mr. Chairman, I believe in constant reexamination and review. I don't think anything should be frozen in perpetuity regardless of what it may be. I think my position today would be that despite the kinds of change that have taken place in our Nation and are taking place in our Nation and in the world, there are still extraordinary areas of concern and need and opportunity in which private philanthropy can play a very important, flexible, and significant role, and I do not think that any changes—there are many changes taking place—are such, if this is what you are suggesting, sir, that the Government needs this minimal amount to tax moneys so badly that foundations should begin to pay taxes.

Some future change might bring this about, but under what circumstances I couldn't imagine. Today, I would not feel that this ought to be in area of action.

The CHAIRMAN. How do we continue to justify a foundation's engaging free of tax in philanthropy that I, as an individual could not do by taking a charitable deduction from my income?

Mr. HARRAR. You can, as you know, sir, take a deduction in your income tax for many of the same kinds of contributions that foundations make. You are perhaps referring to the fellowship phenomenon. That is a programing activity of foundations which I admit is not open to individuals. The Rockefeller Foundation has a fellowship program which has been carried on since 1914, I think, under which it reports all of its grants, who the individuals were, where they went, and what the purpose was. That kind of activity is a proper part of a very complex and I think, as I have mentioned here, demonstrably effective program—if this is the area you are referring to.

The CHAIRMAN. I am not referring to any specific area, Mr. Harrar. I am just referring to the fact that if I want to engage in such philanthropic activities I can't give 20 percent or 30 percent of my income and deduct it.

Mr. HARRAR. I see, sir.

The CHAIRMAN. But if I want to engage in those activities I am required to set up a foundation which can do so.

Now, why should a foundation be given greater latitude in philanthropy that I am given as an individual?

Mr. HARRAR. I suppose I would have to say, sir—

The CHAIRMAN. I have no view about it. I am trying to learn.

Mr. HARRAR. That these are provisions I think the Congress has enacted over the years—that you and I may give of our own funds only up to the limit as established in the tax laws.

The CHAIRMAN. I am not talking about the limits. I am talking about the areas to which I can give as an individual compared to the areas that a foundation established for philanthropic purposes can give.

Mr. HARRAR. I think you can give in any area that a foundation gives except to a person.

The CHAIRMAN. No, I can't.

Mr. HARRAR. In other words, you can give to a hospital, to a church, or to a school.

The CHAIRMAN. No, I can't give my money to a foreign government.

Mr. HARRAR. And not get tax deduction, that is right.

The CHAIRMAN. I can't give my money to some foreign activity and take a charitable deduction for that gift.

Mr. HARRAR. That is right.

The CHAIRMAN. And I doubt very seriously that I could extend to some individual some privilege that a foundation can.

Mr. HARRAR. Perhaps not.

The CHAIRMAN. And deduct it from my income, regardless of what that individual might be doing while enjoying that largess.

Mr. HARRAR. May I just say that our own organization has always been an international foundation.

The CHAIRMAN. I know you have.

Mr. HARRAR. And the rules which we have been enjoying state that we can only contribute to institutions which in this country are tax exempt or overseas institutions which if they were in this country would be tax-exempt.

The CHAIRMAN. I am not criticizing your operation, you understand. I am raising some very fundamental questions that are raised with us from time to time by those who are forced to pay taxes, particularly when we enact a 10-percent surcharge.

Mr. HARRAR. I can see that.

The CHAIRMAN. Maybe it should be called something else, but when that same rule doesn't at least apply across the board we get some questions occasionally about the fairness of our act. I am interested in each of these areas and, I repeat, in finding out whether those people or those organizations, who enjoy a preference in treatment feel that circumstances today justify a continuation of that preference to the extent that circumstances evidently existed to justify the initial enactment of those provisions.

Mr. HARRAR. May I just add one thing, Mr. Chairman? I think a foundation clearly distinguishes its privilege from an individual privilege. It is an institutional privilege as contrasted to an individual privilege.

The CHAIRMAN. No, it isn't, and of course you operate in what you think is undoubtedly the public interest.

Mr. HARRAR. We hope so, certainly think so.

The CHAIRMAN. I am sure you do. Are there any further questions? Mr. Byrnes.

Mr. BYRNES. What is the general charter purpose under which the Rockefeller Foundation operates?

Mr. HARRAR. If you will permit me to state this first, our founder, in order not, as he said, ever to apply the dead hand to any of his charities, made our charter purpose just as broad as possible, saying in effect, the trustees will establish the policies and practices, toward the well being of mankind.

Then the trustees, within those very broad terms of reference, have to identify the areas of concern which this foundation should pursue and determine its policies.

The first part of our history was principally in the area of medicine and public health. As the program has evolved it has been redefined

in contemporary terms, and we have moved into basic science, the pursuit of knowledge in certain limited, described, terms, agriculture and nutrition, university development, and so on. So I think I would like to say that ours has been an evolving program which has moved in specific areas of human concern and as these then began to be taken over by others has addressed itself to new problems and has continued in this way into the contemporary scene.

We are hoping we might be pioneers—this is perhaps immodest—and develop patterns and programs which other agencies with larger funds—usually public agencies—would then extend and expand.

Mr. BYRNES. The reason I ask this is because section 501 has definite limitations. Now, I agree that it is still very broad, including educational charitable purposes and so forth, but the welfare of mankind is, I think, much broader than the statute, depending on whom the individual is that is interpreting what is good for mankind. I wonder about the degree to which your trustees in their operation look to the statute as a guideline of some limitation in this operation, and whether they still just look to the original general objectives of the donor.

Mr. HARRAR. They always look very specifically at programs. I say this is a very broad statement, but just to deny any influence. For example, today our trustees have fixed for us five areas of programs. That's all we have. We don't have 50. We don't have 100.

Mr. BYRNES. Can you furnish those for us?

Mr. HARRAR. Surely.

Mr. BYRNES. What I am trying to get at is, since you have operated over a long period of time and you have had great experience in this area, whether you have developed or attempted to develop definitions of your own as to what you envision is within appropriate educational activity or what is an appropriate charitable activity; in other words, have you developed your own definition as to what you think the words of the statute means?

Mr. HARRAR. Let me say I will describe the five areas.

Mr. BYRNES. Do the trustees have any fundamental rule of thumb that you use in defining the word "educational," or defining "charitable,"?

Mr. HARRAR. May I first say we have never felt that we are engaged in charity, strictly speaking. We have not given for charitable purposes in the general meaning of that term. Ours have been what we call philanthropic activities; we have worked in education, research, training, and action programs, among the five areas you asked me to mention.

We are tremendously and deeply interested, as you learned from the paper I read, in the conquest of hunger. We are one of the earliest organizations to do basic research in the improvement of food supplies.

We consider this a research cum social activity.

Mr. BYRNES. Do you consider that basically scientific?

Mr. HARRAR. That's right, it is scientific. It all evolves from scientific research and its application.

A second element of our program—although not second in any order of priority—is our concern with the problems of population throughout the world. Many of us feel that this is a tremendous human concern which we are going to have to face as it increases more or less explosively in the years ahead.

Mr. BYRNES. What I would like to determine is: Which one of the purposes for which an exempt organization can be established is that particular function? The language to which I am referring is found at section 501(c)(3), where it says:

Foundation(s), organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals, * * *

Now, those are the areas for which we say foundations have to be operated exclusively in order to get this benefit, and I just wondered, now—this is a matter of interest—under which area this particular activity falls.

Mr. HARRAR. Scientific and educational. We are very deeply involved, for example, in research in human genetics, human biology, and reproduction, and in communications and education in this area.

Mr. BYRNES. Thank you. You said there were some others.

Mr. HARRAR. There are five. We have a philosophy, a very strong philosophy held for many years, that it is important for all nations to have strong, viable, and improving educational institutions, and that one of the most important contributions we can make to developing countries is to work with their institutions of higher education so that over a period of time they will improve the quality and quantity of their products in medicine, law, health, et cetera, et cetera, and we have worked, as I have said here, with a number of overseas educational institutions. This is education.

Mr. BYRNES. Right.

Mr. HARRAR. A fourth one—again I am not speaking in order of priority—is equal education in this country, which our sister board, the General Education Board (now liquidated), worked in for many years.

We have carried on and refined and developed our own techniques and approach to equality of opportunity. We have been very heavily involved in working in education and related activities with the minorities of all sorts, with Negro groups, Mexican Americans, Indians, and with institutions of higher education and of secondary education.

This is a socioeducational and socioeconomic activity of ours.

Mr. BYRNES. But there, you have expended it again, and I am trying to limit this to the statute itself. You consider this activity educational?

Mr. HARRAR. This is the major component, education; yes. We don't think of education necessarily always being institutional education, but education, yes, by and large.

And also I should say science in the sense that we are very actively involved in health programs in the same area.

Mr. BYRNES. It doesn't say anything about health in here. I am not quarreling with whether that is a great objective.

Mr. HARRAR. I am talking about applications of medical science.

Mr. BYRNES. Is that the scientific aspect you are talking about?

Mr. HARRAR. We think it is the application of medical science.

Mr. BYRNES. Or is it testing for public safety?

Mr. HARRAR. I guess I couldn't get it under that umbrella. I wouldn't think so.

Mr. BYRNES. I am trying to find where these areas get into the statute.

Mr. HARRAR. I think this is both science and education.

Mr. BYRNES. Did you mention the fifth?

Mr. HARRAR. The final one was our work in what we call cultural development, observing that in our country—this is all in our own country—there are increasing amounts of leisure time. We would like to do what we can to help provide greater opportunities for more people to participate in or be exposed to more of the better things in our cultural surroundings.

This would be the humanities, which you have called—as you said—literary.

Mr. BYRNES. Educational, and literary purposes. These activities would be educational and literary?

Mr. HARRAR. Yes. I think education would occur in the concert hall, on the dance platform, in the theater; that such activities are a part of the cultural education of the Nation. We believe we are within the terminology of the statute.

Mr. BYRNES. What I am trying to get at, and I intend to pursue this with some of the other foundations is whether anybody is paying any attention to the statute. Perhaps they figure it is just so broad that they don't have to worry about it, and all they look to, really is the general official charter purposes as outlined by the donor, and these purposes and concepts can be as broad as the world.

Mr. HARRAR. We don't think so. In our particular case, as I said, we have always defined our areas of concern. We have always reported them with complete detail each year; submitted them to our peers. I think they have always fallen within the purview of our idea of the philosophy of private philanthropy for the benefit of mankind, and that we have not just assumed a license to go anywhere, in any direction.

Mr. BYRNES. Have you ever been audited by the Internal Revenue Service?

Mr. HARRAR. Twice in the last 3 years, I believe, sir.

Mr. BYRNES. Twice in the last 3 years.

Mr. HARRAR. Maybe I should say twice in the last 3 or 4. Twice in the last 3 or 4 years we have had auditors sent to us from the Internal Revenue.

Mr. BYRNES. What do they do? Do they go through all of your books?

Mr. HARRAR. You have just moved outside of my sphere. What I have done is just referred them to our comptroller and our other financial people, and we have just opened everything we have to them. They do just whatever they want to do.

Mr. BYRNES. I understand that. They do that with almost anyone.

Mr. HARRAR. Yes.

Mr. BYRNES. But what I would like to know in the case of foundations is what they, really do and how thorough is their examination?

Mr. HARRAR. I don't, really, know how complete an audit they did, how long they took. I just know we tried to give them every facility they asked for and have never had any criticism back from them. I don't believe there is any reason why we should expect that. We are prepared for audits. We have an outside audit of our own every year and we welcome one from the Revenue Service at any moment.

Mr. BYRNES. You suggest the desirability of, well, more policing of foundations generally.

Mr. HARRAR. Yes, sir.

Mr. BYRNES. We had a recommendation made yesterday afternoon concerning the desirability of paying a fee in connection with the filing of the annual report and the informational return, to really cover the administrative costs of that policing.

Do you have a current reaction to that suggestion?

Mr. HARRAR. We do pay now—if I guess the amount I will make a mistake—a fee to the State of New York, as you know, in filing with the attorney general's office. I cannot imagine, personally, any reason why we shouldn't be perfectly willing to discuss that possibility also in Washington.

We pay for auditing, anyway, from the outside and I don't see any particular reason why we should insist that a public audit be paid for with Government funds as a public service.

Mr. BYRNES. The chairman had mentioned the committee's desire to compare current situations with these past situations when some of these provisions were first put in the code. It seems to me that we have one situation that is different today than when at least some of these provisions were put in, and that situation is the high burden of meeting Government costs, the high burden of taxation. The benefit that is given to foundations, at least on a quantitative basis, is certainly much bigger today than it was when your foundation was established back in 1918.

Mr. HARRAR. Mr. Congressman, I had been talking to some of my colleagues earlier and we were debating that point and I asked my own treasurer to give me a few figures. I am not going to quote these as facts because these were tentative.

We feel that we are probably not much better off today in our buying power than some time 15 or 20 years ago, because what we buy primarily are services of professional people whose salaries have gone up rather substantially and the expensive and sophisticated equipment required for research and education. It has not been possible for us to increase the size of our program in proportion with the increase in our income.

We have somewhat larger programs, yet, but one of our colleagues says that our buying power is a little off as a matter of fact. I couldn't illustrate that with figures at this moment, but certainly during this period, when the portfolios of foundations have increased substantially and their income as well, the size of their dollars has diminished.

Mr. BYRNES. I appreciate that the dollar value has changed, but the point I was referring to was the fact that the benefit that we have accorded to foundations through tax exemption, while once, to a degree, an incentive is now even more of a benefit. This is due to the increasing tax burden and the still-exempt status of the foundations.

Mr. HARRAR. This is not oblique I hope, but the demands on private philanthropy today as contrasted to 25 or 50 years ago are greatly complicated by two facts. One is a change in the nature of our society and the other a change in the nature of our population.

Mr. BYRNES. But today you also have the Government itself, through the use of taxes collected from other people, engaging in many of the activities for which we depended almost entirely upon private op-

erations in the past. In the scientific and the medical fields we have the National Institutes of Health; we also provide Federal grants to colleges for research and studies.

I realize that nearly everything has become more complex, but I think you have to consider that Government has also moved into this area, so that today the same degree of reliance on the private sector no longer exists.

I am not suggesting what is right or wrong at this point, but I think we are closing our eyes to a situation if we don't recognize this change in circumstances.

Mr. HARRAR. I was delighted to hear you say, sir, that our Nation has, perhaps earlier more than now, placed reliance on private philanthropy—that a role has been played, a useful role, which has induced or helped to induce Government to come in on an increasingly large scale.

Private foundation activity has also been supplemented by the establishment of a Government foundation called the National Science Foundation, which is patterned after private philanthropy. As matter of fact, the National Institutes of Health in their present form are also patterned after the private foundations, though not in their earlier form.

Mr. BYRNES. Whenever anyone comes around with some new program for government action one never hears any appraisal of what is being done in the private sector. One would almost think that there exists a vacuum.

Yet, we now come and we talk about the fine purposes served by the private sector, by the foundations, yet we don't hear about the fine work of foundations in the private sector when somebody is advocating that the Government get into some new program or expand on some existing program. Thus, it would appear as though our efforts lacked consistency and coordination.

That has concerned me a great deal. With respect to some of the Government programs, there would seem to be an effort by Government to close its eyes to that which is being done in its particular area of concern by private resources.

Mr. HARRAR. I feel, myself, that greater coordination would be a tremendous accomplishment, if all concerned would be willing to do all they could. I should mention that in our own organization we have in many circumstances worked informally with a variety of Government interests in the accomplishment of mutually desirable objectives.

I will give you examples if you wish. I insist in my own mind that the Government activity in these areas and the private activities in these areas are complementary, not mutually exclusive, that we with our smaller funds, relatively much smaller funds, with the flexibility and freedom and sustained effort that we can maintain for a sustained period of time, can sometimes initiate, sometimes pioneer, sometimes inaugurate, but always collaborate and cooperate, not necessarily in formal fashion, but in terms of the objectives desired.

Mr. BYRNES. I sometimes wonder whether some of these governmental activities ever take advantage of the experience and know-how of these foundations or of the private sector programs which have developed in particular areas. They just start out fresh and new as though there hadn't been any activity in the field. I am not too sure that the

foundations have been awfully fast to come in to volunteer their services or to make suggestions based on their own experience.

Too often the foundations would appear to follow an independent road. If the Government were to move in, then they would move into some other area. They file their papers away, and then go off someplace, and that is the end of that.

Thank you very much.

The CHAIRMAN. Mr. Ullman.

Mr. ULLMAN. Turning to another dimension of this problem, Mr. Harrar, a lot of people are concerned about the timelag between the actual deduction and the expenditure of the funds. Would you comment on that problem? I don't believe you did in your paper.

Mr. HARRAR. No. As you would know, I have to comment from no experience of my own because we don't have a problem of timelag. We have always spent all our income and a good deal of principal as we go along.

Mr. ULLMAN. Repeat that again.

Mr. HARRAR. We have never had any timelag in the expenditure of our income from investments. We have always appropriated all of our income each year as well as substantial amounts of principal over the years, amounting now to \$230 million.

So this does not present a problem to us. I thought you had in mind, sir, those foundations which perhaps in their stages of formation and program development are unable to spend all of their current income wisely until they have time to set up a program to be tested and to find out the directions in which they wish to go.

I would suppose if their intentions are, within a reasonable period of time, to utilize all of their income for the purposes of their charter, that is, philanthropic or charitable purposes, that some time allowance might be reasonable.

Mr. ULLMAN. But you find no difficulty whatsoever in the management of your foundation in expending your income on a yearly basis?

Mr. HARRAR. Not only that, sir, but we have also gone into principal in each of the last 12 or 14 years as well. I mean we didn't have any trouble spending income. We had trouble handling our philanthropic work within income so we asked our trustees to provide capital to supplement it.

Mr. ULLMAN. Turning to another matter, the chairman of the select subcommittee appeared before this committee. He had two general areas of criticism of your foundation. I will just read very briefly from his statement.

He said about your organization:

It spent \$17.8 million for the benefit of foreign institutions or persons, while individuals and institutions in this country received only \$10.9 million.

The second area of criticism was—

The Rockefeller Foundation spent half as much just running its New York office—\$5.4 million—as it spent throughout the entire nation in 1966.

Mr. HARRAR. Yes, sir. I think I could read a few figures here. We are not able to agree with those figures at all, sir. In 1966 our remittances overseas were \$6.8 million. Our total expenditures that year were about \$35 million.

In 1967 and 1968, partly in our determined effort to assist with the balance-of-payments problems, these remittances were reduced respectively to \$5.4 million in 1967 and \$3.1 million in 1968.

So this ranges from one-seventh to one-tenth of our total expenditures, which is different.

Now, I must say one thing to avoid getting into semantics. We do in many instances, partly because of balance of payments, furnish certain kinds of supplies and equipment—scientific, medical, and so on—to some of the universities we are working with overseas. Almost all of this material is bought in the United States from U.S. firms and then sent overseas to these universities.

We do not consider that an outward payments flow because it is not. All the acquisitions are here, and only the objects themselves are shipped across. But in any case, as I said, our foreign remittances were \$5 and \$3 million respectively in the last 2 years.

Mr. ULLMAN. I appreciate your answer in that regard because we are concerned with balance of payments here, but if you didn't take that into consideration would Mr. Patman's figures be correct?

Mr. HARRAR. No, sir.

Mr. ULLMAN. They would not.

Mr. HARRAR. No, sir. I was hoping—I am not sure this is appropriate; I didn't want to bring the matter up here unless it was brought to my attention—that I could file a statement, Mr. Chairman, on this because I would like to correct—

The CHAIRMAN. It would be very appropriate for you to do so.

Mr. HARRAR. If I might I would like to file a rather full statement if I may respond to the testimony you heard yesterday.

The CHAIRMAN. We will welcome such a statement.

Mr. ULLMAN. It will be part of the record here.

Mr. HARRAR. I would hope so.

Mr. ULLMAN. With respect to the other?

Mr. HARRAR. The second one was, sir?

Mr. ULLMAN. The expenditures in the New York office.

Mr. HARRAR. Oh, yes, sir. Our New York office—I am not sure whether the word was elegant or exotic—our New York office is a modern, efficient, we hope, standard type of business office designed, or at least furnished, for our purposes. The figures I think Mr. Patman referred to are not the overhead cost—I am not sure of his words—of our office. They include the rent and also the salaries of all the staff of that office, including officers, secretaries, and so on who operate it. That is our whole annual expenditure out of that office, not just the cost of furnishing.

I am not quite sure what the words were, but this is the cost of our whole New York operation although the administrative portion turns out, as I remember for last year, to average 7 percent of our income.

Mr. ULLMAN. What he said was:

"The Rockefeller Foundation spent half as much just running its New York office—\$5.4 million—as it spent throughout the entire Nation in 1966."

Mr. HARRAR. I think maybe I can handle that too.

Throughout the entire Nation in 1966, we appropriated about \$21 million.

Mr. ULLMAN. And the cost of your New York office? Is the \$5.4 million approximately correct?

Mr. HARRAR. Only if you include the salaries of the officers who are based there, the salaries of all of our departments and so on—there are about 220 people involved there—plus the rent, plus all of the other overhead costs. Our figure for office costs is less than that, but I would like to file the precise figure with the committee.

Mr. ULLMAN. Would you also include this item in the statement you will file.

Mr. HARRAR. Absolutely. I would like to; yes, sir.

(See p. 271.)

Mr. ULLMAN. Thank you very much.

The CHAIRMAN. Mr. Utt.

Mr. Utt. Thank you, Mr. Chairman. I just had one or two questions. I noted in the opening statement you presented that you indicated that you did not control over 3.39 percent of any corporation.

Mr. HARRAR. Yes, sir.

Mr. Utt. So I assume that you figured that that is a reasonable amount of control to have in any corporation.

Mr. HARRAR. Our trustees, sir, many years ago decided that large blocks of stock we had originally held should over a period of years be diversified in order to avoid any suggestion that we might own enough of any stock to be considered to be influential in the affairs of the company.

We had in our minds 5 percent more or less as a figure that we had felt was a fair target figure for the Rockefeller Foundation. It just happens that as a result of diversification we now hold no more than 3.39 percent of any company, I believe it is.

Mr. Utt. Then later in your statement you indicated opposition to the recommendation of the committee and the Treasury of reducing the control down to not more than 20 percent, not even down to 5 percent, but 20 percent. You did not subscribe to that.

Mr. HARRAR. Perhaps I didn't say it as well as I should, sir. What I had in mind was that I didn't think owning as much as 20 percent of a stock of a corporation of itself was necessarily bad. We just happen to have set standards for our own organization which bring us down lower.

Mr. Utt. Isn't there a tendency of any foundation that is in control of a nonrelated corporation to be more interested in the activity of the corporation and the control and perpetuation of control than they are in the purposes for which the foundation was supposedly made, charitable, educational, and so forth?

Mr. HARRAR. I just don't know, sir, because this has never been an experience of our own. I mean I just don't know what the tendency is on the part of those foundations that do owe their origin to this kind of arrangement.

Mr. Utt. Wouldn't you think that the Ford Foundation is much more interested in the operations and continuation of the Ford Motor Co., than they are in charitable and educational programs?

Mr. HARRAR. The only way I can answer that, sir, from my own knowledge is that I know that the Ford Foundation has been diversifying its portfolio substantially and moving away from major ownership of the stock from which it sprang.

Mr. UTT. Then that brings up the question: In case the Congress does pass a law limiting to 20 percent or even less the ownership of any corporation, how long a time should there be to allow for divestiture of that, especially if it is in a closed area where the market is not great?

Mr. HARRAR. That question I could not hope to answer with expertise. I would only say that it would seem to me that in each case an examination should be made of the particular circumstances and the regulations should reflect that.

In some cases diversification could be accomplished quite readily; in others it might take substantially a longer period of time, by the nature of the situation.

Mr. UTT. Now, I want to make one comment on the chairman's statement that you can do certain things that we can't do, and you can question it a little bit.

Let me say that I have tried to make charitable donations to hospitals and churches and schools in Mexico and have not been granted one nickel of charitable deduction, so I can't do that.

You can do that.

Mr. HARRAR. Our foundation can.

Mr. UTT. Yes.

Mr. HARRAR. Yes, sir.

Mr. UTT. I don't mean you individually. I mean your foundation.

Mr. HARRAR. Yes; we can.

Mr. UTT. There again you come to the privileges that you have, that the ordinary taxpayer doesn't have.

Second, I just want to ask you if your foundation has made any loans or grants to Europe within the last 2 years of money?

Mr. HARRAR. No loan, sir. Never.

Mr. UTT. Do any of your international foundations make grants or loans for students or for any other program in Europe?

Mr. HARRAR. Have we made any grants or loans?

Mr. UTT. Grants or loans for students for scholarships or for any other purpose.

Mr. HARRAR. In Europe?

Mr. UTT. In Europe.

Mr. HARRAR. During the past several years?

Mr. UTT. Yes.

Mr. HARRAR. We do not now have any grant programs in Europe. We had very active and vigorous programs in Europe for many years until European public and private resources took over all of the activities we had worked with them on. There have been a few isolated grants recently. I can't think of a fellow whom we have appointed from Europe in several years. We may have done so for a special purpose. We have a large fellowship program, which does not operate in Europe. That is, we do not as a rule award fellowships to Europeans, although our fellows from Latin America, Africa, or Asia do in some cases study at European Universities. But I couldn't assure you that we have not given any fellowship at all to a European in the last several years.

Mr. UTT. The only purpose of that question was to find out if the foundations consider that they were subject to the interest equalization tax if they sent money in grants or loans to Europe.

Mr. HARRAR. We would not be subject to that law.

Mr. UTT. You would not be subject to that?

Mr. HARRAR. No, sir.

Mr. UTT. OK.

Mr. HARRAR. Under the present law we would not be.

Mr. UTT. That's all.

The CHAIRMAN. Mrs. Griffiths.

Mrs. GRIFFITHS. Thank you, Mr. Chairman. Let me say first that I certainly feel that Chairman Patman would not willingly mislead this committee and I assume that he must have received his figures from something, either in testimony or something put out by your committee.

I suggest we open the record and let him show if there is any difference in the figures he has and those this gentleman gives us.

The CHAIRMAN. Yes.

(The following was received by the committee:)

In Congressman Patman's statement to the committee there appear two statements about the Rockefeller Foundation that I characterized, in response to questions asked me by members of the committee, as inaccurate. The committee has asked me to file an explanation of that reply.

1. Congressman Patman said:

"The Rockefeller Foundation sent 75 percent more money out the country in 1966 than it spent here. It spent \$17.8 million for the benefit of foreign institutions or persons, while individuals and institutions in this country received only \$10.9 million."

The sixth installment of Congressman Patman's report includes a table of the Rockefeller Foundation's foreign payments for 1966, as reported to the Congressman by the foundation. Those foreign payments total \$6,973,204. The \$17.8 million figure referred to by the Congressman is not foreign payments but payments—including those made in this country—for the benefit of foreign grantees. The bulk of those payments was in fact made to entities in the United States—such as suppliers of scientific equipment and universities that provided the services of faculty members to foreign institutions. Only a fraction of those payments were "sent out of the country" to foreign entities.

Furthermore, the \$10.9 million figure referred to by the Congressman was not what the foundation "spent here" but was the total of its payments on grants to domestic grantees. It actually "spent here" \$28.9 million. Therefore the amount actually "sent out of the country" by the foundation (\$6.9 million) was less than one-quarter of the amount spent within the United States (\$28.9 million), rather than 75 percent more.

2. Congressman Patman said:

"The Rockefeller Foundation spent half as much just running its New York office—\$5.4 million—as it spent throughout the entire Nation in 1966 * * *. More than \$5 million went into the upkeep of its elegant offices in New York, but only \$2,374 of its money went into West Virginia."

As stated above, the foundation spent \$28.9 million in the United States in 1966. The \$5.4 million figure referred to by the Congressman in the quoted paragraph is not half of our expenditures in the United States but less than one-fifth as much.

The fraction is even smaller when the \$5.4 million figure is examined. The amount spent for administrative services in the foundation's New York Office, as distinct from the amount spent on its charitable program, is shown in our 1966 annual report as \$2,230,286. The "upkeep" of the New York office, in rent, office expenses, and furniture, equipment, and leasehold improvements, totaled approximately \$750,000. The \$5.4 million to which Congressman Patman has referred includes our administrative costs and also all the costs of planning and conducting—out of our New York office—the foundation's national and international programs, including travel, program officers' salaries, and consultants' salaries. It also includes a nonrecurring payment of \$968,000 to transfer to an outside insurance carrier a fund for vested pension obligations which had until then been maintained as an internal reserve fund.

3. Congressman Vank asked me to supply the committee with an explanation of the fact that the Rockefeller Foundation's 1966 annual report showed total

payments of \$34.9 million, and that our form 990A for 1966 showed "net payments" of \$28.9 million.

The \$28.9 million figure in the foundation's 1966 form 990A, which Congressman Vanik described as "net payments," is payments on grants (line 13—"contributions, gifts, grants, scholarships, etc.") Line 12 of the Form 990A ("expenses of distributing current or accumulated income"), which is required by the instructions to include the expenses of philanthropic operating programs, shows payments of \$6 million. The sum of lines 12 and 13 is the \$34.9 million figure shown in our 1966 annual report as our total payments.

4. Congressman Schneebell asked me to supply the committee with an estimate of the annual income of all the foundations in the country. I have had an inquiry made and have been advised that the best available estimate of total foundation net ordinary income is that set forth in the 1965 Treasury Report: \$680 million. Presumably the figure would be somewhat higher for 1968, but there is no way of obtaining it except to examine all the form 990A's of organizations that can legitimately be called foundations.

5. Congressman Corman asked whether the Rockefeller Foundation offers resources to local governments on a matching basis. The foundation has not in recent years made any grant whatever to a local governmental entity—State or municipal—except for school boards and school districts.

In making that statement I distinguish local governments in their governmental capacity from academic or research institutions that may in a technical sense be governmental entities, as many State universities are.

The question of grants to boards of education or school districts has presented some difficulty to the foundation, because on the one hand the operation of the public schools is clearly a responsibility of government in its governmental capacity, and on the other hand the availability of relatively unfettered funds for educational innovation and experimentation is as important to a public school system as it is to a State university or a private institution of higher learning.

The foundation has made no matching grants to school systems, but it has made a total of \$900,000 available to the board of education of the city of St. Louis, the Cleveland Public Schools, the Minneapolis Public Schools, and the school district of Philadelphia, to enable them to initiate, develop and expand community centered activities, programs, and schools. It has also made \$200,000 available to the Berkeley, Calif., Unified School District for an inservice training program on problems of multiracial education. It has also made a grant in aid of \$15,000 to the Gary, Ind., Community School Corp., for a study of needs and interests of ghetto families in preparation for a school-community program.

Mr. HARRAR. May I say something to that, Mrs. Griffiths?

Mrs. GRIFFITHS. Yes.

Mr. HARRAR. Actually we work closely with Mr. Patman. We have great respect for his zeal and for his determination to perform, himself and his committee, activity which he considers to be his responsibility. This work of his has been going on for a number of years, as you know.

We have made every effort to work as closely as we could with him to give him every kind of information, and I did not suggest for a moment that any difference in figures in terms of any direct intent was deliberate.

It is true as a matter of interpretation that we have felt that some of the figures selected by Congressman Patman do not accurately reflect our utilization of our funds. That is the reason I would like to file a further report.

Mrs. GRIFFITHS. I would think he would have gotten the figures either from a report or from you.

Mr. HARRAR. He got all his figures from us.

Mrs. GRIFFITHS. Let me ask, have you ever been investigated by the attorney general of New York? Has the fund ever been? Have you ever had any questions?

Mr. HARRAR. I think I have to give a qualified "No." I do not think we have ever been visited.

Mrs. GRIFFITHS. They have never exercised any supervision?

Mr. HARRAR. Not to my knowledge, up to this date.

Mrs. GRIFFITHS. Do you have some sort of clearing house among foundations where you talk over your own programs so that you would know in advance whether or not you were, for instance, starting out on a program that maybe the Ford Foundation or some other foundation was using?

Mr. HARRAR. No. Maybe there should be such a clearing house, but foundations do not now have, unless it is through the Council on Foundations, any formal, organized system for exchange of information. We meet each other. We know each other. We ask questions if we need to. But we do not plan or decide together what we will do unless it is a special arrangement like, for example, the one I mentioned where the Ford and Rockefeller Foundations planned and set up these autonomous agricultural institutes. There is no clearing house.

Each foundation is usually ignorant of the activities of others until after they become public knowledge.

Mrs. GRIFFITHS. So that in fact the taxpayers could be subsidizing the identical piece of research 10 times in 1 year.

Mr. HARRAR. No, I don't think so.

Mrs. GRIFFITHS. Well, they really could. If you don't know among yourselves as to which things the others are doing, they could in fact be doing it.

Mr. HARRAR. I thought you mentioned a clearinghouse.

Mrs. GRIFFITHS. Yes, I did. If you do not know what the other foundations are doing before they start to do it each of you could be doing the identical piece of research and, of course, the taxpayers would be paying perhaps 10 times for that.

Mr. HARRAR. I think it works a little differently. What happens is that our people in the medical field work with the medical institutions—using that as an example—and other foundations work in the medical field also, work with medical institutions, and at that level the professionals know what the others are doing. This would be true at other levels and in other fields.

Mrs. GRIFFITHS. That could possibly be so, but it would not necessarily be so that every university would know of a piece of research that was done—

Mr. HARRAR. No.

Mrs. GRIFFITHS (continuing). At another university or some other such thing. When you consider the possible duplication within the Government there is also a possibility of duplication within these foundations.

Mr. HARRAR. When a person comes to us for assistance in any field we always very carefully investigate the situation. Among other things we find out to what other organization he is applying. This is another check and balance.

Mrs. GRIFFITHS. Did you hear Congressman Rooney's testimony this morning?

Mr. HARRAR. I heard it.

Mrs. GRIFFITHS. Do you have any suggestions for control of that type of foundation?

Mr. HARRAR. I found no similarity to any situation I knew anything about before. A most extraordinary presentation of circumstances which I hadn't learned of before. We have always operated under what we thought was a requirement that, if I may paraphrase because I can't quote, we apply no substantial funds to propaganda which may influence legislation and we put no funds at all into any political campaign.

These have always been our two absolute criteria and I maintain that they are correct.

Mrs. GRIFFITHS. How would you suggest that we go about stopping this sort of thing?

Mr. HARRAR. I am not legally trained, I would suppose—

Mrs. GRIFFITHS. The gentleman I assume, the head of the foundation, didn't call it political.

Mr. HARRAR. I don't know.

Mrs. GRIFFITHS. No, he didn't. It was educational.

Mr. HARRAR. Is it not true that if under the law it is a political activity, the penalty would be obvious?

Mrs. GRIFFITHS. Well, if this is to be stopped there will certainly have to be additional regulations written.

Mr. HARRAR. Is it additional regulations or is it the application of those now existing?

Mrs. GRIFFITHS. And some enforcement of what we have—or something has to be done.

Mr. HARRAR. I think so. Enforcement of what we have I feel very strongly is necessary.

Mrs. GRIFFITHS. Thank you very much.

The CHAIRMAN. Mr. Schneebeli.

Mr. SCHNEEBELI. Mr. Harrar, how are the trustees of the Rockefeller Foundation chosen?

Mr. HARRAR. By themselves. It is an autonomous board.

Mr. SCHNEEBELI. Is this usual with foundations?

Mr. HARRAR. There are a variety of practices, but it is very common among foundations that when a trustee reaches retirement age or for other reasons leaves the board, a nominating committee composed of trustees brings in a group of names.

Mr. SCHNEEBELI. I realize a big, old, established foundation such as yours and the Carnegie Foundation have a very broad base with so many different interests that you are generally above suspicion as far as self-dealing is concerned, but the reason I raise the question is it is quite conceivable that quite a few foundations could have boards that would be chosen among their own interested groups and they could form a club that might be guaranteed to benefit from the foundation.

Is this possible under the law?

Mr. HARRAR. It is possible under the law.

Mr. SCHNEEBELI. As the private foundations get into projects and I am thinking of research projects, and they run parallel to Government programs in the same projects, have you any observations to make on the efficiency and the cost of the two approaches? What is the approach to the State projects that you have as contrasted with the Federal Government's approach? Can you do the job more efficiently and at less cost, not only yours, but foundations generally. Do you have any experience along this line?

Mr. HARRAR. Yes. Government is forced over and over again to respond to urgent demands from a wide variety of institutions representing broad sectors of our country, with the result that the massiveness of these programs sometimes necessitates decision by formula—I am not sure I am making myself clear—whereas in our much smaller organization we take the time to sit down with the people concerned, work out the project, and stay with it and even go back and look at it.

We do have this kind of flexibility and we do not have, if I may say so, certain bureaucratic limitations which sometimes do limit efficiency.

Mr. SCHNEEBELI. Once a Government program starts it is difficult to stop if it is getting anywhere at all, regardless of cost.

Mr. HARRAR. That is right, sometimes.

Mr. SCHNEEBELI. The general observation I get from you is that possibly the same money is more efficiently used possibly through the foundation approach than through the Federal Government approach.

Mr. HARRAR. Sometimes I think this is true.

Mr. SCHNEEBELI. I am not trying to put words in your mouth.

Mr. HARRAR. Sometimes it is true, but I do believe, as has been suggested, that this fact gives us an opportunity to interact with Government on many occasions—that we can work together more than we perhaps have done.

Mr. SCHNEEBELI. As Mr. Byrnes brought out, increasingly the Government is getting into this type of research activity. Foundations may have pioneered it 50 years ago but increasingly the Federal Government is getting into this area, particularly the area of new research and new areas.

As the Federal Government gets into these new areas is it possible in the conceivable future that you people will be precluded from using your money because all the functions may be taken over by the Federal Government, all the research may be taken over by the Federal Government, and I am referring principally to domestic foundations, not international foundations, because the international field is so broad, but I am thinking in the restricted domestic field is it possible that with this trend of the Federal Government moving in continually and with also the fact that you people are increasingly having more money to spend that you may get to the point where you will not be in the innovative area of new research but you will merely be adding on to something that is already established?

Mr. HARRAR. I would say in principle, sir, that when the day comes that foundations are so unimaginative, or otherwise unequipped, that they cannot innovate, and they simply become a “me too” to Government, then I would question their usefulness.

Mr. SCHNEEBELI. Do you think we are approaching this area?

Mr. HARRAR. No, sir.

Mr. SCHNEEBELI. Even in domestic areas?

Mr. HARRAR. No, sir; not at all.

Mr. SCHNEEBELI. The fact that the Federal Government is now spending billions of dollars annually on research it would seem to me that it might preclude your activity into new fields, into innovative fields.

Mr. HARRAR. We believe that this is what it really does: It gives us opportunity to get more into the innovative, into shall I say that

portion of the field which is not yet really formed, which hasn't qualified for public funds because it hasn't been proven, hasn't been demonstrated. The part that is on a trial basis, a pilot basis, a pioneer operation.

We still think there are enormous possibilities.

Mr. SCHNEEBELI. As appropriations come up to us for approval in increasing proportions we think there probably isn't much left for the private foundations to do in this area and I think you can see that this increasing trend of Federal activity might be usurping the job that you people do.

Mr. HARRAR. I believe you would find, using the scientific community as an example, that that community would feel very strongly that there are great and continuing opportunities for the private sector to be helpful in the areas which are, shall I say, more far out, for example, behavioral biology and molecular neurophysiology, which have not yet even qualified as a science for general support.

Mr. SCHNEEBELI. Well, the Federal Government is catching up to you pretty fast.

Mr. HARRAR. Perhaps so, sir.

Mr. SCHNEEBELI. Thank you.

Mr. BURKE (presiding). Mr. Vanik.

Mr. VANIK. Mr. Chairman, I would like to ask Mr. Harrar, in your basic statement you praised the foundation division that is established in the office of the attorney general of the State of New York.

Don't you really feel that we need something like this at the Federal level because of the national impact and national operations of foundations? Is it satisfactory? Is it sufficient that this should be looked over purely at the State level?

Mr. HARRAR. Not purely, sir.

Mr. VANIK. Very few of your actions are intrastate in the State of New York. Your actions are national and worldwide. Don't you think that the only real way to approach this problem would be to provide for some kind of review or examination by some Federal agency?

Mr. HARRAR. May I add to the statement first, sir, the one I have learned from others who are closer to it, that all States have certain obligations incumbent upon them to supervise charitable activity, and carry out visitation and also enjoin or surcharge people who violate the regulations of the State; and while the States themselves have not uniformly followed through on that we understand that there is an increasing tendency to do so, and we expect that more and more there could be an interrelationship between State and Federal enforcement.

I have to say frankly, if you are suggesting a sort of overall Federal body which undertakes to police all foundations throughout the Nation, it sounds to me as if that might be just an extension of the activity of the Treasury Department, which is now supposed to do that job.

Mr. VANIK. Well, do you think it is done with enough competence so that this is not necessary?

Mr. HARRAR. You mean in the States now?

Mr. VANIK. Well, the States and whatever the Federal Government is doing. Is this providing enough competency in the field?

Mr. HARRAR. I think it could, with greater support.

Mr. VANIK. I infer that you don't believe that it is now.

Mr. HARRAR. No; I don't think it is totally satisfactory.

Mr. VANIK. Now, my next question, and I want to carry along with the point that was made by Mr. Schneebeli and the chairman. The Rockefeller Foundation was established in 1913 and as I understand the language dedicated to serve all mankind with some sort of a broad mandate, is that correct?

Mr. HARRAR. We had that language as an umbrella under which to work, yes.

Mr. VANIK. Broad mandate, yes. The thing that concerns me is that the most outspoken descendant of the original benefactor, Gov. Nelson Rockefeller, told the President of the United States just a few days ago that the welfare of the poor should be the total responsibility of the Federal Government.

Now, do you concur in this view?

Mr. HARRAR. This is the first time I was ever asked that question, sir.

Mr. VANIK. I think you have a right to expect that it might come up.

Mr. HARRAR. I have always felt myself, not being in opposition to the Governor, that the welfare of the poor, morally at least, is the responsibility of everybody. I think all people in our country should be concerned about and worry about the welfare of all of our citizens.

I can't speak for Mr. Rockefeller, and I don't know whether he meant just that the poverty program should be the responsibility of the Federal Government, but is it not true in our country and has it not been for many years, that people traditionally help each other through their churches, through their private organizations? In a broad moral context it is all of us who are responsible.

If it is a matter of the source of the money I guess the Federal Government is the institution that has the kind of money required—or perhaps the Federal and State Governments together are necessary to carry out poverty programs.

Mr. VANIK. Do I take it that you do not agree or do you agree with his statement? He said this ought to be a total responsibility of the Federal Government, States should be relieved of it, it should be a responsibility of the Federal Government, as I take it, in its entirety.

Mr. HARRAR. I thought you meant or thought he meant funding. You were speaking only of funding.

Mr. VANIK. Well, that is what we are talking about in any event. Funding is the heart of it. We can all say complimentary sweet things but ultimately the whole issue revolves to the funding. Do you believe that the funding of the total problem of the welfare of the poor should be a Federal function?

Mr. HARRAR. I don't know enough, sir, to make that kind of judgment. I suppose that the vast majority of any sort of poverty programs must come from public funds. There is no other way.

Mr. VANIK. We are not talking about the poverty programs. We are talking about the welfare of the people, the welfare of the poor. I gather that the Governor's statement was in broad terms that covered the whole spectrum. It must have excluded some of the poverty programs that are being dropped or being moved around.

It seemed to me what he was talking about is the welfare contribution for support for housing, for the living, for the education of the poor. He talked about that as being of what he hoped would become a total responsibility of the Federal Government.

Now, it seems to me that if the Federal Government must undertake this awesome responsibility entirely that it sort of preempts the field and leaves everybody else to the frills and the other things that amplify the general objectives.

Now, is this a desirable thing? Is it desirable in your judgment as a representative of this great and important foundation that the Federal Government should be charged and given the total responsibility for the poor as Governor Rockefeller suggested?

Mr. HARRAR. I can only answer that that must have assumed that each segment of the society whether public or private had some responsibilities to be, shall we say, a brother's keeper, putting it in that sense, but I just cannot respond to a statement made by Mr. Rockefeller unless I knew exactly what the total context was.

Whether this is just fiscal or financial, I just don't know.

Mr. VANIK. I think I gather he was talking about money. He was talking about his plight as Governor of the State of New York, desiring that this total function be made a Federal responsibility.

Could you tell me this? What research has your foundation engaged in with respect to the problem of poverty in America? I mean, I think all these other things are commendable and they are fine. But as a Member of the U.S. Congress, the No. 1 problem that concerns me is the problem of the poor in America; and our support has been through the support of scholarly experts who have asked us for help to enable them to carry on the research that you speak of although, we ourselves, have not.

To your knowledge has your foundation financed any studies that would shed some light as to either the extent of the problem in the United States, the extent to which there might be a division of responsibility among agencies of the Government, or the extent to which there might be a division of responsibility between the public sector and the private sector which would include foundations?

Mr. HARRAR. Not that precise content, though, we have supported a number of studies and are supporting studies directed to a variety of these kinds of problems. One right now, for example, under the supervision of Dr. Kenneth Clark, of New York, concerns the problems of the ghetto, its formation, its structure, and its possible transformation, that is one kind of study we have supported.

Mr. VANIK. Might I point out that I would think that one of the most helpful studies that might be made in the United States would be the study of how—we know the extent of the problem, we can evaluate its cost—we in Government must allocate responsibility for the problem and to what extent. We are dealing primarily with the fiscal problem and I just want to appeal to you as a Member of Congress for some aid, for some help, through whatever sources can be provided, to give us the answers as to the extent of Federal funding, the division of responsibility between the State and the Federal Government and the local governments, and to provide for a solution of the problem which is even more important than the sharing of the load.

Mr. HARRAR. We would like to be helpful any way we could.

Mr. VANIK. Thank you.

Mr. BURKE. Mr. Collier.

Mr. COLLIER. Mr. Harrar, certainly no one can question the laudable purpose of the foreign philanthropic programs that your foundation

has conducted, but in order to get this whole thing in perspective, inasmuch as we are looking at this in terms of the tax concept, did I understand you to say the foundation spent a total of \$6½ million in foreign programs, primarily of the scientific and technical assistance nature I assume.

Mr. HARRAR. In 1966.

Mr. COLLIER. In 1966, as I recall, somewhat general terms, the foreign aid program expenditure or the AID program directly and associated programs, entirely the same area, was about \$3 billion. Was there any function that you would say during those years, with this type of funding available in the area of economical and technical assistance under the AID programs, that it could not have absorbed and performed this \$6.5 million function equally as well since obviously those who conducted these programs are drawn from the same community usually, the academic community, the colleges, and universities.

Mr. HARRAR. Sir, I have a very strong feeling that smallness sometimes is a virtue, if it is precisely focused—if the smaller organization undertakes to do the kinds of things that large public funds cannot do. I mentioned one example: the development of biological materials for agriculture.

I think you would find that will be helpful, for example, in feeding people in disadvantaged areas.

Mr. COLLIER. I think that is fine, inasmuch as I would presume the goals and purposes are identical, could this program have been recommended to those in charge of the technical assistance programs under the AID program to pursue and perform?

Mr. HARRAR. Since you have mentioned AID, may I give you an example? You have been reading of the green revolution—the miracle rice, the miracle wheats, and so on—in which AID has had a very important role of distribution and promotion.

These were all developed through research by the Rockefeller Foundation, later in association with the Ford Foundation, and if they hadn't been so developed there wouldn't have been the same opportunity for AID in the matter of developing and producing fertilizer plants and encouraging transport and establishing markets.

It seems to me that this was a case of a small institution's working with a large institution, with success. Both components are absolutely essential in the final result.

Mr. COLLIER. No question it is important. I was going to get specifically to that. Is the International Rice Institute in the Philippines presently operating solely with foundation funds or are these funds in its operation emanating from the Philippine Government and the United States at the present time?

Mr. HARRAR. The Philippine Government provides substantial facilities and small local currency components. We hope that this will increase as time goes on.

Mr. COLLIER. Even in the face of this tremendous achievement or increase in badly needed foodstuffs they still are indifferent to providing more than just a pittance in this now established institution?

Mr. HARRAR. They have provided some very important, worthwhile, useful, and really valuable land and other sorts of assistance. Budgetarily the amounts of money—I have forgotten—are small. The

Ford and Rockefeller Foundations continue to provide major support. The AID has provided some support.

Mr. COLLIER. When you say some, how much compared to what the foundations do?

Mr. HARRAR. Much smaller up to now, but we hope that AID may want to become a full partner in this as the Government indicated it may want to be.

Mr. COLLIER. You might get the Philippine Government to be a full partner?

Mr. HARRAR. Oh, yes. The more others we can get, the more we can press the Philippines and I expect and hope the Philippines will be able to do that.

Mr. COLLIER. Of the total aid operation of the institute at the present time what percentage is financed by the U.S. Government through the AID program and what part by the foundations, generally, and what part of the land and physical facility which obviously they have to provide, as much as the function is on their mainlands, so I am talking in terms of dollars, what percent do the foundations furnish, what part does the AID program furnish, what part does the Philippine Government furnish?

I have no quarrel. I think the program is wonderful. I am trying to get this in perspective.

Mr. HARRAR. I would just like to say the only thing we did in the very beginning was establish this as an autonomous institute to which we make grants; so it isn't the same as being under our control. So I have to depend upon my memory. The budget of the Rice Research Institute for 1969 is I think approximately \$2.2 million, and I have to use the words "I think," but I think that is pretty close, of which the Ford and Rockefeller Foundations would be prepared to produce two-thirds and the other third, because we are trying to build up support by other agencies, would come from other sources.

We have from the Philippine Government, as I say, land, building sites, and a lot of facilities, and a small budget from what they call their corn and rice program. We are pushing very hard to get more and more institutions to put money into this institution so that it can become a truly autonomous one, just like a university which can go to any source of funds and ask for resources to maintain its effectiveness.

Mr. COLLIER. Let me just summarize my question at this time by saying at any time do these people who are knowledgeable in these fields and recognize the need for scientific research to develop food stuffs to take care of the expanding population recommend, before they go into the actual work themselves, to those in our State Department, those in charge of the AID program, that this ought to be done?

In other words, it would seem to me since certain of the Federal Government would have access to the same scientific minds, and primarily from the same pool as does the foundation, that it might be well with the limited funds you have to recommend such programs to the AID program where it could be financed out of those funds that are established specifically for technical assistance.

Mr. HARRAR. Yes. I think there is one thing that needs to be said here; that is that the principal reason these programs have been successful, to my knowledge, is that by the time we got ready to establish the Rice Research Institute we had the expertise of a substan-

tial number of professional scientists who had been with us for 10 to 12 to 15 years, working in our agricultural programs.

Mr. COLLIER. Do you ever have many of these obviously specialized scientists loaned to the Government for any of these programs or have you had any leave and actually go into the performance of their duties in a Government agency?

Mr. HARRAR. Have we loaned any of ours?

Mr. COLLIER. Either loaned or have any voluntarily left and entered the Government service in the same field?

Mr. HARRAR. I don't think so. We have had many cooperative relationships, but I don't think we have had any one voluntarily leave and go into AID. There is no reason why they couldn't, but I think one of the special things we have been able to offer them is a career opportunity.

Mr. COLLIER. The fact that they are not involved in recommending any programs that they feel are so important to go into that they go into them themselves.

Mr. HARRAR. If I understand you, we have talked with the AID people as well as international agencies. FAO and other groups, including the Foundation, constantly keep in touch with each other, talking back and forth and making decisions as to who should do what or perhaps to do a thing together if we would rather do it that way.

Mr. COLLIER. Then there is a rapport there and you do make recommendations.

Mr. HARRAR. Very closely; yes, sir.

Mr. COLLIER. How often are these recommendations, if you know, looked upon with favor by those who control our technical assistance programs in AID?

Mr. HARRAR. I think they are, at least always listened to with friendship just as we would and do listen to their proposals for things we might do together. How often they have actually been implemented is a very difficult thing to say, but in a number of instances there have been very close cooperative relationships which I think are effective.

Mr. COLLIER. I assume this is not in any way a basis of criticism but rather because I have long had the feeling that the various problems we have had in the whole AID program are due to the fact that it has not been properly divided in three separate and distinct authorization and appropriations bills divorcing the technical assistance aspects of it from the economic assistance and certain programs for military assistance.

Thank you.

Mr. BURKE. Mr. Gilbert.

Mr. GILBERT. Let me say to the witness, Mr. Harrar, I think you have done a noble job here this morning staying on your feet for practically an hour and a half or two hours and if you wish to sit I would be delighted that you sit.

Mr. HARRAR. No; I would be glad to remain this way for any questions I can try to respond to.

Mr. GILBERT. I won't take too long. Probably everybody is hungry at this point and a little tired but I would like to ask you what is the annual income of your foundation?

Mr. HARRAR. For 1968—again I think it was about \$34 million.

Mr. GILBERT. And out of the \$34 million how much of that was actually expended?

Mr. HARRAR. All of it.

Mr. GILBERT. All of it? So you have no accumulation of income?

Mr. HARRAR. No. Only appreciation of portfolio.

Mr. GILBERT. No; I am not talking about appreciation of portfolio.

Mr. HARRAR. We never retain any income. In other words, all of our income is appropriated every year. Now, may I say, so as not to have a misunderstanding, that there are occasions on which we appropriate a certain amount of money to an institution for research which might require payments over a 3-year period. We pay it over 3 years, but we put that money aside as committed and we consider it as being—and it is—appropriated during the year in which the grant is made.

Mr. GILBERT. I have no quarrel with that. My only point was if there was an accumulation of funds as a result of failure to spend income would you spend it?

Mr. HARRAR. Let me try to answer it this way. This year our trustees appropriated in total the full income plus \$9½ million from principal in order to cover our philanthropic program.

Mr. GILBERT. I see. Now, do you know if this is the practice generally with foundations that they would expend the amount of their income in the same year?

Mr. HARRAR. I think the foundations that I am most familiar with—quite a few—all expend their annual incomes fully or appropriate them fully. I mean, they may not spend the entire amount of money, for the reasons I have explained, but they commit it.

Mr. GILBERT. Yes.

Mr. HARRAR. They appropriate their total incomes and there are some that go into principal too, if it is necessary. But I think expenditure of principal is the exception rather than the rule.

Mr. GILBERT. What concerns me is I do know that there are many foundations that receive substantial income and that income isn't expended.

Mr. HARRAR. Is?

Mr. GILBERT. Not expended. So that there is an accumulation. I would presume that this foundation then would invest and reinvest its money. For example, I don't know what your portfolio consists of but I imagine it covers a wide spectrum of common stocks.

Mr. HARRAR. Principally common stocks in U.S. companies.

Mr. GILBERT. Do you have real estate?

Mr. HARRAR. None.

Mr. GILBERT. No real estate at all?

Mr. HARRAR. You mean as part of our portfolio?

Mr. GILBERT. Income producing.

Mr. HARRAR. No, sir.

Mr. GILBERT. But there are some that do, I presume.

Mr. HARRAR. Yes, sir.

Mr. GILBERT. Now, this is the money that our committee is concerned with on the question of taxation—at least it concerns me—where you do accumulate this additional income, and this should be taxable money and many of the foundations then go out and compete with private industry in this area.

Do you have any suggestions or recommendations to the committee with respect to this problem?

Mr. HARRAR. The generic term foundation is a tremendously worrisome thing because it has been applied to so many unlike entities which you can't recognize as foundations when you see them coming down the street. But the one thing we have espoused from the beginning is that, generally speaking, a foundation which has established its position and its program should, as is indicated by the Internal Revenue Code, spend all of its income or commit all of its income annually.

The reason I say it is complicated is that there have been some testaments in which the trustees were directed to hold back part of the income until the corpus grew to a certain level. You are familiar with all of those things. I don't know what you do about those, but I do think that once a foundation is in operation and has its program established, if it cannot find adequate opportunity to spend wisely its total income then I would raise some questions about it.

Mr. GILBERT. If your foundation or any foundation sold part of its portfolio, they don't pay any capital gain on that, do they?

Mr. HARRAR. No, sir.

Mr. GILBERT. There is not a tax at all there. Thank you very much.

Mr. VANIK. Mr. Chairman, I just had one other question if I may ask it.

Mr. BURKE. We had planned to recess at 1 o'clock.

Mr. VANIK. I don't think the gentleman would like to come back.

Mr. BURKE. There are other gentlemen here.

Mr. GIBBONS. Couldn't we come back after lunch?

Mr. BURKE. Would it be inconvenient for you to come back at 2 o'clock?

Mr. HARRAR. Whatever you like, sir.

Mr. BURKE. There are other gentlemen who would also like to ask you some questions.

The Chair will declare a recess until 2 o'clock and you will be on the stand then.

(Whereupon, at 1:07 p.m. the committee recessed to reconvene at 2 p.m. the same day.)

AFTER RECESS

(The committee reconvened at 2 p.m., Hon. Wilbur D. Mills, chairman of the committee, presiding.)

The CHAIRMAN. The committee will please be in order.

Mr. Harrar, would you return? Would you prefer to have a seat?

STATEMENT OF J. G. HARRAR, PRESIDENT, THE ROCKEFELLER FOUNDATION—Continued

Mr. HARRAR. I think I can think a little better upright. I hope so. The CHAIRMAN. Mr. Gibbons.

Mr. GIBBONS. Thank you, Mr. Chairman.

First let me say I am a believer in pluralism. I think you make a good case for it, and I think we need more attack on the problems we have rather than governmental attack. I am vaguely familiar with the fine work that your foundation has done but I am a little confused about all the things that really come under it.

When I was a boy once I went mountain climbing in North Carolina and I noticed that the Rockefeller Foundation or some Rockefeller had contributed a scenic view there in that mountain area. I noticed the same type of contribution in the Grand Tetons. Then I went down to Caneel Bay one time and saw what had been done there.

I read your statement last night and I am very impressed with the fine work that you have done. How many Rockefeller Foundations are there? Has one foundation done all this work?

Mr. HARRAR. No, sir. The things you alluded to a moment ago having to do with the Grand Tetons, St. John, many others, have all been private benefactions by members of the family. Most of the early ones are simply gifts from John D. Rockefeller, Jr. There is a book which describes the philanthropic efforts by which he attempted to acquire scenic and other historic sites and turn over to the city or State or the National Park Service, and this was one of his own personal benefactions.

Mr. GIBBONS. Is historic Williamsburg under you?

Mr. HARRAR. That was again started by Mr. Rockefeller, Jr., but is an autonomous foundation which has its own trustees and no relationship to the Rockefeller Foundation.

Mr. GIBBONS. A separate entity?

Mr. HARRAR. Entirely separate in every way.

Mr. GIBBONS. How many Rockefeller-type foundations are there? How many are there?

Mr. HARRAR. Well, sir, maybe this would be revealing to you: even I don't know. I do know that you mentioned Williamsburg, the Grand Tetons, . . .

Mr. GIBBONS. I know about the foundation's separate corporate units.

Mr. HARRAR. The gentleman who follows me, who will speak for The Rockefeller Brothers Fund, can answer that question because he is very much more knowledgeable about the numerous Rockefeller benefactions. The Rockefeller Foundation has stood apart from all other Rockefeller activities since its inception. Mr. Creel will have the information you wish.

Mr. GIBBONS. I have another question. I noticed in your statement that you said you own no more than three and a half percent of any one corporate entity. If that is control or influence, it is certainly marginal, I would imagine.

I was reading a book last summer called "The Rich and Super Rich," and listed there, as I recall, was something about the Rockefeller Foundation being in control of the Cities Service Oil Co. Is that inaccurate information, or information that was true in the past but is not now?

Mr. HARRAR. It is inaccurate. We never did.

Mr. GIBBONS. You never did. Your assets primarily have grown since 1903 by an accretion of value. You haven't received any more substantial charitable gifts, have you, since that time?

Mr. HARRAR. No. Not since 1929.

Mr. GIBBONS. Since 1929?

Mr. HARRAR. We had an original gift in 1913 and the assets of one other foundation in 1929, and there have never been any further gifts from any member of the family.

Mr. CONABLE. Mr. Chairman, will the gentleman yield?

Mr. GIBBONS. I will be glad to yield.

Mr. CONABLE. Isn't it true that Mr. Rockefeller, Jr., left a substantial amount in his will to the Rockefeller Foundation?

Mr. HARRAR. No, the Rockefeller Brothers Fund, which follows me in testimony, received money from the estate of John D. Rockefeller, Jr.

Mr. GIBBONS. You spent some \$230 million of your corpus in that time and that has primarily been replaced, I would imagine, by increases in the value of the original assets.

Mr. HARRAR. The growth of the portfolio; yes, sir.

Mr. GIBBONS. I notice you also have some trouble with your cafeteria up there. I think we Members of Congress are in sympathy with that problem.

Mr. HARRAR. If you want me to speak to that, I would say we, as many other organizations, feel obligated to provide this kind of service for the efficiency of our organization, our group. We do do that.

Mr. GIBBONS. As I understand your testimony, the primary thrust is that you endorsed the findings of the Treasury and their recommendations somewhat. You say that they really wouldn't apply to you because you don't do any of them anyway, but you think that they would be unwise because they would inhibit further pluralism-type of grants. Am I correct?

Mr. HARRAR. I think I meant to say that I think they would be unwise if the result was choking off of the flow of funds into the charitable and philanthropic purposes.

Mr. GIBBONS. Do you think that these proposals if correctly followed would choke off the flow of funds?

Mr. HARRAR. Only if they were made so to speak categorically, across the board, without any reference to the individual situation.

Mr. GIBBONS. You seem to advocate State regulations of charitable foundations. What motivation do the States have to regulate them?

Mr. HARRAR. The States in the first place have major responsibility which automatically accrues to them by virtue of the fact that foundations have State charters and are responsible to State law, which is enforced by the attorney general.

I was really trying to say that it seems to me that the States and the Federal Government have an opportunity to work together and jointly bring about these reforms and change the pattern and habits of those organizations which are not conforming to the exclusively charitable-operation provision of the law.

Mr. GIBBONS. Isn't what happens that if the State of New York got real rough on the XYZ Foundation, that the foundation would go to some other State? All you are transferring is the portfolio of investments. You have no manufacturing plants or anything to tie you down.

Mr. HARRAR. You could just move right over. I had not thought of that possibility.

Mr. GIBBONS. You could go to New Jersey or Connecticut.

Mr. HARRAR. I didn't intend to suggest that the Federal Government surrender jurisdiction to the State, but rather that it should interact with the States.

Mr. GIBBONS. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Vanik.

Mr. VANIK. Mr. Chairman, I had just a couple of more questions. Late in the morning before lunch, the question came out about the cost of operating your New York office, which Mr. Patman testified was \$5,413,000 and some question was raised about that figure, but I have before me your annual report for 1966, and on page 228 it lists Rockefeller Foundation New York office, administrative services and so forth, \$2 million, and so on, retirement program and so forth, and the total thing here that is listed as the cost of the New York office is \$5,413,102. Is that report correct?

Mr. HARRAR. The figure is correct; yes, sir.

Mr. VANIK. This is where Mr. Patman got his testimony, from your own annual report. Yes?

Mr. HARRAR. I think the misunderstanding as we see it is that the actual costs of the management and the operation, or what might be called administrative costs or overhead costs, of that office are something less than half of that figure. The other half are program costs, costs of the program officers who are based in New York but are not part of the central administration or overhead—who are part of program activities. We tried to make that distinction that it just wasn't a \$5.4 million office.

Mr. VANIK. Interprogram and retirement plan, past service liability, that doesn't create any research or anything, does it, retirement plus past service liability?

Mr. HARRAR. These are fringe benefits.

Mr. VANIK. Fringe benefits. The interprogram and medical, what is that?

Mr. HARRAR. The "Medical and Natural Sciences" entry is a program cost.

Mr. VANIK. That seems to take up most of that \$5,413,000.

The other question that I want to raise is this: That in your annual report you list the operation costs of the New York office as a charitable contribution. This is the way it is listed for payment. Is that approved accounting procedure? Am I right about that? You list in this 1966 annual report the operation of the New York office just as you list a grant to Duke University.

Mr. HARRAR. I would reply, sir, that we would.

Mr. VANIK. Is that approved accounting procedure for foundations or is it something else?

Mr. HARRAR. No; I think it is approved accounting procedure.

Mr. VANIK. In other words, you consider as a gift the operation of your own staff and office?

Mr. HARRAR. I consider it part of the philanthropy.

Mr. VANIK. Part of the philanthropy.

Mr. HARRAR. Yes.

Mr. VANIK. I wish we could do that in the Federal Government. We might not have so many problems. It seems to me rather unique and extraordinary that the cost of operating your own shop with all of its functions, with the fringe benefits, should be considered as a charitable grant or a charitable payment and that is the way it is listed, as a charitable payment.

Mr. HARRAR. I don't think we think of it that way.

Mr. VANIK. This is the way the public thinks of it and the way it is presented to the public. Now, shouldn't that be set aside as a clear-cut operating overhead expense so that it stands out in your report not as a grant, not as a charitable contribution, but as a normal cost of operation which everybody ought to understand?

Mr. HARRAR. I think we broke it down to provide the whole picture of all of our costs and this would be the operating cost of our home base from which all of our program flows.

Mr. VANIK. It shouldn't, really, appear among the charitable contributions because certainly that is self-serving.

Mr. HARRAR. I am sure we haven't interpreted it that way, that this was a grant to the office for charitable purposes.

Mr. VANIK. It is listed among payments, U.S. Rockefeller Archive Center, North Carolina, the Arts Councils of America. It is listed as a contribution, an expenditure by the foundation.

It seems to me that administrative expenses in any kind of report ought to stand out clearly for what they are and shouldn't be listed among the so-called payments that are classified as the charitable or the benevolent activities.

Just a little bit ago we had some testimony about the total amount of your payments. According to your report they are listed in 1966 at something like \$34 million. You quoted that figure.

Mr. HARRAR. I said I thought that was approximately right, sir, \$32 million to \$34 million.

Mr. VANIK. This doesn't reconcile with your tax return which indicates a figure of \$28,796,000 for the same year.

Mr. HARRAR. We are talking about which year?

Mr. VANIK. 1966. The only report that we have is the 1966 report.

Mr. HARRAR. I thought we had a 1967. That is the one I filed.

Mr. VANIK. Is there a copy?

The CHAIRMAN. There is a 1967 report attached to his statement.

Mr. VANIK. I didn't see this volume attached.

The CHAIRMAN. Is it attached to your statement?

Mr. HARRAR. No; it was just delivered to you, sir.

The CHAIRMAN. Where is it?

Mr. HARRAR. I think the figures that I was referring to as \$34 million were 1968.

Mr. VANIK. So, if your annual reports indicated payments as they do on page 233 of your 1966 report and you may refresh your memory on this, the total payments of \$34,893,373.

Mr. HARRAR. I have the 1967 Annual Report here, sir.

Mr. VANIK. I don't know anything about that. We have not seen that.

Mr. HARRAR. I just filed it.

Mr. VANIK. That has not had public distribution. I want to refer to your 1966 report for my question. Here in your report on page 266 you list payments as \$34 million.

Mr. HARRAR. Yes, sir.

Mr. VANIK. Now, how does that reconcile with your tax returns which have been made public which indicates that \$28 million was distributed?

Mr. HARRAR. I am afraid I would have to turn to those who really know the figures better than I.

The CHAIRMAN. Turn around so that the secretary can hear you, please, sir.

Mr. HARRAR. What I was saying is that I really would have to have a little time to reconcile this, so that I could understand it, or I could turn it over to one of my colleagues.

You are saying that we said we had \$34 million but reported only \$28 million.

Mr. VANIK. No; your report as you quoted indicated 1966 net payments, net payments which includes also the payments to yourselves for operating costs of the New York office, \$34,898,371. The return for the year 1966 shows net payments of \$28,796,429. Now, I was hoping that we could get some reconciliation between the two.

Mr. HARRAR. I would suppose that would be the difference between our grants and other operating programs and the New York costs. That is what it sounds like.

Mr. VANIK. But the New York costs are listed as payouts in the annual report. If you would like to have time to check that out—

Mr. HARRAR. I would like to be accurate.

Mr. VANIK. Mr. Chairman, if the correct answer can be put into the record by correspondence, I think that would clear that up.

(See page 271.)

Mr. VANIK. I might say that I was concerned, Mr. Chairman, about the impression that was made earlier that Mr. Patman's figures were questioned here during the course of the testimony, and I wanted to get this point straightened out. Mr. Patman's testimony came from, I think, the best evidence possible, the evidence that was submitted by the agency itself, by the foundation's own records, and what he had quoted was a complete narration of the foundation's own records, and I thought that we ought to get that cleared up at this point.

Mr. HARRAR. I am very glad, because as I said, we have worked closely with Mr. Patman and we have thought there had been some interpretative differences, and as I said this morning I hope, Mr. Chairman, I can clear those up.

The CHAIRMAN. Surely. Mr. Conable.

Mr. CONABLE. Mr. Harrar, you have been a very patient and stellar performer here today, and I think most people would consider the Rockefeller Foundation a stellar performer also. I have just one or two very general questions.

We are interested here, of course, in maintaining a balance, balancing the public interest involved in continuing the incentive to charity and in preventing a large part of the resources of the country moving outside the tax system which most of us must support.

Now, we have had an acceleration of growth of foundations. It seems to bear some relation to the inheritance tax law. If this trend continues, and if taxes become more onerous, it is likely to continue to accelerate even further. Do you see any danger of some kind of a new pluralistic mortmain affecting the public acceptance of foundations generally?

Mr. HARRAR. Yes, sir. I do. I think as a matter of fact there is evidence to those of us in the field, and others of our friends who are totally cognizant of the questions which have been raised, to cause real concern as to whether or not the burgeoning of foundations as described in so many multiples of thousands has not really become such as to make these questions become more severe.

Mr. CONABLE. Do you have any suggestion as to a quantitative rule of thumb we could arrive at, or for the time being do you consider it primarily a problem of public relations?

Mr. HARRAR. No; not primarily. I wish I could give you a rule of thumb. I have about four, and I don't think any of them would work at this moment. One thing among others I would feel would be very important is this: We would not wish to exclude other agencies from examining the foundations, but I think foundations have probably made a mistake in not examining themselves.

So many foundations are always afraid they will be accused of having a trade association or something of that sort. We have lacked boldness, I think, in not talking to each other in depth and trying to make up our minds as to what are the rights and wrongs and reasons and rationales of private philanthropy and charity in this society of ours.

I would urge that we do so at this rather delayed moment—we ourselves; not that we eliminate other inspections, but inspect ourselves more in depth and see if we can come up with something helpful which could be used by a committee such as this or others who are concerned.

Mr. CONABLE. I am concerned about this because I think we are somewhat inclined to exaggerate the aggregate amount of assets that have gone into the foundation domain generally.

We have reason for concern because certainly we are going to have continuing agitation to broaden the tax base as people feel the tax bite more and more. Do you have any suggestions with respect to the tax law, as it relates to inheritance taxes, for instance, that this committee should consider with respect to foundations, in the whole area of foundations?

Mr. HARRAR. You mean, sir, some sort of a proviso or limitation on the extent to which inheritance can be converted directly into the corpus of foundations?

Mr. CONABLE. Yes.

Mr. HARRAR. I certainly imagine that your committee will examine this with great care. I just don't feel that I have an offhand answer that I think would be valid, but I understand what you mean.

Mr. CONABLE. The inheritance taxes have more impact on the formation of foundations than do income taxes, don't they?

Mr. HARRAR. I think so.

Mr. CONABLE. That is certainly true of the Ford Foundation, and I imagine the Rockefeller Foundation, also.

Mr. HARRAR. No, sir. The Rockefeller Foundation, the one thing we can always point to is—

Mr. CONABLE. Excuse me. I mean the Rockefeller Bros. Fund. Well, as taxes become more burdensome we can expect the foundations to continue to burgeon, can't we, unless some change is made in the basic law?

Mr. HARRAR. For whatever reason, it seems rather apparent that as taxes have continued to grow so have foundations. The case can also be put differently—that because there is more affluence in the society, more people have enough money to start a foundation; the other side of the coin is that more people are inclined to start a foundation for other reasons.

Mr. CONABLE. Would the imposition of, say, a 10-percent tax on foundations' income from investment as opposed to donations to foundations, have any impact other than to reduce your ability to perform charitable acts by 10 percent?

Mr. HARRAR. What I am getting at is that this would be symbolic, would it not, rather than meaningful in terms of tax collection?

Mr. CONABLE. Well, in your own case you generate \$36 million of revenue that you distributed in full now. You would have \$3.6 million less to distribute.

Mr. HARRAR. That is right.

Mr. CONABLE. It certainly wouldn't result in much taxes in terms of revenue. I don't know whether it would across the board with respect to all of the Nation's 20,000 foundations or not. It would be primarily psychological.

Mr. HARRAR. I was suggesting that it would be symbolic in terms of taxation, tax collection, but I am not sure it would be merely symbolic in terms of reduction of our income.

Mr. CONABLE. Well, there would still be an advantage in setting up foundations because the alternate would be substantially greater taxation. I was wondering if that would have any impact other than just the reduction in your charities.

Mr. HARRAR. I don't see how it would change the pattern measurably.

Mr. CONABLE. I am not advocating it, sir. I am just asking to see if there are other than revenue implications.

Mr. HARRAR. Thank you for an opportunity to speak to it, sir.

The CHAIRMAN. Mr. Schneebeli.

Mr. SCHNEEBELI. Mr. Harrar, could you tell us what is the annual income of all of the foundations in the country? How much money are we talking about?

Mr. HARRAR. I think I can get that figure in one second. It has been said in some of the earlier testimony and has been expressed in two or three different dimensions. That is the income of all?

Mr. SCHNEEBELI. Would you supply it for the record?

Mr. HARRAR. I will be glad to.

(See page 272.)

The CHAIRMAN. Mr. Corman.

Mr. CORMAN. Does your foundation offer any resources to local governments on a matching funds basis?

Mr. HARRAR. Local governments abroad or in the United States?

Mr. CORMAN. In the United States?

Mr. HARRAR. No, sir; I don't think so.

Mr. CORMAN. One of the earlier witnesses representing an association of foundations stressed the fact that foundations do offer matching fund grants for both public and private institutions. I take it that yours does not?

Mr. HARRAR. Yes; if you mean public and private educational funds.

Mr. CORMAN. Would you offer matching funds to a school district; if they come up with a certain number of dollars that you would match those dollars to undertake a project approved by your foundation?

Mr. HARRAR. Yes. We might do that if we worked this project out together and agreed together that if the foundation were able to help in this amount, the other party could raise a similar or lesser or larger

amount. We don't do this as a standard practice but are perfectly willing to do so.

Mr. CORMAN. Have you done it in the past?

Mr. HARRAR. Yes, we may have.

Mr. CORMAN. Could you supply us with some examples?

Mr. HARRAR. Well, I am trying to think of one which I think is correct. There are some programs we had in the South. I am a little uncertain because it was some time ago. I will try another example. Let me go back. We have done it a substantial number of times with institutions such as a college or university where, let's say, they wanted to develop a program in this or that field and we were prepared to share with them and other donors, even other foundations, the total cost which may be triangulated or even quadrangulated.

Mr. CORMAN. Are you talking about privately or publicly supported institutions?

Mr. HARRAR. Both.

Mr. CORMAN. I am apprehensive about this. The Federal Government is often charged with the fact that he who controls the purse strings controls the power. Are we creating the possibility here of foundations making decisions for local government because of their capacity to match funds to undertake the particular project that would be satisfactory to the foundation and great temptation to the local authorities because of course some of the dollars are going to be provided by the foundation?

Mr. HARRAR. I see what you mean, but we have always felt that we ought not to go to a university or college or community and say, "If you do this, we will pay that."

We have responded to inquiries and sat down and talked to see if something might be worked out to the advantage of the recipient in the way they wanted to do it with our help. We have not tried to control or overpower the situation.

Mr. CORMAN. If you could give us some examples for the record later, I would appreciate it. I don't criticize your particular foundation, but I could see a large foundation in a small community as we have in some instances, southern California might make a number of public decisions based on their capacity to match foundation dollars with local tax dollars and remove from the local government the opportunities to make decisions in the interests of the public.

Mr. HARRAR. I would be glad to supply that.

Mr. CORMAN. Thank you, sir.

(See page 272.)

The CHAIRMAN. Are there any further questions?

Mr. GIBBONS. Mr. Chairman.

The CHAIRMAN. Mr. Gibbons.

Mr. GIBBONS. I notice on page 209 of the hearings published by Mr. Patman a listing of the Rockefeller Foundation in New York City, and I don't know whether it is listed in any other place. I also noticed the Rockefeller Brothers Fund is located in Rockefeller Plaza; that the Rockefeller Family Fund is on 49th Street, that the Rockefeller Institute is on 66th Street, and that the Rockefeller Foundation, which I assume is you, is on 50th Street.

Do you all have any interlocking members of your boards of directors or trustees? Do you work together in any way?

Mr. HARRAR: We do not work together in any way.

Mr. GIBBONS: Do you have any common members of the boards of directors?

Mr. HARRAR: In our case we have one. The chairman of our board, Mr. John D. Rockefeller, III, is also a member of the board of the Rockefeller Brothers Fund, though we have no interaction with the fund.

Mr. GIBBONS: You have no interaction, though, as far as a coordinating branch or investing power?

Mr. HARRAR: None whatsoever.

The CHAIRMAN: Are there further questions? Again we thank you, sir, for coming to the committee and responding so willingly to our questions. We appreciate your coming.

Mr. HARRAR: Thank you.

(The following letter was received by the committee:)

THE ROCKEFELLER FOUNDATION,
OFFICE OF THE PRESIDENT,
New York, N.Y., April 21, 1969.

Hon. WILBUR D. MILLS,
Chairman, Committee on Ways and Means,
U.S. House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: At the recent hearings of your Committee in Washington at which I testified, you indicated that you would welcome comments and suggestions from foundation executives which might be helpful to the Committee in its further deliberations. In response, I am sending you this letter which I hope will be useful to you and your Committee.

The Rockefeller Foundation, as stated in its testimony before the House Ways and Means Committee, would not be affected by the enactment of the proposed legislation recommended by the Treasury. However, we fully recognize that these proposals are directed to an effort to contain, or better still eliminate, abuses of the tax-exempt privilege. Our position is that all institutions granted the privilege of tax exemption accept great initial responsibility and must continue to earn this franchise through the proper discharge of their philanthropic or related purpose during each ensuing year. We would welcome any and every effective means of identifying those who abuse the privilege of tax exemption and thus defraud the objects of their philanthropic or charitable purpose. We believe that such organizations should be forced to fully comply with their charitable purposes or, where there is clear-cut evidence of abuse of the tax-exempt privilege, have this withdrawn.

My position at the hearing, held under your auspices, was not one of opposing any and all legislation on foundations, but rather one in which I attempted to urge that any such legislation be considered in the light of its effectiveness in eliminating abuses and also its possible effect on the large majority of foundations which are properly attempting to carry out their mandates. I also expressed the hope that any new legislation would not militate against the creation of new private philanthropies.

We have thoroughly reviewed the situation in the light of the recent hearings in Washington, and would now like to make the following recommendations, which I hope you may find both constructive and helpful.

(1) The law should require as a condition of tax exemption that foundations prepare annually a report giving full information on their operations, payments, and general finances.

(2) The Treasury Department should be required to police and vigorously enforce present requirements that foundations be "operated exclusively" for the charitable purposes for which tax exemption was granted. It is suggested that this could be accomplished by requiring that the necessary information be included in IRS Form 990A filed with the Treasury Department each year. We repeat our earlier suggestion that the staff of the Treasury Department be re-enforced, and we are interested in the suggestion that such augmented staff might be placed under the direction of an Assistant Commissioner for tax-exempt institutions.

(3) References have made to a number of hypothetical foundation practices that raise questions of violations of Federal laws that are within the jurisdiction of the Department of Justice, the Federal Trade Commission, the Securities and Exchange Commission, the Federal Communications Commission, or other agencies, either on the part of the foundations themselves, or on the part of corporations with which they have some actual or assumed connection. We believe that if such abuses exist, they can and should be halted immediately through enforcement of existing laws by those agencies.

(4) As has been pointed out, the states are beginning to perform an important role in policing abuses which have developed within charitable organizations. On the other hand, the Federal Government obviously has a major responsibility for assuring that tax exemption is not abused. Accordingly, it is important to make certain that there is close cooperation and coordination between Federal and state authorities, to ensure that enforcement is effective and that no abuses fall between Federal and state interests.

(5) The law should prohibit self-dealing defined as any financial transaction which has the direct or indirect effect of giving advantage to a donor or member of his family.

(6) The law should prohibit speculation with foundation funds, but clearly define limits of normal and prudent investment policies as contrasted to speculation.

(7) All exempt organizations should be taxed on unrelated business income.

(8) Federal and state authorities should enforce the present prohibition on political activities by foundations.

(9) All tax-exempt organizations should be required to pay at the time of annual filing of Form 990A a fee which would adequately cover the actual costs of annual audits by the Treasury Department.

(10) Foundations should be required to pay out all their ordinary income during the year of its receipt or within a definite but reasonable period after the end of the year.

You will notice that we have not supported any suggestions that taxes be levied against foundations. We believe that Congress shares with us the view that private philanthropy has a critically important role to play in the United States, and that proper foundation activity is in the public interest. Their funds are committed to public purpose, and not only do they support but indeed they relieve the Treasury of many public responsibilities.

Sincerely yours,

J. G. HARRAR.

The CHAIRMAN. Our next witness is Mr. Creel. Mr. Creel, would you prefer to stand or take a seat? Either way is all right.

STATEMENT OF DANA S. CREEL, PRESIDENT, ROCKEFELLER BROTHERS FUND

SUMMARY

In the attached statement, Dana S. Creel, president of the Rockefeller Brothers Fund, makes the following comments:

1. There is a critical need today for the Federal tax structure to support and extend the role played in our society by private philanthropy, of which foundations are a small but significant part. The resources of private foundations are woefully small in relation to the needs in such areas as health and welfare, education, scientific research, conservation, the arts, population, and particularly the country's vast and urgent urban problems.

2. As to the Treasury's specific proposals in the areas of self-dealing, accumulation of income and financial speculation, the Rockefeller Brothers Fund agrees with the Treasury's objectives, but not with the means suggested for attaining them. It is suggested that the most effective way of dealing with such matters is at the State level, where the supervisory responsibility rests with the jurisdiction closest to the situation and where there is a much wider range of remedies.

3. Adoption of the Treasury's proposals to restrict foundation ownership of business and to deny deductions for gifts of "controlled property" would discourage the growth of existing foundations and deter the creation of new foundations.

4. The Treasury's proposal to limit family service on the board of a foundation after 25 years is undesirable. In this connection, specific reference is made to the development of the Rockefeller Brothers Fund and the participation of members of the Rockefeller family as trustees.

Mr. CREEL. I prefer to stand.

The CHAIRMAN. All right, sir. As I understand, you are the president of the Rockefeller Brothers Fund.

Mr. CREEL. Yes, Mr. Chairman.

The CHAIRMAN. Your office is in New York City?

Mr. CREEL. I am appearing on behalf of the Rockefeller Brothers Fund and as Dr. Harrar has explained we are completely separate from the Rockefeller Foundation with separate board, and officers and staff.

The CHAIRMAN. You are recognized, sir.

Mr. CREEL. I am particularly grateful for the opportunity to testify before your committee today because I am deeply committed to the values of private philanthropy. I am consequently no less interested than Congress in preventing any abuses there may be in the field, while at the same time making it possible for private philanthropy not only to continue but to increase the role it plays in our pluralistic society. In the light of this, my testimony will be related to these three points:

(1) There is a critical need today for the Federal tax structure to support and extend the role played in our society by private philanthropy, of which foundations are a small but significant part;

(2) As to the Treasury's proposals in the areas of self-dealing, accumulation of income and financial speculation, we agree with the Treasury's objectives, but not with the means suggested for attaining them; and

(3) With regard to the Treasury's proposals concerning foundation ownership of business, denial of deductions for gifts of controlled property and restrictions on family participation as trustees after a 25-year period, we do not agree with either the objectives or the means.

NEED FOR PHILANTHROPIC FUNDS

Regarding the first point, there has never been a greater need for philanthropic funds than there is today. This is a need which promises to increase, rather than decrease. It is not an exaggeration to say that a growing financial crisis is facing private institutions in practically every area—health and welfare, education (especially higher education), the many fields of scientific research, conservation, the arts, population, and particularly the country's vast and urgent urban problems, where there is a great deal of experimentation which is necessary.

The various estimates of needs in all of these areas are in the very high billions of dollars and the sums are so staggering that it is difficult to have any realistic understanding of what is involved. This need is brought home in a concrete way when you are a foundation official faced constantly with an endless number of sound and important requests, but where there is no possibility of responding to more than just a few because of limited resources.

The total of both net income and new gifts for all private foundations in the United States has been about \$1.5 billion annually in recent years. When you consider that this amount has to be divided

among all the fields I just mentioned, it becomes evident that the resources of private philanthropy are woefully small in relation to critical needs.

Increased philanthropic funds must also be brought into the picture in order to maintain any sort of balance between governmental funds and those from private sources. To take only a small example from the governmental sector, the annual appropriations of the National Science Foundation have increased from \$4.75 million in 1953 to \$495 million in 1967. This sum of \$495 million is larger than the grant programs for all purposes last year of all of the 20 largest private foundations combined. The budget of the National Science Foundation itself pales by comparison to the tens of billions of dollars annually granted by the Federal Government through the more than 400 Federal categorical aid programs.

It is not a theoretical, but an actual problem as to whether private institutions can be continued without, in effect, being taken over by the Government through such heavy Government funding that they lose their essential private characteristics. Many persons, including myself, believe that this would eventually change the character of our society. I am not saying that governmental funds should not be given to these institutions; I am simply saying that at the same time there must be a sufficient balancing flow of private funds to these institutions in order for them to retain their essential private character and to provide an incentive for private individuals to give time and energy in their direction.

Private institutions are used by and are of great value to Government itself. Foundations play a key role in maintaining the vitality of private institutions in our society. They have traditionally been at the forefront in creating new institutions, since they are able to channel substantial sums to such institutions in the early period before they are in a position to attract broad public support. The early history of the Population Council, created in 1952 through the personal initiative of John D. Rockefeller 3d, and assisted by grants from the Rockefeller Bros. Fund and other foundations, provides an illustration of this. Many other special functions of private foundation were described in greater detail in a statement which the Rockefeller Bros. Fund submitted to the Ways and Means Committee 3 years ago in response to the 1965 Treasury Report. For the convenient reference of the committee, I am attaching the relevant portion of that statement as an appendix to my testimony today.

In light of the critical need for philanthropic funds by private institutions today, we are therefore naturally concerned with any legislative changes which would act as dis-incentives for the creation and growth of foundations. We are similarly concerned with changes in the tax laws which would broadly discourage individual charitable giving. It would be ironic for action to be taken which would result in private philanthropy being able to do less when there is currently a cry for the private sector to do more.

TREASURY PROPOSALS

Now I would like to turn to the proposals which were advanced by the Treasury Department in its 1965 Report on Private Foundations, and which have been further discussed in the Treasury's cur-

rent "Tax Reform Studies and Proposals." As a general matter, we feel that the abuses to which legislative changes are directed can best be corrected through State action, rather than through the Federal tax laws. The tax laws are by their nature essentially revenue measures and do not provide the flexibility needed for the proper regulation of private philanthropy. The problem of "self-dealing," "delay in benefit to charity," "financial transactions unrelated to charitable functions," and especially "broadening of foundation management," are not essentially tax matters, but relate to the community's interest in the accumulation, control, and disposition of funds which have been dedicated to public use.

Mr. Chairman, I might interject here that I am afraid that these comments in my paper will indicate that I don't think that there is a role for the Treasury Department in the regulation of foundations. I do. I have not emphasized it in this paper. I think it is a matter of cooperation between the Treasury Department and the various States. Possibly, I will be permitted to comment on that later.

In 1965 we suggested that the most effective way to deal with these problems was through the substantive laws of the States. At that time, this suggestion was somewhat theoretical since there was no formal supervisory program applicable to the Rockefeller Bros. Fund or to other major foundations incorporated under the laws of the State of New York. Since that time, New York State, under the leadership of Attorney General Louis Lefkowitz, has taken the major step of initiating a registration and annual reporting program for foundations. I note that Attorney General Lefkowitz is due to testify tomorrow, and I am sure that he will tell you about the enforcement measures he has undertaken in New York State. Other States, such as California, are also taking the lead with respect to State enforcement. More than 67 percent of all the foundation assets in the country are now subject to State supervisory programs.

I should make it clear that we are not arguing for leniency when it comes to the application of funds for charitable purposes. We agree that self-dealing is indefensible, that foundations should not engage in the kind of speculative financial practices identified by the Treasury, that foundation investments should produce a fair income yield, and that this yield should be distributed on a reasonably prompt basis. However, we would like to see the focus of enforcement of these requirements at the State level. Supervisory responsibility would then rest with the jurisdiction closest to the situation and generally having the paramount interest in the proper use of the charitable funds. Moreover, State courts have at their disposal a much wider range of remedies for dealing with abuses than are available to the Federal tax authorities. These include removal of fiduciaries, mandatory distribution for charitable purposes, surcharge, reformation, and cy-pres.

The weapon of personal trustee liability through surcharge for failure to serve the best interest of a charitable organization is a most powerful weapon against misconduct—as any of you will fully appreciate who have served as a trustee of a private trust—with the penalties falling on the wrongdoer rather than upon the charity itself.

PROPOSED RESTRICTION OF FOUNDATION OWNERSHIP OF BUSINESS AND
DENIAL OF DEDUCTIONS FOR GIFTS OF CONTROLLED PROPERTY

Having agreed with the need for more effective enforcement in the area of self-dealing, accumulation of income and financial speculation, I want to say that the Rockefeller Bros. Fund does not favor action at either the Federal or State level in two areas suggested by the Treasury. The first relates both to the proposed prohibition against foundation ownership of 20 percent or more of a business and to the denial or referral of deductions for gifts of "controlled property."

Basic to much of the popular apprehension about foundations and their growth is the contention that donors through existing legislation receive tax benefits as a result of their charitable donations. It has been a tradition of our country to encourage a variety of private institutions, including churches, hospitals, educational institutions, philanthropic foundations and others. Congress has thus consistently offered incentives toward this end, which, put another way, encourage donors to create and fund such private organizations, including foundations.

Foundation ownership of a controlling interest in a business, or joint foundation-donor ownership of a controlling interest, is not bad or against public policy unless that control results in impairment of the ability of the foundation to serve its charitable purpose. The essential abuses arising from foundation ownership of stock in a "controlled corporation" would be remedied by the prevention of self-dealing and speculation and the requirement that a fair income yield be distributed on a reasonably current basis.

With the correction of abuses which defeat or compromise the charitable purposes of foundations, the question then is to what extent should Congress withdraw incentives, or create disincentives, which will impair the future creation and growth of foundations. The Treasury's sweeping approach, involving bans on foundation ownership of business and on deductions for gifts of controlled property, is designed to eliminate the possibility of any "subtle abuses" not covered by the specific requirements just mentioned—but at what cost?

I have indicated that foundations must grow and major new foundations must be created if the foundation sector is just to stay even in relation to government. It is also important for the foundations established in earlier parts of this century to be joined by others created by donors of a later generation in order to afford additional viewpoints and approaches to the many problems currently faced by our society and the world. By and large, new foundations must come from the men who have large or controlling interests in the major growth companies of the post war period—the IBM's, Polaroid's, Xerox's, and others less well known to the public. I am very much concerned that the total effect of the Treasury's proposals would be the drying up of much of this critical source of new foundation funds. And I am concerned that other proposals, such as the desire to tax gifts of appreciated stock to foundations, would add further disincentives.

I might add that this would apply to any charitable organization.

RESTRICTIONS ON SERVICE BY FAMILY MEMBERS AS FOUNDATION TRUSTEES

Now I would like to comment on the other Treasury proposal which the Rockefeller Brothers Fund believes is ill-advised—the limitation of family service on the board of a foundation after the foundation has been in existence for 25 years. In my view, the arguments of the Treasury in support of this proposal are largely conjectural and for the most part unconvincing. Since the enactment of this proposal would directly affect the composition of the board of the Rockefeller Brothers Fund, I think it is probably understandable that it is one to which we take strong exception, particularly since it would deprive the fund of demonstrably effective leadership for reasons that, quite simply, are not valid.

The board of the fund, which I am representing today as president, is composed of a number of members of the Rockefeller family who have a deep interest in the foundation and have had since its creation. This number includes John D. Rockefeller 3d and Laurance S. Rockefeller, two outstanding leaders in many different fields of philanthropy, David Rockefeller, who combines leadership in the business community with the devotion of substantial time to a variety of other causes, and Governors Nelson Rockefeller and Winthrop Rockefeller, whose careers are in the public service.

The Treasury report recognizes the important values which a private foundation may derive from donor influence, including the bringing of imagination and creativity to the foundation, infusing spirit and drive into its operations, and giving unique focus to its efforts. However, the report concludes that these advantages "tend to decline sharply with the passage of time." This view is apparently based upon a misconception concerning the way foundations generally are created and grow. They are rarely endowed with their entire capital at one time. Consider the Rockefeller Brothers Fund, for example. Started in 1940, the fund's assets never exceeded \$2 million in the first 10 years of its existence. However, in 1951 the fund received a major capital gift from Mr. John D. Rockefeller, Jr., which enabled it to expand its program to the support of new and experimental undertakings. A residuary request from Mr. Rockefeller, Jr., in 1961—a decade later—enabled the fund to expand greatly the scope of its program. It was thus more than 20 years after its formal date of creation that the fund took full shape as a substantial foundation.

The Treasury report contends that family dominance in the affairs of private foundations may lead to narrowness of view and parochialism. This may be true in some instances, but certainly not in all.

Already 29 years old, the fund is now under the direction of the third and fourth generation members of a family who have made public service a major part of their lives. These trustees bring to the fund their widely recognized experience and personal leadership in numerous fields. They provide a major opportunity for the fund to combine responsible leadership and financial resources for the benefit of a broad array of private philanthropic needs. The fourth generation members of the Rockefeller family, many of whom are just reaching majority, are highly motivated as are their predecessors and are becoming increasingly active in philanthropic endeavors. Should this generation and future generations of the Rockefeller family be arbi-

trarily deprived of the opportunity to play a leading role in the fund's activities? Can the direction of the fund be turned over to strangers who would have no incentive to see that its resources are applied imaginatively and creatively?

I submit that participation by several generations of a family actually results in most cases in the opposite of the Treasury's allegation of parochialism and narrowness of view. The Treasury's view is based upon the belief that a common family link limits individuals to common experiences and common points of view. But the very fact that family members represent different generations enables them to bring to a foundation ideas and approaches which in a real sense are responsive to the changing needs of a society.

In proposing an arbitrary restriction on family service as foundation trustees, the Treasury has gone far afield from the proper sphere of the tax laws. Its judgments here are in the realm of social science and we do not believe they are sound. Furthermore, the composition of a board of trustees of a foundation is not a matter susceptible to effective legislation and certainly is not a proper subject for tax legislation.

In summary, I would most earnestly urge that this committee, in its consideration of the Treasury's proposals, should bear always in mind the continuing need to carry forward our traditional incentives for private philanthropy. In the years ahead, as we seek to understand and deal with the complex and stubborn problems that confront our society, I am convinced that the American people and the American Government are going to need the fullest possible participation from private philanthropy and from private foundations.

The CHAIRMAN. Mr. Creel, we thank you, sir, for your statement. You have some appendixes, I notice, at the end of your statement.

Without objection, these will be included in the record at this point. (The appendix referred to follows:)

APPENDIX—EXCERPT FROM STATEMENT SUBMITTED BY THE ROCKEFELLER BROTHERS FUND TO THE COMMITTEE ON WAYS AND MEANS, U.S. HOUSE OF REPRESENTATIVES, NOVEMBER 15, 1963

II. THE ROLE AND IMPORTANCE OF PRIVATE FOUNDATIONS IN AMERICA

It is difficult to list the achievements of private foundations over the past decades, since they have in some way contributed to virtually every major advancement in the knowledge and well-being of our society during this period. Foundations have in fact become so much a part of the American scene that it is easy to take their accomplishments for granted. For this reason it is important to have clearly in mind the wide range of unique functions which private foundations perform in our society today.

A. Pioneering

Philanthropic foundations have traditionally pioneered the way in many areas of our national life. They have provided early support to men and institutions with new ideas, and where institutions have been lacking have assisted in their creation and development.

The pioneering work of the Rockefeller Sanitary Commission in largely eliminating hookworm in the South, the work of the General Education Board in assisting the development of the public schools in the South, and the great successes of the Rockefeller Foundation in conquering yellow fever and malaria have been well known for several decades.

In many other instances, the vistas opened up by early grants from philanthropic foundations have only recently become known. In 1890, the Rockefeller Foundation made a pioneering contribution toward the creation of the Woods

Hole Oceanographic Institution, an organization which has been a major force in advancing our knowledge of the sea and the world beneath it. We have as yet only a glimpse of the future possibilities for mankind in this area. During these same years, the Daniel and Florence Guggenheim Foundation was pioneering in the field of space. As a result of the belief of Harry Guggenheim, Director of the Foundation, in the importance of the rocket experiments of Robert H. Goddard, successive grants were made in the 1930's in support of his research. Goddard's fundamental discoveries paved the way not only for vital weapons systems, but for the further exploration of space, upon which the government alone is now spending more than \$5 billion annually. Another fund established by the Guggenheim family, the John Simon Guggenheim Memorial Foundation, devotes its entire program to backing the creative individual. The list of past holders of Guggenheim Fellowships is a distinguished one, and includes numerous recipients of the Nobel Prize.

Millions of Americans have been the beneficiaries of the Ford Foundation's pioneering efforts to promote educational television in cities throughout the United States and its parallel effort to develop instructional television in our educational institutions.

Today foundations are still pioneering, not only in the natural sciences but in new areas of education, urban planning, the creative arts, linguistics, the prevention of juvenile delinquency, the administration of criminal justice and the provision of equal opportunities for the underprivileged. The Rockefeller Brothers Fund, for example, has aided the creation of the National Skills Bank of the National Urban League, which functions as a reservoir of names and résumés of minority group job-seekers which can be tapped by personnel recruiters of private firms and government.

The Fund has taken a special interest in the field of women's education. It has supported an experimental program conducted by the Radcliffe Institute for Independent Study, under which fellowships are granted to women holding a doctor's degree or its equivalent, whose careers have been interrupted and who would find it difficult without a special incentive to renew their commitment to scholarly work. In a related effort to develop new approaches in this field, the Fund has provided substantial support to the College Faculty Program of the American Association of University Women Educational Foundation. This program assists mature women in resuming their education at the graduate level, so that they may prepare for careers in college teaching, research or administration.

B. Areas in advance of public opinion

Private foundations fulfill the vital role of providing support for projects in areas which are not generally seen as important at the time key action is needed. This may be illustrated by considering three fields in which the Rockefeller Brothers Fund has taken a special interest—conservation, historic preservation and population. The importance of early action is manifest in efforts to protect the natural beauty of strategic land areas. The Rockefeller Brothers Fund has made major contributions toward the costs of land acquisition for the Grand Teton National Park, the Virgin Islands National Park and the Paliades Interstate Park and for the acquisition of watershed necessary to protect California's Humboldt Redwoods State Park.

Another interest has been the preservation and restoration of Colonial Williamsburg, the 18th Century capital of the Virginia Colony. Millions of Americans have thus been able to see a detailed re-creation of the environment of the men and women of 18th Century Williamsburg, and to gain a greater understanding of the contributions of these early Americans to the ideals and culture of our country.

In the past few years, there has been increasing public recognition of the of the magnitude of the threat posed by the rapid and continuing growth of world population. The prospects of coping with this problem have been greatly enhanced by the fact that there are now several experienced organizations in existence, largely financed by private foundations, which are specifically concerned with its various aspects. The largest of these organizations is the Population Council, created in 1952 through the personal initiative of John D. Rockefeller 3rd, and assisted by grants from the Rockefeller Brothers Fund for a number of years. Due to the controversial nature of the birth control question, the federal government for many years declined to make grants in the population field. Only in 1963 did the foreign aid bill authorize funds for research on popula-

tion growth in developing nations, and it was only last year that the United States announced it would welcome and respond to requests for birth control assistance from other nations.

C. The field of religion

The federal government is prohibited by the Constitution from making grants in the field of religion. Private foundations have responded to the need in this area and in recent years have made total contributions in the field of religion approximately \$48 million annually.

A substantial portion of this sum is given by various foundations throughout the country in support of religious life in their local communities. The Rockefeller Brothers Fund has provided recurring support to such organizations as the Catholic Charities of the Archdiocese of New York, the Federation of Jewish Philanthropies of New York, the Protestant Council of the City of New York, the New York State Council of Churches and the National Council of Churches. Since 1964, the Fund has financed a special trial-year fellowship program under which one-year theological fellowships are granted to graduating seniors and recent college graduates who are not prepared to make the usual commitment involved in entering the ministry but wish seriously to consider this possibility.

D. Areas where government support would not be appropriate

There are a number of sensitive areas where governmental support is not appropriate or practical. This is the case, for example, with many projects in the international area.

Overseas, privately supported organizations are often able to work constructively where agencies of the United States Government or agencies financed by the Government are unable to do so. This attribute of privately supported organizations is typified by the American Friends Service Committee, which carried out the delicate task of supervising relief for more than 200,000 refugees in the Gaza Strip from 1948 to 1950. The American Friends Service Committee was similarly one of the few agencies acceptable to the Algerian Government in the period immediately following independence. The Rockefeller Brothers Fund has contributed to the general budget of the American Friends Service Committee since 1946 and has provided support for its program of relief and rehabilitation for Algerian refugees for three years.

In countries where governmental and private aid are equally acceptable, private philanthropic foundations, and organizations supported by such foundations, have the additional important advantage of greater flexibility. Although private foundations seek the full support of local governments, they nevertheless retain the important freedom to channel their support directly to individuals or institutions of special promise.

E. Impartial studies and reports

One of the most significant areas of opportunity for private philanthropic foundations in a democratic society lies in the support of studies on problems of national concern. Some private foundations, such as the Twentieth Century Fund, maintain a close working relationship with individual scholars concerned with problems of major significance for America and the world. Other private foundations finance the studies conducted by leading private research organizations such as The Brookings Institution, the Committee for Economic Development, Education and World Affairs, Inc. and many others. Private support enables those making such studies to take an entirely impartial and objective view of the problem considered. In the case of research studies on such subjects as "College Graduate Federal Civilian Employees" (Brookings), "AID and the Universities" (EWA), or "Improving Executive Management in the Federal Government" (CED), the importance of major nongovernmental support is manifest.

The Rockefeller Brothers Fund has contributed to the study of problems of national and world concern through its Special Studies Projects. The first project was organized in 1958, when more than one hundred American citizens of experience and capacity, working over a period of four years, sought to define the major problems and opportunities that would challenge America over the succeeding ten to fifteen years and to develop a framework of concepts and principles upon which national policies and decisions to meet these challenges could be soundly based. The reports of six special studies panels dealing with foreign policy, international military security, foreign economic policy, economic and social challenges to America, education in America, and the power of the democratic idea—were published from 1958 to 1960.

In March of this year, the Rockefeller Brothers Fund published a Report on the Performing Arts, the most recent of its Special Studies Projects. This Report assessed the place of the performing arts in our national life and identified major impediments to their wider enjoyment.

F. Building organizations and institutions

In pioneering new approaches, philanthropic foundations have often supported the creation of new organizations or institutions which have then attracted other support to sustain their activities. The National Merit Scholarship Corporation, a new approach in the college scholarship field established by the Ford Foundation, now administers scholarship funds contributed by a great many business corporations and other organizations. This single experimental organization has greatly hastened the day when any young person of real ability will not be denied higher education because of inadequate funds. Of similar importance was the support given by the Carnegie Corporation in 1948 toward the creation of the Educational Testing Service.

In 1955 the Rockefeller Brothers Fund made a major grant to assist in the building of an organization which would be devoted to the problems of agricultural development in Asia. Today this organization, the Agricultural Development Council, is a primary source of support for teaching and research related to the economic and human problems of agricultural development in Asia, and it administers a major program of grants and fellowships designed to develop the professional competence of teachers, research workers and administrators engaged in agricultural development throughout the world.

Several private foundations in the early 1960's provided the original financing for a new organization known as the African Scholarship Program of American Universities (ASPAU). There are now about 850 African students studying in the United States on ASPAU scholarships. The United States Government's contribution toward this program in the current year is more than \$2.5 million. As government support becomes more available in various fields, the role of private foundations in creating the institutions which can attract and effectively administer government funds will become more vital.

G. Long-term support

Philanthropic foundations have the flexibility to provide long-term support both in areas where basic knowledge is sought for its own sake, and in fields where practical applications may be many years away. The Rockefeller Foundation's grants in the early 1930's to enhance instruction in Far Eastern and Middle Eastern languages are examples of long-term support in a fundamental area of knowledge where no practical benefits were apparent. However the competence built up as a result of these grants was largely responsible for the ability of the United States Government to develop intensive programs of instruction in these languages when World War II broke out. After the war, government support was terminated but private philanthropic foundations stepped in to sustain work in this area.

In its efforts to develop more productive varieties of food plants for use in the developing countries, the Rockefeller Foundation has demonstrated the ability of a philanthropic foundation to persevere in a program which is fundamentally sound, but where pay-off is necessarily years away. The important work of the Rockefeller Foundation in this area began in the early 1940's at Chapingo, Mexico, with an experimental effort to produce improved varieties of corn. The success of this and subsequent projects has led to similar undertaking involving many other food plants throughout the world. One such effort is the International Rice Research Institute in the Philippines, where the Rockefeller Foundation and the Ford Foundation have joined together in a program to develop rice hybrids which are high-yielding, early-maturing and pest- and disease-resistant. The success of this project could make possible the harvesting of two or possibly three improved rice crops per year in many areas of Asia and could be a major step forward in meeting Asia's increasing demands for food.

H. Organizations depending upon general public support

When considering the experimental programs financed by private foundations, it is important not to lose sight of the fact that private foundations assume a significant share of the responsibility for supporting the galaxy of organizations which operate in such fields as cultural advancement, civic improvement, education, health, religion and welfare, and which depend upon the general public for support. A major portion of the \$54 million in grants made by the Rockefeller Brothers Fund since its creation in 1940 falls within this category.

In short, private foundations fulfill a number of crucial functions in our society. They support the new and untried, the talented individual and the promising institution. They have been able to operate in environments inimical to government, to engage in long-term support in areas of fundamental importance, and to assist in building new organizations capable of coping with the problems of today and the future. They furnish key support for the private institutions which have generally been the pace-setting and standard-setting institutions in our society.

America has traditionally encouraged diverse responses to the needs of society. This has led to the creation of hundreds of thousands of private, voluntary organizations devoted to a wide variety of tasks and attracting the time and energies of millions of volunteers. Philanthropic foundations, through financial support, encouragement and advice, are inextricably involved in the success of this outpouring of private effort.

Private philanthropic foundations also serve as the means by which an individual citizen can use his resources to shape and influence events. This means that the individual does not have to work exclusively through the government in seeking to serve his fellow men. Private foundations are in this way a vital tool in the development and maintenance of the democratic process in America.

III. THE NEED FOR SUBSTANTIAL AND CONTINUED GROWTH OF PRIVATE FOUNDATIONS

The philanthropic foundation acts as a vital stimulant, complement and counterpoise to government in America. As government support in various areas of our national life grows, the more critical is the role of philanthropic foundations. But if they are to continue as a vital moving force for innovation and creativity in our society, they must remain free of excessive restrictions.

If they are to present a viable alternative to the resources available to the federal government, they must also continue to grow substantially. This need for growth relates both to the size of individual foundations and to the aggregate resources of all philanthropic foundations.

The importance of growth in the size of individual foundations may be illustrated by the history of the Rockefeller Brothers Fund over the past twenty-five years. In the first ten years of its existence, the assets of the Fund never exceeded \$2 million, and its activities during this period were very largely confined to the making of grants to local, national and international social service agencies which depended upon the general public for operating and capital needs. However in 1951 the Fund received from John D. Rockefeller, Jr. a major capital gift which enabled it to expand its program to include the support of new and experimental undertakings. Additional assets thus provided the crucial original margin for pioneering. A decade later, a residuary bequest enabled the Fund to expand greatly the scope and impact of its experimental programs. It was thus more than 20 years after the formal date of its creation that the Fund began to take full shape as a substantial general-purpose foundation.

But fostering the growth of foundations to the size where pioneering is possible is not enough. The demands upon private philanthropy today require a large number of foundations with assets sufficient to permit gifts in the millions of dollars. The Lincoln Center for the Performing Arts in the Fund's home community of New York is an example of this need. The Center comprises the New York State Theater, the Metropolitan Opera House, the Vivian Beaumont Theater and Library-Museum, the Juilliard Building and Philharmonic Hall. Of its total cost of \$100.7 million, city, state and federal governments contributed \$10.1 million, leaving \$120.6 million to be raised from private sources. Approximately \$61 million has been given by private foundations. However more than \$52 million of this amount has been given by ten foundations ranking in assets among the top twenty. More than ninety smaller foundations contributed approximately \$9 million. The crucial role played by foundations with assets sufficient for large gifts is evident.

The aggregate resources of all private foundations must also continue to grow if private foundations are to provide an effective alternative to government support. The annual appropriations for the National Science Foundation have increased from \$1.75 million in 1953 to \$353 million in 1964, an increase of over 7,000 per cent. The total expenditures of the National Science Foundation of more than \$353 million in 1964 make it not only the largest foundation in the United States in terms of annual expenditures, but larger than the top ten philanthropic foundations combined. The initial sum of \$21 million annually

recently made available to the National Foundation for the Arts and Humanities is more than the income last year of all but two philanthropic foundations.

Consolidated appropriations of the National Institutes of Health have increased from \$3 million in 1946 to more than \$968 million in 1964. In 1960, a total of approximately \$35 million in research funds was made available to colleges and universities by private foundations. In the same year, federal funds for comparable purposes totaled approximately \$250 million, and in 1964 exceeded \$900 million. Clearly, if private foundations are to provide a meaningful alternative to government, they must be allowed to grow and develop materially in the years ahead.

The CHAIRMAN. Let me ask Mr. Creel, because I don't know, what is the initial purpose as set forth in your incorporation papers for the Rockefeller Brothers' Fund. What is its objective?

Mr. CREEL. It is a broad objective, charitable and philanthropic purposes.

The CHAIRMAN. Does the fund as a matter of fact own more than 20 percent of the stock of any corporation?

Mr. CREEL. About 20 percent of the fund's total portfolio is in the stock of one company. But this stock represents only 0.29 percent of the equity of that company. You mean of its portfolio or of equity, sir?

The CHAIRMAN. Well, combined, either way. You don't need to name the company.

Mr. CREEL. The most equity it holds in any one company is 1.8 percent. All the rest of its holdings are less than 1 percent of equity of any corporation.

The CHAIRMAN. Yours is even less in a position to influence or control, then, than the Rockefeller Foundation itself.

Mr. CREEL. Mr. Chairman, I can assure you that the fund has never participated in the control of a corporation.

The CHAIRMAN. It hasn't at any rate at least. You don't supply the board of directors, then, for any corporation.

Mr. CREEL. No; we have leaned over backward realizing that there can be misunderstandings. We have leaned over backward to avoid any situation in which the fund could be accused of that.

The CHAIRMAN. Are there further questions?

Mrs. Griffiths.

Mrs. GRIFFITHS. If all of the Rockefeller Foundations had their stock together how much control would they have?

Mr. CREEL. I can't answer that accurately because they are separate. They have separate boards of directors. That knowledge simply isn't available to me. The nearest thing and I think one thing that might be some indication is this:

Congressman Patman in some of his reports, I think, listed, I believe, 14 Rockefeller Foundations. There are not many. Some are operating companies. I believe when I was looking at that listing and taking the total number of shares according to his figures for all 14 of those listings the percentage of equity was somewhere between 3 and 4 percent.

Mrs. GRIFFITHS. What is the advantage of having 14 foundations in place of just one?

Mr. CREEL. Well, there are not 14 foundations.

Mrs. GRIFFITHS. How many are there?

Mr. CREEL. There are a number. There is the Rockefeller Foundation. There is the Rockefeller Brothers' Fund, the newly created Rockefeller Family Fund, the Martha Baird Rockefeller Fund for music,

Sealantic Fund in the process of liquidation. I think Mr. John D. Rockefeller 3d has a fund. I can't think of the name of it but it is a small foundation and I believe Mr. Winthrop Rockefeller has a foundation.

Mrs. GRIFFITHS. All of the money could have been put in one foundation couldn't it? There would not have been any real problem, would there?

Mr. CREEL. Yes. It is a question of some of this being very special purpose foundations. It is a question of their being directed to these special purposes, staffed appropriately for these special purposes. I suppose basic to the development of these foundations would be the thought that possibly it isn't desirable to try to achieve everything through one instrumentality. I think that would be the general explanation.

Mrs. GRIFFITHS. If I might say so, I really do feel that for the Rockefeller Fund to come in here, residing in the State of New York where a Rockefeller is Governor, and to suggest that the State should have the control over the funds comes dangerously close to self-dealing.

Mr. CREEL. New York is just one State out of 50. We are advocating this for all States.

Mrs. GRIFFITHS. Do you have any funds in other States?

Mr. CREEL. Well, Mr. Winthrop Rockefeller has his foundation with which we have nothing to do; at least with which I have nothing to do.

I might say Governor Rockefeller will not always be Governor of New York and we would just as urgently plead that this is a matter which comes under the jurisdiction of the State courts where there are really in effect laws in all of the States which if enforced would go a long way. If you enforce the laws relating to a fiduciary which really are common law to all of the States, this would go along way toward preventing many of the abuses which we all admit.

Mrs. GRIFFITHS. Most of the testimony here has already been, though, that attorneys general are not enforcing these laws, they are not checking up on the funds.

Mr. CREEL. This is true. I think it has to be taken in perspective. Not until recently has there really been great attention paid to the foundations and there has been even less attention paid to private institutions, and I think this whole question just does not relate to foundations. It relates to all charitable organizations, colleges and churches, and so on. There is a problem there. There has not been great attention paid to this until recent years. The attorneys general had no incentive and really it was not made clear to the attorneys general that this was really their function. As a matter of fact, the Treasury Department passed regulations, and I think everyone rather generally felt, "All right, the Treasury Department has passed these regulations. This is the Treasury's job." The State attorneys general I am afraid did not think it was theirs.

Mrs. GRIFFITHS. The Treasury report came out in 1965. Has Mr. Nelson Rockefeller presented anything since that time to the New York State Legislature which would encourage any control over foundations?

Mr. CREEL. Not to my notion. Not to my knowledge, but I don't know that that is called for because the legislation itself provides the means by which the attorney general can act.

Mrs. GRIFFITHS. Does the lack of action on the part of attorneys general enhance from a foundation's viewpoint leaving this matter to the States or does it make it less comparable?

Mr. CREEL. I am not quite sure I understand you. If I do I would answer it in this way. As a foundation person I am not pleading for less regulation. As a matter of fact, I would be personally very pleased to see the attorneys general really clamp down not only on foundations but on all charitable activities.

Mrs. GRIFFITHS. Have you ever asked the attorney general of New York to do this?

Mr. CREEL. When there were hearings on the proposed New York legislation we supported that legislation. I wonder if I might go back to my earlier point as I was attempting to trace the history as I see this? I was saying that there was a tendency, I think, for everyone to look to the Treasury Department to regulate foundations and charities. With no criticism intended to anyone, I don't think the Treasury Department has fully exercised the authority which it has under present regulation. Nor has it really, let's say, definitely encouraged State attorneys general to act.

Now, I think we are in a situation where there is growing interest in foundations, growing concern that abuses be corrected.

Mrs. GRIFFITHS. Do you think that interest is national or do you think the interest is State?

Mr. CREEL. I think it is fairly general. In a way I think that is unfortunate because I think foundations and charitable institutions have been presented in an unfavorable light so that I think there is probably a public concern and growing feeling that something isn't right here? That is partially correct but I think the result of it is, yes, there is a national growing concern about the regulation of foundations. I think this is good. If I might, and I am certainly not prepared to make any definite recommendation as to how this should be done, I am urging that State regulation be given a chance and be encouraged.

I think with the 12 States which now have legislation action is coming along. New York State is coming well. I think it needs to do more. I think funding of the operation is a problem. In some of the testimony it was suggested that foundations pay a filing fee which would help in meeting the costs of regulating foundations.

In New York there is such a fee. I don't know that it is adequate. I personally would see no reason why foundations should not pay a reasonable fee that would meet the costs of their supervision.

I draw a distinction between fee and tax because I think they are quite different. One device that was suggested, and which has a certain amount of appeal is that the filing fee together with adequate information, and that is another subject, might be paid to the Treasury Department and remitted to the local States as encouragement to them to become active in developing adequate staffs.

As States become more efficient in their regulation of foundations, this could relieve the Treasury Department of, let's say, close scrutiny of the foundations in those areas and then it could have more of a chance of looking more carefully at the remaining States which might not have adequate regulation.

If the Treasury Department could call to the attention of the attorneys general of those States those situations which look somewhat skeptical and offer to help them pay the costs of their departments for this, I think this thing would snowball or gain momentum. As I said earlier, I don't intend to imply that the Treasury Department does not have a role in this. I think it does. For instance, there are provisions under which tax exemption is granted to an organization, namely it must be chartered in a way that will qualify for the Treasury regulation. There is a regulation against self-dealing.

Now, this isn't an ironclad regulation. It is reasonable. But in the event the State fails to act, this is a law on the books which the Treasury can exercise. Also there is a regulation against undue cumulation of income.

Again, if the State does not adequately enforce this the Treasury can step in. In other words, I am suggesting a backup role, an encouraging role for the Treasury Department.

Mrs. GRIFFITHS. In my judgment that would be a double expenditure of taxes and quite unnecessary. It would be far better if the Treasury really did supervise and control them. In addition, we are really hunting tax funds and let's not think up ways to spend any money by sending it back to the States.

Thank you very much, Mr. Chairman.

Mr. BURKE. Mr. Chairman.

The CHAIRMAN. Mr. Burke.

Mr. BURKE. I just want to ask one question along that line. How do you think the foundations would feel about our setting up an organization within the Treasury similar in its role to the Comptroller of the Currency which charters national banks. The Comptroller has charge of sending bank examiners around to look at the accounts and investigate those people applying for bank charters to get a complete report of those people and their purposes. Do you think that such an agency would be a good thing for the foundations?

I refer more or less to foundations that go beyond the borders of their States.

Mr. CREEL. Sir, I can't answer for foundations generally on that. It is my impression that there would be concern about an SEC type of supervision or let's say a special bureau for the regulation of foundations.

I think again, coming back to the idea that this is an awfully large country and that the States would not be as bogged down as an overall agency and would have a better chance of supervising the charities within their jurisdictions that in that connection I don't think that the fact that a foundation is located in one particular State rather than another would subject it to any greatly different rulings or interpretations on what is legitimate philanthropy or what is self-dealing, and so on, because I think as a body of experience develops in one State this will be recognized by another so that I think that uniformity of your State interpretations would rather quickly develop.

Mr. BURKE. The only thing is that I think the testimony here has indicated that there are only 12 States that have effective laws governing foundations. It might take 10 years before the rest of the States put in similar laws. During that period, if I understand correctly, there would be about \$14 billion to \$20 billion now tied up in founda-

tions. That is quite a sizable amount of money for the Federal Government to ignore.

Mr. CREEL. Sir, I am not familiar with that figure. It is my understanding that the money going into foundations at this time is around \$1.5 billion.

Mr. BURKE. Excuse me. They control approximately \$20 billion in funds, as of now.

Mr. CREEL. I think, sir, the answer I would give to that is that these 12 States, and granted they may not be perfect in the administration, would cover some 67 percent of the assets of the foundations. There aren't so many foundations in the other 38 States, and I would hope that there could be fairly rapid legislation or even if there isn't rapid legislation, that the Treasury Department through its backup position which I mentioned could move in on these 38 States.

Mr. BURKE. What I had in mind was the cost to the Treasury Department. As I understand it, the cost of supporting the Comptroller of the Currency's office is maintained by the national banks themselves. They pay into a fund that pays for the expense of the bank examiners and all the other people who are connected with the inspection of the activities of national banks.

Mr. CREEL. This might be taken care of in part through the filing fee which I mentioned which so long as it would be a reasonable amount I don't think the foundations would object to sharing in the cost of their supervision.

Mr. BURKE. Thank you.

The CHAIRMAN. Mr. Creel, your paper, as I am afraid so many of the papers that will be presented to us, deals primarily with a discussion of the Treasury's proposal which is more or less regulatory and policing in nature. I am more interested, frankly, in a discussions such as I raised with Mr. Harrar earlier today about the justification for the continuation of preference in treatment of foundation income. Whether or not in your opinion the situation today is such as to justify a continuation of that treatment which was accorded of course to foundations in the beginning of the income tax law in 1913, as I recall, and even was provided during the Civil War period when an income tax was voted by Congress at that time.

The concept has been, you might say, historic in the United States for philanthropic activities carried on by foundations do not have to pay tax. Has the situation in any way changed so that the foundations themselves should now be required to pay some tax, even though they are not fully taxed, and pay it by taxable income?

Mr. CREEL. Mr. Chairman, my personal opinion is that there has never been a greater need for every philanthropic dollar that can be made available. I say this for two main reasons. One, the philanthropic organizations are facing inflation like all the rest of us, mounting costs, mounting population.

There is, as I mentioned, really a need beyond estimate as to what private institutions need to survive. There is really a serious question if colleges and universities, except the very strongest, can survive in the face of mounting costs and demands upon them. This is rather typical in practically every field. So that the question is if they are to survive and meet the requirements either they get more philanthropic money or get more funding directly or indirectly through the Federal and State government.

There is a limit to the extent to which governmental funds can go into these private organizations without their, in effect, losing their private character. To me this, as I have said, would change the whole nature of our society.

I believe the private institution is vital as an instrument for the private citizen to exercise an influence on his society, his environment, outside of the expanding governmental programs.

So, Mr. Chairman, my answer would be, one, that the private institutions need every dollar that they can get, and that it is essential that private institutions survive.

THE CHAIRMAN. Let me go beyond that particular point. What I am thinking about is the basic issue whether or not philanthropy should now be insulated from any degree of responsibility for the costs of Government under today's circumstances as it has in the past been insulated, or should philanthropy be required to pay some proportion of the costs of Government. That is what I am thinking of, not the need for philanthropy. On that we all can agree.

We all agree, of course, about the need for more and more of this type of operation. I don't have any question about that in my mind. I was convinced of that before the hearings began. The question is the relationship between the need of the government today, the responsibilities of government, the costs of government, the inability of government to finance those costs, and the continued need for the insulation of philanthropy from sharing those costs.

That is the basic question that I have in my mind.

I would like in this whole review of these matters for the real emphasis to be put upon the answer to that question.

Mr. CREEL. I think my answer to that, Mr. Chairman, is that I consider funds which are collected through the tax system and funds which are dedicated to the public use through philanthropy are all dedicated to the public welfare and hopefully each expended as effectively as the other.

It is a question as to how these funds are allocated, it seems to me, between government and the private sector. I would argue that the private sector not be cut down any more than possible in order to maintain a balance which I mentioned between the private sector and the government, and I think this balance is in great jeopardy at this point with the expanding government programs.

THE CHAIRMAN. I can see your point and that is what I want to get in the record. I want the American people to understand that by and large philanthropy is in the direction of public interest and performs a public service just as any tax dollar that may be collected and used by a government is supposed to be in the public interest and public direction.

If we could be certain in all instances that that is the motivation, that that is the result of the use of the dollar through philanthropy, I assume there wouldn't be too much question about continuing the status that foundations have always enjoyed. But we don't hear too much about the amount of philanthropy that went into the development of the Salk vaccine or things of that sort. We hear about the few thousand dollars that may be spent for some very questionable public purpose.

Those are the things that the American public apparently has learned are the activities of foundations.

Really the primary question then in your mind is one of some area or level of government properly policing the operation of the foundations to see that their activities are just as much in the public interest as are the activities of the tax dollar when put to work. Is that your thought?

Mr. CREEL. Exactly, sir, and I keep repeating myself in the feeling that the duties of a fiduciary trustee need to be imposed upon trustees and directors of all charities, and I think it is a mistake to center in exclusively on foundations because there are other organizations which are in the identical situation.

I think it is unfortunate that foundations are, in effect, without a constituency. Also I think they have a tradition of being rather bashful about talking about what they have done. This I think historically has been a rather uncomfortable thing for philanthropists.

Foundations are in a peculiar situation in that they are vulnerable to various misunderstandings, various attacks, and have no ready way to speak for themselves. Frankly, I think foundations can publish reports. They are read by those who are interested and those who I think would take the lead in, let's say, seeing that abuses would be corrected or called to the attention of the Attorney General, but they are not widely read by, let's say, the greater proportion of the population and it is in this area where I feel there is a misunderstanding developing increasingly. I don't know what the answer is.

The CHAIRMAN. Are there any further questions?

Mr. BUSH. Mr. Chairman.

The CHAIRMAN. Mr. Bush.

Mr. BUSH. I have just one question along the line of the chairman's questioning about the private sector. I couldn't agree with him more about the erosion of the participation by the private sector but many of us are concerned, and I don't know if you heard Mr. Rooney's testimony on concern about political activity.

Mr. CREEL. Yes, indeed.

Mr. BUSH. Do you participate in that directly or indirectly?

Mr. CREEL. We try our best not to.

Mr. BUSH. Do you support any programs, for example, that have extensive voter registration drives not aimed at all the citizens but aimed at a particular group or block of people that might vote historically along one party line for example?

Mr. CREEL. Since that question came up, I have been trying to think. I think there is only one grant that the fund has done. That was to the Southern Regional Council for voter registration. We considered that very carefully, looked into it, felt that it was not a campaign on behalf of any one party or any one candidate, but an effort to extend the franchise. This was our judgment in looking at it, and we were buttressed in this judgment by the ruling of the Treasury Department that the Southern Regional Council in its activities qualified under 503(c) (1).

This is the only one I can think of, but in this situation we used our best judgment and also relied upon the judgment of the Treasury Department.

Mr. BUSH. Where was that voter registration made, in what State, sir?

Mr. CREEL. That was in the Southeast.

Mr. BUSH. Was it in one State or several States?

Mr. CREEL. Several, I think. I don't know the exact number. I think it was really in some degree all of the South.

Mr. BUSH. And it was just for registering voters. Was it prior to any specific election?

Mr. CREEL. No; this was a general effort to get voters registered. It was not with relation to any one specific election.

Mr. BUSH. It was not aimed at a particular economic section or racial section? It was aimed across the whole spectrum of good citizens in the Southeast who were not registered?

Mr. CREEL. Yes, but I think in all honesty it was directed in large part to a racial group, the black community which had not been participating as fully as they might in our political processes, but was certainly not directed at any party or candidate. This was the one example that I can think of.

Mr. BUSH. I see. I have no further questions, Mr. Chairman.

The CHAIRMAN. Mr. Betts.

Mr. BETTS. This reminds me of a question Mr. Byrnes asked this morning, of Mr. Harrar, I believe, about the purpose clause of the Rockefeller Foundation's charter.

Would you think it would be well to have in the record the purpose clause of the Rockefeller - Brothers Fund?

Mr. CREEL. Yes. Our charter reads charitable, which, when it was incorporated in 1940, interpreted broadly as philanthropy.

Pursuing the questioning this morning, if I might anticipate a question, while we consider our charter quite broad, we do refer to the statute and its wording, abide by it and its rulings, and if there is any question as to the propriety of an item coming under the wording of the Treasury ruling on tax exemption, this is referred to counsel for opinion.

Mr. BETTS. So an activity such as the one you explained to Mr. Bush would have been ruled on by your counsel, is that correct?

Mr. CREEL. I can't answer that definitely. I think it may have, but even so, I think we had the two standards of judgment, that of the Treasury and of ourselves in considering it coming under the Treasury rules.

Mr. BETTS. Did the Treasury rule on this specific activity?

Mr. CREEL. It granted its charter and again I would have to confirm this but I believe it was examined.

Mr. BETTS. I mean the one on voter registration.

Mr. CREEL. This was just one segment of the Southern Regional Council.

Mr. BETTS. I know, but it would have to come within the provisions of the law which would entitle it to exemption. Did the Treasury determine that it was appropriate?

Mr. CREEL. I don't know if there was any specific review by the Treasury at that point, but all I can say is that the Treasury has not revoked the exemption. The implication is that there is no question about it.

Mr. BUSH. Excuse me, Mr. Chairman. Could I have one more question?

The CHAIRMAN. Yes, Mr. Bush.

Mr. BUSH. I believe you indicated not, but do you own a personal interest in newspapers or television stations?

Mr. CREEL. We do not.

Mr. BUSH. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Corman.

Mr. CORMAN. Thank you, Mr. Chairman.

Our dilemma here is that there is now a substantial Federal question because, the tax rate being what it is, a substantial amount of money escapes to the Federal Treasury. That may or may not be justified. Perhaps in many instances it is. On the other hand, there is an invitation or great incentive for the expansion of foundations for questionable purposes.

You mentioned that many foundations are reticent to talk about what they are doing and I have observed that. We have in fact created a situation where there is a great potential loophole, and you ask that that be continued and make a fair case for it, but then turn right around and say that we ought not to effectively police people who are being invited to take advantage of this Federal tax exemption.

It seems to me that we have to do either one or the other. We must either get the Federal Government into the picture to protect the public interest as represented by that tax exemption or we must remove the tax exemption. If we decide to follow one of the two courses, which would be your choice?

Mr. CREEL. I would like to go on record as advocating effective regulation of foundations. My only question is the means. If I have been vague in some detail it is because as I said I am not prepared to make a definite recommendation as to how this should be done because there are a number of ways of approaching it.

Sir, I have mentioned the powers which are already on the books for the Treasury Department. I think foundations should make full disclosure, possibly a more complete disclosure than is now made in its 990-A forms.

In New York State, for instance, the State requires additional information to that required by the 990-A. So that it is in a position to look at the operation of the foundation and assure itself that things are right or if it would appear to warrant investigation. I would see no reason why similar information should not be required by the Treasury Department.

Again I am advocating full disclosure which is a basis for action, and I am saying if the States do not act through the Attorney General with the, let's say, nudging of the Treasury Department, I think the Treasury Department has already powers at its command if exercised which would go a long way toward correcting the blatant abuses that have come to the forefront.

So I am not advocating lack of regulation. It is the means, sir. While it may be not as automatic as might be desired and not definitive in preventing of abuse, I frankly am fearful of legislation, which is arbitrary, that tries to cut off every possible conceivable violation.

I think you have to feel your way into it and I do believe, sir, that when you apply fiduciary laws, this is less rigid and getting at the wrongdoer more directly than the means afforded by exclusive regulation by the tax department.

Mr. CORMAN. I didn't understand that the Treasury Department proposals were to deny the States any of their authority to enforce State laws. You are not suggesting that we anticipate preempting those police powers?

Mr. CREEL. I think so. In effect it practically does.

Mr. CORMAN. I understood you to state a minute ago that the States now have the power but they think the Federal Government is regulating the field.

Mr. CREEL. Possibly I am not responsive to your question. I think some of the Treasury proposals are not desirable.

Mr. CORMAN. May I ask one other question. Are there any of those Treasury proposals that you think would be improper for a State to impose on foundations?

Mr. CREEL. I would hope that on some of those proposals the State would not enact arbitrary provisions such as the 20-percent ownership of a corporation and so on. I think this is an area that comes better under the flexible ruling of fiduciary relationship and sound management.

If I might be personal, as a trustee of a private trust, one would think a long time about holding a very substantial part of a portfolio in one stock. I mean this becomes an investment matter. It becomes a matter of personal responsibility—personal financing responsibility to a trustee.

So that I am not saying that it is good or bad, the 20 percent should be the turning point. I am saying this is a matter which sound investment and a fiduciary responsibility can get at more flexibly.

Mr. CORMAN. Thank you, sir.

Mr. BETTS. May I ask one question?

The CHAIRMAN. Yes, Mr. Betts.

Mr. BETTS. Mr. Creel, I understood what you said to mean that the Treasury Department apparently approved of the activity of voter registration which your foundation conducted. I would be interested to know, for the record, under what category of exemptions they allowed that deduction. As you know, the law provides for exemption for religious, charitable, and scientific purposes for testing for public safety, for literary, or educational purposes, or for the prevention of cruelty to children or animals.

Under which one of those categories did the Treasury allow the exemption to the foundation for that activity? Are you able to answer that?

Mr. CREEL. No, I am not. I was going to say this would have to be a matter of referral to the Treasury letter on that.

Mr. BETTS. Oh, you had a Treasury letter?

Mr. CREEL. Yes. We usually require a Treasury letter on agencies to which we give or look them up in the exemption directory.

Mrs. GRIFFITHS. Mr. Chairman, could I ask one more question?

The CHAIRMAN. All right.

Mrs. GRIFFITHS. Have you ever been investigated by the attorney general of New York?

Mr. CREEL. No, not overtly. We have furnished full information. I assume that had he had any question, we might have, but we have not heard anything about it.

Mrs. GRIFFITHS. Well, have you ever been investigated by the Internal Revenue Service?

Mr. CREEL. We were audited in 1964 with no exceptions found.

Mrs. GRIFFITHS. I see. I would like to say that I do agree with Mr. Betts that I can't imagine any circumstances under the statute where any foundation could run a campaign to register people. It just isn't within the statute. That is my opinion.

Mr. CREEL. Might I say that we didn't run it. We gave it to an agency which ran the campaign as a part of a much larger program.

Mrs. GRIFFITHS. For you to make that kind of contribution to me is ridiculous.

The CHAIRMAN. Are you saying it is a perversion of the law for the Treasury to have so held?

Mrs. GRIFFITHS. Of course it is.

Mr. CREEL. I suppose if we were wrong, we must join the Treasury Department in so ruling.

The CHAIRMAN. Mr. Gibbons.

Mr. GIBBONS. I am not so worried about the money for voter registration. There are a lot of other nonprofit tax-sheltered agencies that run voter registration drives. I think that is fine. I would invite you to my community to run one. I think it might help. I am really not familiar with these foundations. How is your foundation governed? Has it a board of directors?

Mr. CREEL. It is governed by a board of directors of 12.

Mr. GIBBONS. You have five Rockefellers and seven other fellows on the board. How do those seven others get on there?

Mr. CREEL. As a matter of fact, it is nine Rockefellers and three others.

Mr. GIBBONS. Excuse me, three others. How did the three others get on the board? I would be interested.

Mr. CREEL. Well, they were elected by the board. The board elects successors.

Mr. GIBBONS. I said to the last witness that there are five Rockefeller foundations within two or three blocks of each other up there. I am surprised that you don't even know each other and apparently have nothing to do with each other.

Mr. CREEL. We know each other.

Mr. GIBBONS. You don't have lunch in the same cafeteria.

Mr. CREEL. We do have lunch.

Mr. GIBBONS. I am curious as to why there are so many different Rockefeller foundations. Why are there so many different ones?

Mr. CREEL. As I mentioned, they by and large are for different specific purposes. I guess it is part of the pluralistic society.

Mr. GIBBONS. Pluralistic private society of the family. I don't want to go into that further.

Can you hazard a rough guess as to what is the net worth of all of these different semi-Rockefeller foundations?

Mr. CREEL. Honestly, I can't.

Mr. GIBBONS. I had the figure of about \$800 million in mind. Is that figure way off?

Mr. CREEL. I would guess that you are not far off. This is pure guess. I don't know.

Mr. GIBBONS. What are the net assets of the Rockefeller Brothers Fund?

Mr. CREEL. The current assets vary around \$200 million.

Mr. GIBBONS. How much?

Mr. CREEL. \$200 million.

Mr. GIBBONS. And your income is approximately what?

Mr. CREEL. Our income is 6 percent on book, 4 percent on market, which comes out around \$8,200,000.

Mr. GIBBONS. You are just one of the little ones, aren't you?

Mr. CREEL. I know.

Mr. GIBBONS. No further questions.

The CHAIRMAN. Are there any further questions?

If not, Mr. Creel, again we thank you, sir, for your statement and your answers to our questions. You have been very helpful to us.

Mr. Stover and Mr. Holt.

Mr. Francis W. Stover is the director of the national legislative service, and Mr. Cooper T. Holt is the executive director of the Washington office of the Veterans of Foreign Wars.

We are pleased to have you with us today, and you are recognized.

STATEMENT OF FRANCIS W. STOVER, DIRECTOR, NATIONAL LEGISLATIVE SERVICE; ACCOMPANIED BY COOPER T. HOLT, EXECUTIVE DIRECTOR, WASHINGTON OFFICE, VETERANS OF FOREIGN WARS

Mr. STOVER. Mr. Chairman and members of the committee, thank you for the opportunity to present the views of the Veterans of Foreign Wars of the United States with respect to this most important legislation, my name is Francis W. Stover and my title is director of the national legislative service of the Veterans of Foreign Wars.

The Veterans of Foreign Wars of the United States is an organization composed of honorably discharged officers and servicemen who have served in the Armed Forces of the United States on foreign soil or in hostile waters during a war, campaign, or expedition for which a campaign badge or medal was authorized by the Congress. The Veterans of Foreign Wars was organized in 1899 and was incorporated by an act of Congress in 1936 when our charter was granted by Public Law No. 630, 74th Congress.

Presently, our membership is approximately 1,450,000 upon which a national per capita tax of \$2 a member is assessed for the funding of our national programs.

From this \$2, each member is provided with a copy of our VFW national magazine each month. In addition we carry out national programs including Americanism, Loyalty Day, youth activities, buddy poppies, membership, community activities, civil defense, safety, voice of democracy, public relations, VFW National Home, legislative, rehabilitation, national security and foreign affairs, and civil service and employment.

All of the income that we derive is spent carrying out these programs in behalf of veterans and their families or, if deceased, their survivors. We are a service organization. It is this service to our fellow citizens, and especially our fellow veteran, which makes us a service organization.

For income tax purposes, the Veterans of Foreign Wars is presently an exempt organization, being classified as a social welfare organization.

The Veterans of Foreign Wars has no unrelated trade or business. All of our activities are directly related to the carrying out of our national purpose of service to veterans and their families.

Since we have no unrelated trade or business, we do not have any unrelated taxable business income.

The Veterans of Foreign Wars does not come within the scope of the report of the Treasury Department on private foundations and other recommendations which were made to this committee in that report during the 89th Congress.

The purpose of this appearance is to have the record indicate that the Veterans of Foreign Wars has no unrelated business income, and there is no recommendation by the Department of the Treasury to change the exemption for our organization.

It is extremely hopeful that this information will be helpful to this committee in your deliberations concerning tax-exempt foundations and the extension of taxes to organizations which have income from other than the purpose for which they are exempt.

Thank you, Mr. Chairman, and members of the committee, for the privilege and opportunity to present the views of the Veterans of Foreign Wars here today.

The CHAIRMAN. We thank you, Mr. Stover and Mr. Holt, for bringing to us this statement.

Are there any questions?

If not, we thank you very much.

Mr. STOVER. Thank you, sir.

Mr. HOLT. Thank you, sir.

The CHAIRMAN. Dr. Norton.

Mr. VANIK. Mr. Chairman.

The CHAIRMAN. Mr. Vanik.

Mr. VANIK. I would just like to say before Dr. Norton presents his statement that Dr. Norton comes from Cleveland, Ohio, and is one of our outstanding community leaders in the Greater Cleveland area. I think Mr. Betts knows of Dr. Norton and his work. He is one of the really good guys in the foundation movement.

The CHAIRMAN. Dr. Norton.

STATEMENT OF DR. JAMES A. NORTON, PRESIDENT, GREATER CLEVELAND ASSOCIATED FOUNDATION, AND DIRECTOR, THE CLEVELAND FOUNDATION

Dr. NORTON. Thank you very much. I appreciate Congressman Vanik's statement.

The CHAIRMAN. You are recognized.

Dr. NORTON. I am director of the Cleveland Foundation and president of the Greater Cleveland Associated Foundation. The Cleveland Foundation was the first and is the largest of the community foundations. Under the Cleveland Foundation rubric the funds of hundreds of donors are held in trust by banks in Cleveland with the income—and under certain circumstances, the principal—allocated by our distribution committee in accordance with the donor's directions. Some donors designated specific institutions to receive their gifts; others restricted use of their funds to certain categories of uses such as education, care of the aged, et cetera; still others left their funds unre-

stricted to be used at the discretion of the distribution committee to meet community needs.

Mr. Wilbur J. Bender, director of the Permanent Charity Fund of Boston, will appear before your committee on February 21 and present a statement on behalf of community foundations. For that reason I would like to confine my remarks to the conception and work of the Greater Cleveland Associated Foundation rather than the community foundation—The Cleveland Foundation.

The basic concept of the Associated Foundation is best introduced with a brief history. There are many foundations in the Cleveland area, some of substantial size. In 1960 the persons responsible for several of these foundations became concerned that their foundations were not having a maximum impact on the tough urban problems that our city was facing. They were responding to requests with the feeling that some priority issues were probably being missed because no request for a grant had come forth. They also were concerned that there was no continuing strategy for resolving some problems before they had become acute.

In conversations locally and with representatives of the Ford Foundation, these foundation representatives decided to experiment with a foundation directed toward urban problems and what foundations could do to attack them. The Ford Foundation made a 5-year grant of \$1,250,000 which was matched with a like sum from the Leonard C. Hanna, Jr., Fund of Cleveland. This \$2,500,000 was to be expended or committed within a 5-year period for the following purposes:

To encourage research on and solution of community problems.

To establish priorities for community action.

To make grants for research, pilot, experimental, and other projects toward solution of such problems.

To encourage wise use of philanthropic funds.

Signing the request to the Ford Foundation were officers of the Louis D. Beaumont Foundation, the Cleveland Foundation, the Leonard C. Hanna, Jr. Fund, the Kulas Foundation, the Elizabeth Ring Mather and William Gwinn Mather Fund, and the Elisabeth Severance Prentiss Foundation. One person from each of these foundations plus five other persons affiliated with family or corporate foundations made up the initial board of trustees. The grant was announced December 18, 1961, and the Associated Foundation began work in January 1962. After reviewing the experience in 1966, the operation was renewed for another 5 years with further grants from the Ford and the Leonard C. Hanna, Jr. Fund.

The Associated Foundation determined that it would "encourage wise use of philanthropic funds"—its fourth commitment—first, by serving as a model with the highest standards of operation of which it was capable; second, by making staff services available to any other foundation at their request; and, third, by seeking to focus on problems that demanded priority attention.

1. The Associated Foundation endeavors to present a model operation.

Public reporting was one of the foremost guidelines for quality operation. Reporting had long been a hallmark of the Cleveland Foundation, one of the sponsors of the Associated Foundation; under the terms of its establishment in 1914 a financial report was required to

be published in two newspapers each year. The Associated Foundation sought to emphasize that some sort of reporting was an obligation of every foundation regardless of size. It has announced all its grants and issues annual published reports.

We have been encouraged with the actions of the Internal Revenue Service which have caused more foundations to file their 990-A report forms. We are pleased to have this opportunity for a report to Congress and we believe this is an obligation that every foundation should accept with the privileges they have under the tax laws.

In our operations we have not been worried with some of the abuses reported in the Treasury Department study of 1965. The public character of our board of trustees and our operation probably has been the reason for this. As a foundation we deeply regret the abuses that do occur in some instances. Indeed we are indignant with those who abuse the privileges of foundations not only because of the moral lapses but also because of the very practical concern that foundation philanthropy may be injured by restrictions intended merely to correct abuses.

2. The Associated Foundation offers staff services for other foundations.

We were not surprised that our offer of staff services was not immediately snapped up by other foundations. In some instances, other foundations were simply unaware of what professional staff could offer. To offset this, we began publishing a newsletter aimed at serving the needs of donors. Now it takes the form of a regularly published brochure, Challenge and Response. Now it takes the form of a regularly published brochure. In our May issue in 1968 we published for general distribution a report on the basic information and issues we feel we need for considering a grant request. This has not only been reprinted twice by national organizations but also has been widely used locally.

We also found that to overcome the reticence of some foundations to call on us we should approach them on issues where we knew they were concerned. For example, where there were over 20 organizations offering some services for the mentally retarded—and seeking support for their work—and two metropolitan-wide agencies offering planning and leadership on mental retardation, the Associated Foundation prepared substantial reports clarifying how these agencies work together and giving some ideas of the priorities which we thought were identifiable. Then we invited representatives from a dozen or so foundations to sit down with us to discuss this report. It has been useful incidentally to the agencies serving the retarded, but it has also helped foundations get a far better perspective on what their grants could and could not do.

We have prepared similar reports on neighborhood centers, housing, some economic opportunities, and the like. Today there are several foundations that call on us regularly.

We have found that some foundations also like to participate in projects which the Associated Foundation has helped develop. In 1968, for example, we developed, with Cleveland State University, a special continuing education program to strengthen the capabilities of principals within our school systems. Our staff together with consultants had identified the leadership of principals as the key point of leverage for upgrading elementary and secondary education and

discovered a void in modern educational resources available to persons in these positions. We offered the opportunity to join in supporting this project to a foundation whose resources are limited to elementary and secondary school proposals, and the project is currently underway with 64 principals participating.

Three national foundations have joined in special projects with us. The Stern Family Fund shared the costs of an internship which brought college professors from southern Negro colleges into our office for three summers so that they could get a better perspective on decisionmaking in a large metropolis. The Rockefeller Foundation shared the costs of a neighborhood committee working on a review of services available to children and youth. This was in our Hough area. The Rockefeller Foundation also joined us in an intensive management training program for Negroes, a very successful project which is now in its second year.

The Ford Foundation, in addition to its general support, has joined in several special projects. One currently in progress deals with the administration of justice and includes revamping the entire police training system for Cleveland. Another is providing supervisory training for 600 supervisory level employees in Cleveland's city government and assisting in the development of a program of continuing education for government employees in the entire region.

From time to time, other foundations have given their funds directly to the Associated Foundation for programs which the foundation was assembling. This last year corporations gave us \$25,050 toward the costs of the businessmen's inter-racial committee which I will mention again in a moment. Corporations, individuals, and foundations gave us \$529,000 for the summer youth programs we had helped plan. The Ford Foundation made grants of \$256,615, some for our direct expenditure and some to be made available to other grantees. We also received \$115,987 from corporations and other foundations for planned parenthood projects, funds used to match money from Cleveland Foundation grants.

We hope that modifications in the law respecting gifts to non-operating foundations do not make this form of cooperation impossible in the future.

I must admit that I do not speak as a detached observer but it seems that this pattern of cooperative grants which has been evolving in Cleveland gives the national foundation the advantage of responsible observers on the scene who are sensitive to opportunities for constructive grants. Local but understaffed foundations have the same advantages of staff support that their larger associates have with no diminution of initiative or responsibility.

Following analysis in depth by both our staff and consultants, all programs in grant proposals must be passed on by the board of trustees comprising 11 of Cleveland's leading citizens and businessmen. This provides far more than a cursory review. These community leaders have not only real knowledge and a real sense of obligation to the greater Cleveland community but communicate widely with citizen groups through other positions of responsibility.

3. The Associated Foundation seeks to focus on problems of high priority.

As instruments for social development, foundations have two privileges that, at first glance, seem paradoxical: They can undertake projects that require years of leadtime; but, also, they can move with great rapidity on problems of immediate concern. The Associated Foundation—and with us, the Cleveland Foundation—has sought to identify long-term approaches to some problems. For example, recognizing the need for the long-term development of black entrepreneurs, the Associated Foundation began in 1964 to study small businesses and their leadership. With other groups, we worked in 1966 on the development of a Small Business Opportunity Development Corporation to bring together the research strength of a university, the teaching of a community college, and, under black leadership, a community group to recruit businessmen and potential businessmen to use the educational, consultant, and loan services available. We have worked with special organizations, the Economic Development Administration of the Department of Commerce, the Small Business Administration, and the economic opportunity program to expand these activities. Today, we are seeking ways to continue this cooperation with the newer groups, local and national, in the field. There was no shortcut that could be devised so the foundation planned a long-term program for business development among minorities.

An example of much more rapid movement came in 1964 when Cleveland was threatened with racial violence over a variety of issues. The foundation, with others, was able to bring together Negro leaders and top white businessmen for communication, which had been impossible before. The Businessmen's Interracial Committee on Community Affairs has worked actively since then on problems of housing, employment, and education. The flexibility of foundation response, however, brought this agency to life with almost no leadtime.

In each of these examples, the Associated Foundation also acted in accordance with another of its guidelines: Problems of public concern are not either governmental or nongovernmental; they are both, and both private and governmental resources must be brought into play.

This principle permitted the foundation to assist in planning and launching the first public community college in Ohio, to fight for the development of a juvenile delinquency prevention project, to help plan and establish our local economic opportunities program, to assist in establishing Cleveland's comprehensive employment program and so on. The resources from government and voluntary agencies have been to meager in manpower and money. Foundation programs have helped draw attention to the need for additional commitments and we are happy that many more donors are becoming involved.

Over the years the Associated Foundation has involved hundreds of Clevelanders in examining and working on the urgent problems of modern society. The PACE (Program of Action by Citizens in Education) Association has led changes in elementary and secondary education. The PATH (Plan of Action for Tomorrow's Housing) Association has developed significant projects in housing. The United Area Citizens Agency has strengthened neighborhood groups.

The foundation, through grants, has sought to assist governments. It provided secretariats for the Cuyahoga County Mayors and City Managers Association and for the School Superintendents Association. The foundation helped fund the Cleveland Little Hoover Commission and funded not only tax studies of local governments but educational programs to help disseminate the information gathered to the local governments in the area.

The foundation has not been afraid of controversy. Operation Equality received a grant to help Negroes move from ghettos to suburbs; grants to the city of Warrensville Heights sought to stabilize neighborhoods while they were in the process of integration.

These are among the challenges to foundation philanthropy and some of our responses in Cleveland. I will be glad to try to answer your questions.

MR. ULLMAN (presiding). Thank you very much, Dr. Norton, for a very interesting statement.

Are there questions?

We appreciate very much your expert testimony. Thank you.

MR. VANIK. Mr. Chairman, I would like to say that in our community the works of the Greater Cleveland Foundation are so extensive that I ask leave to place in the record statements which in my office document the great social contributions made by this fine organization.

MR. ULLMAN. Without objection, they will appear in the record.

DR. NORRIS. Thank you.

(The information follows:)

MARCH 18, 1969.

In Cleveland, as in the United States in general, efforts to improve the quality of life depend on the cooperation and interplay of the private business sector, government, and voluntary citizens groups. Foundations are a special category of voluntary group; they do not provide direct services, but they have a responsibility to provide leadership and support for forward thinking programs directed toward solving the problems that concern our communities.

The morning newspaper for March 17, 1969, in Cleveland, reported a special training program for command level policemen funded by the Greater Cleveland Associated Foundation. This support for the development of a more highly professional police department is part of a continuing program by the Associated Foundation and The Cleveland Foundation in strengthening the administration of justice. In 1964, a grant was made for a neighborhood effort to work with the police; in 1965, a grant made it possible for police specialists to visit other cities and get acquainted with the practices of other departments. In 1966, the Associated Foundation funded the first three years of a police cadet program; in 1967 it supported training the operators for the computerized police information network. In 1968 grants were made and combined with Ford Foundation grants to assist the police in revamping the police training program, and to work with the courts on changing procedures that work to obstruct justice.

The Cleveland Foundation and the Associated Foundation have established community programs in other fields. In 1963, the PACE committee was established to propose a Plan of Action by Citizens in Education. This committee outlined major steps for Greater Cleveland to upgrade elementary and secondary education. As a continuing organization PACE has received many grants to experiment with new techniques for teaching reading, expanding kindergartens, teaching human relations. In addition, the foundations have made grants to establish a secretariat for the Cuyahoga County School Superintendents Association to provide in service training for principals of urban schools, to strengthen teacher understanding of the neighborhood environment of their schools, and to investigate the impact of pupil test results on how teachers teach.

The concern of Cleveland's foundations for increasing employment opportunities goes back to 1963 when, with the cooperation of the Cleveland Urban League,

the Chamber of Commerce, the Ohio State Employment Service, and several civic organizations, the first Skills Bank in the United States was established. Special drives were held to register skilled Negroes who were unemployed or underemployed and to make their names available to employers who had positions open. In 1964, the Associated Foundation made a staff man available to the Mayor to help develop the Job Training Program which used federal support funds and city jobs. A special youth unemployment survey was made by the Cleveland Board of Education and funded by the foundations in 1966. Taking advantage of the opportunities provided by the programs established by Congress and operated through the Labor Department and the Office of Economic Opportunity, the foundations, in 1967, helped bring together persons loaned by business, civic groups, and governmental agencies. Congressman Vanik and his staff were of vital assistance in helping open doors in federal agencies. The Ford Foundation helped supplement the funds of the Associated Foundation. The result of this partnership effort was AIM-Jobs, Cleveland's Comprehensive Employment Program, which continues to develop as one of the nation's best efforts of this kind.

Solving employment problems is more than a series of projects, even if they are all strong. Focusing on planning an overall program for the metropolitan area, the foundations supported the Manpower Planning and Development Commission of the Welfare Federation. This agency not only helps identify local problem areas, but also evaluates the abilities of local agencies to provide the manpower needed by business and industry. Recent grants support projects to coordinate the reporting systems of all agencies engaged in manpower development and to facilitate the work of the businessmen in job development.

Many of the projects supported by The Cleveland Foundation and the Greater Cleveland Associated Foundation seem to be in line with more traditional foundation history. They relate to voluntary agencies in child welfare, or assistance to the aged or disabled. The foundation emphasis, however, is on improving the operations of agencies wherever possible by encouraging research or stronger planning or more efficient operation. Central planning, community examination of goals for health agencies, coordination of activities and attempting to eliminate unnecessary duplication, application of operation research and functional budgeting in private agencies, management studies leading to consolidation of agencies—these are special interests. One example: in 1968 in Cleveland, summer programs to respond to the needs of the inner city young people were coordinated—*public and private*—for the first time in any major city in any country.

This past year, The Cleveland Foundation and the Greater Cleveland Associated Foundation made grants—not all payable in 1969—of \$3,063,000. This breaks down in this fashion: the Greater Cleveland Associated Foundation grants totaled \$633,000; The Cleveland Foundation grants totaled \$2,430,000 (?).

In the field on education, between The Cleveland Foundation and the Greater Cleveland Associated Foundation, grants were made totaling \$951,000. In the field of health and welfare, commitments totaled \$900,000. In the field of public affairs, the grants were \$763,000 and in the field of cultural activity, the total was \$388,000.

In addition to their own grants, the Associated Foundation also served as a recipient agency for \$250,000 from the Ford Foundation and, from Cleveland industry and local foundations, \$537,000 for special summer programs. In other words, the total of all philanthropic support through these two foundations was about \$4,000,000.

At times like this, strategic support for strengthening developing agencies, or strategic support for change in established groups, or sometimes support in creating new organizations, can be particularly effective. As there is so much movement, encouraging the right movement at the right time in the right direction is an appropriate way to help the community move ahead.

Foundations have the privilege of detachment from operating responsibilities and the prerogative of taking a long-term view. It is on this basis that they should judge their own actions and the actions of other foundations.

Mr. ULMAN. Mr. Sugarman. We welcome you before the committee. Please identify yourself for the record and proceed in any way you see fit.

STATEMENT OF NORMAN A. SUGARMAN, CLEVELAND, OHIO

Mr. SUGARMAN. Mr. Chairman, my name is Norman A. Sugarman. I am an attorney in Cleveland, Ohio.

I appreciate this opportunity to appear in person before the committee and to express my views on certain aspects of the subject of tax-exempt foundations.

I am speaking in my individual capacity as a lawyer in private practice. My remarks are based upon my experience with tax-exempt organizations and with the administration of the tax laws in this field.

1965 TREASURY REPORT PROPOSALS—GENERAL COMMENT

The principal proposals before this committee with which I am concerned are those contained in the Treasury Department Report on Private Foundations, dated February 2, 1965, and certain related proposals contained in the recently released Treasury Department Proposals for Tax Reform. I previously submitted comments on the major aspects of the Treasury Department report, which comments were printed in volume I of this committee's 1965 report of written statements submitted to it on the Treasury Department Report on Private Foundations. I shall not attempt to repeat here the comments which I made in that prior statement, but I have appended to my statement today the text of my prior submission for the convenience of any who may care to refer to it.

SUMMARY OF VIEWS ON SPECIFIC PROPOSAL TO PROHIBIT 20-PERCENT OR GREATER INTEREST IN BUSINESS

The specific proposal to which I wish to address my remarks today is the proposal in the Treasury report that a tax-exempt foundation cannot have, directly or indirectly, a 20-percent or greater interest in an unrelated trade or business.

I am opposed to this proposal. In brief summary, my reasons are:

(a) No sound policy purpose would be served by requiring foundations to dispose of proper investments in businesses—neither charity nor the tax revenues would be benefited;

(b) The proposal would adversely affect a large number of unsuspecting foundations while probably not affecting the economic power of certain large foundations to which it appears directed;

(c) The "abuses" with which the Treasury report is concerned can be corrected under existing law and by other specific proposals; and

(d) The unannounced but necessary effect of the proposal is to repeal the existing safety valve in the provisions taxing unrelated business income, and to make the conduct of any "unrelated business" within the organization a basis for complete denial of exemption.¹

¹ There are certain limited activities cited in the Treasury report which would not be regarded as "unrelated business", but these are so limited that they only emphasize the activities that would be penalized.

In short, the proposal goes too far—and will probably catch the wrong fish for the wrong reasons.

In the short time available, I would like to elaborate more fully on these principal points.

NO SOUND POLICY PURPOSE WOULD BE SERVED BY REQUIRING FOUNDATIONS TO DISPOSE OF PROPER INVESTMENTS IN OUTSIDE BUSINESSES

The first reason I am opposed to the proposal in the Treasury report is that I believe the report fails to prove its case for such a drastic restriction on foundations.

The report cites certain existing situations as illustrative of problems, but then instead of recommending specific solutions to these problems, the report adopts a sledge hammer approach—slamming down on a broad area far beyond the problems cited. The report indicates that the Department, as a result of its survey, found 109 foundations owning 20 percent or larger interests in unrelated corporations. However, the number of exempt organizations that are likely to be affected by this particular proposal will be much greater.

PROBLEMS CITED—BUT THIS PROPOSAL IS NOT THE RIGHT SOLUTION

The Treasury report, in the first instance, seems to indicate that the problem in the existing situation is the size and variety of businesses in which foundations have an interest. But size of the business or variety of the holdings has very little to do with a solution limiting the financial investment to a 20-percent interest. A foundation which has more than a 20-percent interest in a moderate business is likely to have less economic power than a foundation which has a 19-percent interest in each of a number of large businesses.

The Treasury report also complains of a competitive advantage because a foundation can accumulate capital to invest in businesses; but this is not the function of a 20-percent or greater interest in a business. This relates to the question of whether there should be any tax-exempt organizations. If there are to be tax-exempt organizations, their capital funds should be invested. Existing law—and other proposals—strike at improper accumulations of income.

The report also complains that under existing law some foundations acquire an interest in a corporate business through the device of acquiring the stock or assets by debt financing, leasing out the business and paying the purchase price out of tax-free rent. There is a separate and distinct proposal to stop this device, which is one of the topics before this committee, under the designation of the Clay Brown case problem. The adoption of the 20-percent stock interest limitation is not necessary to meet this problem.

Another complaint in the Treasury report is that a number of foundation-owned enterprises make negligible or no distributions to their parent organizations. To the extent this charge is true, it nevertheless should not reflect on those contrary situations in which businesses do make substantial distributions to foundations owning their stock. Moreover, for those cases in which the stock of the business is relatively unproductive, the report contains other and more specific solutions, such as a proposal to require that foundations distribute

an income equivalent and proposals denying benefits to the donors for contributions of unproductive stock.

The report also indicates there may be other forms of abuses by reason of relationships between foundations and corporations, such as self-dealings, and so forth. Again, to the extent these abuses exist, there are specific proposals in the Treasury report which the committee may consider to meet these specific problems.

The Treasury report also indicates that the attention of trustees of a foundation may be diverted to business interests by reason of a foundation owning a 20-percent or greater interest in a business. This type of conjecture hardly supports the drastic solution which is proposed. The actual operation of the foundation for charitable purposes is the best evidence of whether the foundation is entitled to exemption. Well run charitable organizations should not be denied exemption because of speculation as to what may be in the minds of trustees.

In short, the report cites certain specific situations, some of which should be corrected, but from these it creates a solution which in many respects goes far beyond the situations cited, affecting "good" and "bad" foundations alike, but which at the same time does not necessarily meet the problems that generated the discussion in the first place.

PRIME CONSIDERATION SHOULD BE BENEFIT TO CHARITY

Let us look at the other side of the coin. A foundation may own more than a 20-percent interest in a business corporation from which the foundation receives substantial dividends which are employed for the benefit of charity. The return to the foundation, in the form of income available to charity, may be better than if it held other investments.

The real test should be whether the foundation's holdings are productive of income for exempt purposes or otherwise serve the tax-exempt purposes of the organization. For example, a foundation may be receiving a high rate of return on securities or a foundation may have made an investment which is very important for the rehabilitation or economic development of a community or region. Why should it be forced to dispose of this investment to the disadvantage of charity, the community, or the region?

As previously indicated, the specific abuses or problems of which the Treasury report complains can, to the extent Congress in its wisdom determines these abuses affect the revenue, be met by other specific solutions, including some already included in the Treasury report.

However, this proposal is not required by revenue considerations. The recent "Treasury Department Proposals for Tax Reform," which repeats the 1965 Treasury recommendations in this area, states—page 41—that these proposals "have no significant overall revenue effect."

Moreover, the type of investment or extent of the holdings by a foundation is primarily a matter of State law; and so long as the holdings satisfy State law requirements as proper for the purposes of the foundation and the foundation is operating for charitable purposes, why should the tax authorities be concerned or require additional legislation?

In fact, if a foundation is improperly using its funds or making investments to the detriment of its charitable purposes, then I believe that the Treasury Department has sufficient authority under the existing law to deny the exemption of such an organization. Thus, the Revenue Service, in Revenue Ruling 67-5, announced its position that under the existing law the Service will deny exemption to a foundation controlled by the creator's family and operated to enable the creator and his family to engage in financial activities detrimental to the foundation and resulting in the foundation's ownership of non-income-producing assets which prevent the foundation carrying out a charitable program commensurate in scope with its financial resources. This is a very important ruling, and a copy of the full text is attached for your information at the end of my statement.

Thus, I believe, that there is sufficient authority under the existing law to meet many of the problems cited in the Treasury report and for other specific problems the Congress can, if it so wills, take specific legislative action.

PROPOSAL WOULD GENERATE GREATER ADMINISTRATIVE AND LEGAL PROBLEMS

It might be said that the Treasury needs the type of sledge-hammer legislation proposed in the report in order to have definiteness and certainty, even though this might penalize some foundations. However, the fact is that the proposed legislation will not provide definiteness and certainty; but instead it will create greater administrative and legal problems than exist under the present law. For example, in order to determine the interest of a foundation in a corporation, a whole series of complicated attribution rules would be necessary, probably involving attributions of ownership through other corporations, trusts, estates, individuals, partnerships, and other foundations and their trustees. This could prove a nightmare, not only for foundations but also for the Internal Revenue Service—and to what benefits to charity?

Furthermore, what is an unrelated business? In 1967, after nearly 17 years under the unrelated business tax law enacted in 1950, the Treasury Department issued new regulations reinterpreting the term "unrelated trade or business." Even so the standards are far from clear. For example, under the new regulations, an exempt organization for the advancement of public interest in classical music may own a radio station which may or may not be regarded as an unrelated trade or business activity. The regulations indicate that that part of the activities of the radio station relating to the regular sale of advertising time and services to commercial advertisers in the manner of an ordinary commercial station constitutes an unrelated trade or business. The application of the regulation involves a difficult factual determination on which reasonable minds may differ. Assuming a foundation owned more than a 20-percent interest in such an educational radio station, it would be extremely difficult for it to know from one year to the next whether that radio station would be considered as an unrelated business; yet its whole exemption could turn upon this matter.

This brings me to a further major reason I am opposed to the proposal.

The Treasury proposal would have the effect of repealing the present law permitting some unrelated business activities within the exempt organization.

This proposal is far more sweeping than merely requiring foundations to dispose of an interest in excess of 20 percent in the capital or stock of a separate business. In fact, the provision applies to activities within a foundation itself and would have the effect of repealing the 1950 statute which recognized the difficulties inherent in completely prohibiting so-called unrelated activities in organizations operated primarily for exempt purposes.

By way of further explanation, let me repeat that the Treasury proposal would prohibit a foundation from owning 20 percent or more of an unrelated business; from this, of course, it follows that the proposal would prohibit a foundation from owning 100 percent of an unrelated business; and if a foundation conducts within itself any activity, which the Revenue Service regards as an unrelated business, it follows that the foundation would be owning 100 percent of an unrelated business and therefore, must be denied exemption.

The net effect would be that no organization would be permitted to have any unrelated business activity, as defined by the Treasury Department.¹ An organization would be acting at its peril in conducting activities, whether or not productive of income.

One reason for the 1950 legislation was the fact that a hardship would be imposed on legitimate charitable organizations if they were denied exemption merely because of the incidental conduct of an unrelated business activity. The 1950 legislation sought to equate any unrelated business activity with a taxable business by imposing the regular tax on unrelated business net income, while at the same time preserving the exempt status of the organization devoted primarily to charity. Of course, there have been difficulties in determining what is an unrelated business, but these difficulties are not solved by the Treasury proposal. They are, in fact, accentuated, as previously indicated.

The virtue of the present unrelated business income tax system is the fact that difficult questions involving whether an activity is or is not an unrelated business are capable of being resolved by the exercise of good judgment, so that a reasonable solution can be arrived at protective, to the extent possible, of both charity and the Federal revenues. This can be done without having to classify an organization as entirely exempt or entirely taxable as would be required by this proposal—to the detriment of charity and without commensurate benefit to the revenue.

An example of the type of organizations that might be affected is found in Revenue Ruling 57-313 published by the Internal Revenue Service in 1957. This ruling involves a medical and research foundation which the Revenue Service held was exempt. Apparently this foundation, in addition to or in connection with its exempt medical and research activities, furnished photographic, illustrative, and similar

¹ The proposal contains some limited exceptions, but unrelated business activities now permitted under the law would result in loss of exemption.

services to medical and educational institutions. This was held to be the conduct of an unrelated business. Under existing law, if this foundation derived any net income from such service to other medical and educational institutions, it would be subject to tax on such net income, but otherwise, it would continue to be an exempt organization. Under the proposal, the medical and research foundation would lose its exemption unless it disposed of or terminated its services to the other medical and educational institutions. I fail to see any good public purpose or tax policy purpose that would be served by repealing the 1950 legislation and requiring such an organization to terminate these activities in order to maintain its exemption.

PROPOSAL RUNS COUNTER TO POLICY IN OTHER AREAS

Finally, I would like to call your attention to several situations in which the 20-percent limitation proposal runs counter to policy in other areas and, at the very least, requires that the proposal be carefully and clearly defined to prevent hardship and penalizing legitimate charitable institutions.

The proposal as contained in the Treasury report would not apply to so-called "public foundations," but would apply to so-called "private foundations." While I think that the proposal if applied to "public foundations" would unfairly penalize them, I think the same reasons equally require that the proposal not apply to so-called "private foundations."

Additionally, the definition of "private foundations," which the Treasury report uses, would apply to many organizations that are not commonly thought of as "private foundations." Thus, many operating exempt charitable, educational and scientific organizations do not fit the current definition of "public foundations" which is limited, generally, to organizations deriving their primary support from the public or whose buildings may be open to the public. A medical research organization of the type referred to in Revenue Ruling 57-313 is an example of an operating foundation which may be treated as a "private foundation" under present definitions. The same would be true of a great many other operating organizations that serve the public, such as educational organizations that are not schools, including those conducting educational radio, forums, and similar activities for the advancement of music and the arts; also various other organizations for the advancement of science or conducting research.

The definition of a public foundation under existing law is also quite nebulous and in most cases depends upon the so-called "facts and circumstances" test as set forth in the present Treasury regulations. Because this test does depend upon "facts and circumstances," an organization may think it is a public foundation and later find that the Internal Revenue Service does not agree with it; or it may qualify in 1 year as a public foundation but not in another.

The net policy effect of the proposal would be to make it more difficult for foundations actually to carry on operations themselves. In order to become "safe" under the tax laws, they would have to become either quite dormant; that is, merely fund distributing organizations, or turn their operations over to the large public or social

welfare organizations, or to the universities or to the Government. From a policy standpoint such penalizing of initiative in the charitable, educational, and scientific fields would be unjustified in my judgment; and from a revenue standpoint is clearly unnecessary.

The proposal also appears to be completely inconsistent from a policy standpoint with another proposal before this committee. I refer to the proposal that the unrelated business income tax to be extended to organizations and institutions to which it presently does not apply, such as churches, social welfare organizations, and social clubs. In contrast to this proposal, for extension of the unrelated business income tax, the proposal placing a 20 percent limitation on an interest in business has, as I previously indicated, the effect of repealing the unrelated business income tax in the case of charitable, educational, and scientific organizations. It seems completely inconsistent to propose on the one hand that, for example, an educational organization which conducts some unrelated activity would lose its exemption, and at the same time propose that a private social club which conducts a similar activity would maintain its exemption and merely be taxed on any net income from such activity. If the unrelated business income tax is to be retained and extended to other organizations, then in the interests of consistency and fairness the proposal imposing a 20-percent limitation must be rejected.

SUMMARY

In speaking in opposition to this proposal I do not mean at all to indicate opposition to all proposals for tax reform or correction of abuses. However, I believe that a sound principle is that legislative solutions which restrict the private sector of our economy should be imposed only with respect to problems requiring resolution and should go no further than the specific bounds of those problems. This particular proposal is not a proper solution because it descends like a parachute that missed its target; it fails to cover the economic power point and at the same time encompasses a great deal of other ground, thereby adversely affecting both the administration of the tax laws and proper charitable operations.

I have indicated that there are specific problems which can be corrected by specific legislative proposals; but this broad sweeping proposal is wrong—it will adversely affect legitimate educational, charitable, and scientific operations without any benefit to the revenue.

(The attachments to the statement follow:)

REVENUE RULING 67 5—CUMULATIVE BULLETIN 1967-1, PAGE 123

"A foundation controlled by the creator's family is operated to enable the creator and his family to engage in financial activities which are beneficial to them, but detrimental to the foundation. This has resulted in the foundation's ownership of non-income-producing assets which prevent its carrying on a charitable program commensurate in scope with its financial resources. *Held*, the foundation is operated for a substantial non-exempt purpose and serves the private interests of the creator and his family, and therefore is not entitled to exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code of 1954."

The question has been raised whether a foundation organized and operated in the manner described below qualifies for exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code of 1954.

A foundation was created under a trust agreement between the donor and members of his family as trustees. The trust agreement sets forth exclusively charitable purposes and directs the trustees to pay over the entire net income to charity.

The creator and his family contributed a few shares of common stock in their family-owned corporation to the foundation shortly after its inception. At this point the corporation, whose capital structure consisted solely of common stock, was recapitalized. A first and a second class of preferred stock, each having voting rights equal to the common, was authorized. The first class was sold to members of the family; the second class was issued as a dividend on the common stock.

In the years following the recapitalization, the foundation acquired a substantial majority of the common stock. The larger portion of this stock was purchased from the creator and members of his family. In this manner the sellers realized appreciation in value of the corporation's assets, as reflected in its common stock, the gain being taxable at capital gains rates. The foundation also obtained additional common stock in the corporation through donations from the creator and his family. The donors claimed deductions as charitable contributions for the appreciated value of these gifts.

As a result of these transactions, the corporation's common stock became the foundation's principal asset. Concurrent with the sales and donations of the common stock to the foundation, the creator and his family increased their ownership of the corporation's preferred stock. This was accomplished by authorization and purchase of new issues of preferred, stock dividends on existing preferred, and various reorganizations between the corporation and other and other corporations controlled by the creator and his family.

Throughout this entire period the corporation consistently paid full dividends on its first preferred and partial dividends on its second preferred. No dividend was ever paid on the common stock. Since the corporation's common stock was the foundation's principal asset, the foundation's income was negligible in relation to the net asset value of its total holdings. As a result, the foundation was able to carry out only minimal charitable activities.

Despite the absence of dividends, the trustees of the foundation continued to purchase the corporation's common stock and failed to invest any sizable portion of the foundation's funds in other assets productive of income. Although the foundation was an important stockholder in the corporation, its trustees never exercised their fiduciary duty to the foundation by attempting to require the payment of dividends on the common stock or to prevent the issuance of additional preferred stock which diluted the underlying value of the common stock and inhibited the payment of dividends on it.

Section 501(c)(3) of the Code provides for the exemption from Federal income tax of organizations organized and operated exclusively for charitable purposes.

Section 1.501(c)(3)-1(c)(1) of the Income Tax Regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3) of the Code.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an organization is not organized and operated exclusively for the purposes specified in section 501(c)(3) unless it serves a public rather than a private interest. To meet this requirement, an organization must establish that it is not organized or operated for the benefit of private interests such as the creator or his family, or persons controlled, directly or indirectly, by such private interests.

Members of the family of the creator of the foundation control the operation and investment policies of the foundation in their capacity as trustees. Through this control, the foundation has been operated to enable the creator and his family to engage in financial activities beneficial to them.

By a series of financial transactions involving the corporation, the creator and his family have succeeded in shifting the economic advantages and voting control in this company from the common stock held by the foundation to the preferred stock held by the creator and his family. The members of the family acting as trustees of the foundation have acquiesced in these transactions. As a result, the foundation owns non-income producing assets and is prevented from carrying on a charitable program commensurate in scope with its financial resources. Thus, these activities have not only resulted in favorable tax consequences to the creator and his family, but their effect has also been detrimental to the charitable purposes of the foundation.

The use of the foundation as a vehicle for activities advantageous to its creator and his family and as a source of funds to finance such activities, the resulting investments by the foundation in assets which fail to produce income for a charitable program commensurate in scope with its financial resources, the continued failure of its trustees to protect the value of these investments, and their failure to make them income-producing, all establish that the foundation is operated for a non-exempt purpose, substantial in nature. That purpose is to serve the private financial interests of its creator and his family. The presence of such purpose is fatal to exempt status. See *Better Business Bureau of Washington, D.C., Inc. v. United States*, 326 U.S. 279 (1945) Ct. D. 1650, C.B. 1945, 375. Furthermore, the foundation fails to serve a public rather than a private interest and therefore is not operated exclusively for charitable purposes.

Accordingly, the foundation fails to qualify for exemption from Federal income tax under section 501 (c) (3) of the Code.

STATEMENT ON TREASURY DEPARTMENT REPORT ON PRIVATE FOUNDATIONS BY
NORMAN A. SUGARMAN, ATTORNEY, CLEVELAND, OHIO, OCTOBER 15, 1965

This statement is submitted in response to the invitation from the Committee on Ways and Means for interested persons to submit views on the Treasury Department Report (issued under date of February 2, 1965) on Private Foundations.

These comments are being submitted in my individual capacity and are based upon my experience as a lawyer in private practice and my prior experience in the Internal Revenue Service.

The purpose in expressing these views is to assist the Committee in evaluating the legal and tax administrative effects of the Treasury proposals if they were to be adopted. There is no question as to the authority of the Congress to enact any legislation it desires to determine those organizations that are qualified for the privilege of exemption from the Federal income tax, and it is not my purpose to attempt to advise the Congress on the political or social aspects of imposing tax restrictions on the operations of private foundations.

This paper is submitted on the premise that the Congress intends to continue in the tax law an exemption for organizations which are organized and operated for charitable, educational, scientific and religious purposes. Therefore the matters to which I shall address myself are those aspects of the Treasury Department recommendations which, as it appears to me, would promote or not promote a sound administration of the tax exemption and related provisions of the Internal Revenue Code. For convenience I shall follow the order of recommendations as contained in the Treasury Report.

I. Recommendation on "Self Dealing" (Treasury Report Part II A, pages 15-21)

In principle, the recommended standards of conduct of trustees contained in this section of the Report are sound. However there are three types of problems of serious proportions which could result from attempting to enact such stringent rules into the tax law: (1) problems of distinction between public and private foundations, (2) problem of penalties for technical violations and (3) problems of definition.

The first two types of problems also arise from other portions of the Treasury recommendations and will be dealt with separately later.

Problems of definition in applying prohibitions against self dealing involve both the definition of the class of persons who cannot "deal" and the definition of the prohibited types of transactions. The Report indicates only vaguely that the proscribed class will be the "donor or parties related to the donor". Definitional problems here are difficult because there can be all kinds and degrees of relationships, including indirect relationship through stock ownership in a corporation. Must a foundation know all of the relationships, direct and indirect, of every donor no matter how small his donation? Must it before accepting a donation make sure that the donor had no transactions, or is not related to any person who had a transaction, with the foundation? How long must it keep records for this purpose? How long will the "taint" of being a donor or related to a donor prevent a person from dealing with a foundation?

The other type of definitional problem involves making exceptions to the list of "prohibited transactions" which should be made for normal dealings of a foundation, such as for transactions involving supplies, printing, brokerage com-

missions, safe keeping fees (such as to a bank), transportation, professional services, etc.

The complexities and uncertainties that will result from enactment of legislation on the above matters and the application of such legislation will add burdens to both foundations and the Revenue Service. It is questionable whether all foundations should be so burdened. The Revenue Service will have a greater administrative burden because transactions that are clearly reasonable and prudent will have to be checked for the identification and direct or indirect relationship of the parties. It is submitted that a better approach would be to apply the standard of fiduciary responsibility in determining whether a foundation is engaged in improper transactions.

2. *Recommendation on "Delay in Benefit to Charity" (Treasury Report Part II-B pages 23-38)*

This recommendation is also subject to the same first two problems referred to above, which will be discussed later.

The principal recommendation, namely that requiring distribution of income within a year after receipt, with an exception for certain programs, is sound. However, some leeway should be permitted for differences of opinion as to what constitutes income (e.g., a foundation may think it has distributed all its income but the Revenue Service may reach a different conclusion by a technical reclassification of capital items or expenses). Moreover, consideration must be given to the problem of organizations prohibited by old articles, charters, wills or irrevocable trusts from making such distributions and to the treatment of past accumulations which were reasonable or existed prior to the enactment of the 1950 legislation. Organizations should not be forced imprudently to distribute past accumulations.

The principal problem under this recommendation, however, involves the "income equivalent" recommendation. The concept that an organization should realize income for the benefit of charity is sound in principle but there are at least two difficulties in the attempt to write an arbitrary rule for its application. One difficulty is that many factors enter into a sound investment program, and the evaluation of these factors involves the exercise of judgment which can hardly be forecast by a legislative rule. For example, economic conditions, trends in an industry and other factors may indicate the wisdom of holding securities for growth with a reasonable expectation that the return to the foundation will be greater than that which might result from another security with a higher current income yield. Moreover a sound investment policy would include not only income considerations but also capital appreciation to keep pace with the growth of the economy and maintenance of real income. The "income equivalent" rule could on the other hand prevent a foundation from keeping pace with inflation. For example, if a stock selling for \$100 paid a \$2 cash dividend and a 2% stock dividend, the rule might require the sale of three-fourths of the stock dividend to realize cash to pay a 3½% "income equivalent" to charity. A 2% accumulation may reflect sound judgment in an effort to maintain the value of the fund.

This is not to suggest that foundations should normally hold substantial unproductive property for long periods of time, but there is a judgment factor involved as to a proper investment portfolio, which conservatively should include a mixture of both income and growth situations.

A second problem under the "Income equivalent" recommendation involves the question whether it would apply on an asset by asset basis or in the aggregate. For example, if a foundation has a security producing a 7% yield and another security producing a 1% yield with an average of 4%, does this meet the Treasury test? There are many well known securities that are proper investments for fiduciaries that would be ruled out by the Treasury approach, or to say the least, that would be required to be disposed of by foundations which have followed sound investment practices. It is no reason to substitute the Treasury's concept of investment based on every security having a particular yield of 3½% or thereabouts for what could be the sound investment judgment of persons who have a fiduciary responsibility in the management of a foundation.¹ A requirement that each security produce a minimum income as suggested in the Report could force foundations to speculative securities, could require them to dispose

¹ There are many "blue chips" with current investment yields of less than 2.5%, such as J. General Electric, Merck, Monsanto, Pet Milk and Minnesota Mining & Mfg.

of securities at an untimely period,² and could create an artificially high market for securities of the type the Report would favor.

One other comment should be made as to the basic recommendation to require expressly by statute that income must be expended within a year following receipt. The Report suggests an exception be made to permit a foundation to treat as an expenditure amounts which are set aside for a definite charitable purpose to be accomplished by the foundation. The Report indicates this exception would not apply where the accomplishment of the charitable purpose would involve an accumulation by a recipient organization. This aspect of the matter should be clarified. There is a trend toward foundations making grants to be paid over a period of years. A commitment for such a grant should be recognized as the equivalent of an "expenditure" for purposes of the above rule. Further the foundation should not have to be concerned for tax purposes whether the recipient organization is accumulating funds also for a project which may take some time. While, of course, the trustees of the foundation making a grant have a responsibility as to the proper purposes of a grant, a rule requiring earmarking and tracing by both the donor and recipient organization could become unworkable.

3. Recommendation on "Foundation Involvement in Business"

(Treasury Report Part II-A, pages 30-36)

The recommendation here is that a foundation should not own 20% or greater interest in an unrelated business. This would prevent a foundation from owning 20% or more of the stock of a corporation and would also prevent the foundation having any unrelated business activity (as that term is defined in § 513 of the Code), with certain minor exceptions which are spelled out on page 37 of the Report.

With respect to the prohibition against owning 20% or more of the stock of a corporation, the recommendation has the benefits of a seemingly clear and direct rule. However, there is a serious question whether the problems resulting from the rule are worth it. One technical problem is that of attribution or determining direct or indirect ownership. Foundations and the Service may become embroiled in arguments on this subject which will have nothing to do with the charitable worth of the organization.

Another problem area involves the family type business where a bequest of stock to a foundation may be made to serve a charitable purpose and to reduce death taxes by reason of eliminating the contributed stock from an estate subject to Federal estate taxes. This may relieve financial pressures that would otherwise exist to sell the business to raise funds for taxes, and thereby it may permit a small business to be retained under family control through stock still in the hands of the family. Should this means of helping to preserve a family business be prohibited? Or to put it another way, must the family contribute stock to another foundation than the one it has established?

In many cases it may be difficult to market a block of stock without selling the controlling stock of a business owned by the foundation. Aside from the marketing and expense problem to the foundation, there may be the problem of the foundation having to sell more than it might prudently sell otherwise or having to form a syndicate or group with others to sell (including family owners of the business). The net effect in some of these cases may be that the foundation will sell stock at a price representing a lesser return to it than if it held the stock and continued to receive dividends from the corporation. Thus the required disposition of the stock under the Treasury recommendation could result in an actual financial loss to the foundation and charity. This would not be true in every case, but the probability points up the difficulty of the application of an arbitrary rule requiring disposition of all such investments. Serious consideration should be given to a "grandfather clause" whereby foundations already possessed of 20% or more of the stock of the corporation would not be required to divest.

As already indicated, the recommendation goes beyond the situation of stock ownership, but would, in effect prohibit the conduct of any unrelated business activity (with minor exceptions) by "private foundations". It would have the effect of repealing the 1950 legislation on unrelated business activities with respect to such organizations and, by adding new definitional problems, would substantially complicate this area for all organizations and the Revenue Service. See Section 7 of this statement.

The concept and rule of the 1950 legislation was that a foundation can be exempt and can have an unrelated business activity so long as the primary pur-

² A foundation so disposing of securities might also be accused of "speculating" in violation of another limitation recommended later in the Report.

pose of the foundation is charitable. Since the conduct of an unrelated business activity within a foundation would in effect constitute 100% of the ownership of the unrelated business activity, the Treasury recommendation apparently would require the foundation to divest itself of such activity or else lose exemption.

The 1950 legislation was a sound approach to a difficult problem because the courts were reluctant to deny an organization exemption where its primary purpose was charitable even though it might have an activity which produced unrelated income. The Congress provided a sound solution to this difficult problem by segregating the unrelated business activity into a taxable activity, while not requiring the organization to forfeit its exemption. This approach is administratively sound because it permits the resolution of difficult cases without the government and the courts being put to the task of deciding that an organization is all taxable or all exempt.

In the process of applying the present statute, it is clear that we do not as yet know all of the rules and concepts that are determinative of what is an unrelated business activity. Therefore both the legal and administrative problems will be greatly increased if, under the Treasury proposal, exemption is made to turn on whether an organization has any unrelated business activity. The penalty would be greater than even that under existing law (which imposes a tax on the unrelated business activity) because, under the approach in the Treasury Report, even if the unrelated business activity is not productive of income it could nonetheless result in loss of exemption simply because it may be an unrelated business activity.

There are activities which the Revenue Service has held are unrelated business activities although they serve a good purpose and are not actually inconsistent with the basic charitable public purpose of an exempt institution. For example, in a published ruling, the Revenue Service held that a medical research organization had unrelated business income when it rented to doctors, hospitals and others some of its medical equipment and medical slides. The 1950 legislation wisely permits this type of an organization to continue to be exempt. The recommendation contained in the Treasury Report apparently would require this organization to discontinue such medical service if it desired to maintain its exemption.

Whether this particular case could be treated differently because of the particular type of "unrelated" activity or because the particular organization might not be a "private foundation", is besides the point of the basic problem involved. The more attempts are made at arbitrary statutory refinements between various types of unrelated activities and between public and private foundations, the more complexities are added to an already complex area of the law and the more foundations and the Revenue Service will have to devote their time and efforts to the niceties of distinctions that bear little relationship to charity or to revenue raising.

While the Treasury's survey (as reported on page 31 of its Report) indicates that only about 8% of the foundations covered own 20% or larger interests in businesses, the proposal, involving as it would the broad spectrum of unrelated business activities, would affect a great many more foundations and substantially increase the administrative task of the Internal Revenue Service.

It is suggested that this recommendation of the Treasury is too broad and that efforts should be made to find more specific solutions to specific problems. The size and nature of the business and the actual extent of foundation involvement in management in unrelated businesses should be looked to if it is felt that a limitation in this area is necessary.

4. Recommendation on "Family Use of Foundations to Control Corporation and Other Property." (Treasury Report Part II-D, pages 37-43)

This recommendation would postpone the charitable contribution deduction for a gift of an interest in controlled business or other property until the foundation disposes of the contributed assets, the foundation devotes the property to active charitable operations or donor control over the business or property terminates. A similar rule would be applied for income, gift and estate taxes. This proposal should be considered in conjunction with another proposal (at page 58 of the Report) where a similar rule is applied to contributions of unproductive property, i.e., the deduction likewise would be postponed until the property is made productive, disposed of or applied to charitable use.

There are several definitional problems that arise in connection with this recommendation. The first one involves the matter of the control of the business

or controlled property. A definition of control for this purpose could be a source of extensive controversy. While this would be the donor's problem (from the standpoint of whether he would be entitled to a deduction and when), it obviously would be the foundation's problem in terms of whether it could in good faith accept a contribution or whether it should become involved in advising donors as to whether a control situation exists or does not exist. A foundation would also become involved under the part of the recommendation designed to prevent a foundation from distributing certain types of property to another charitable organization where the other organization is of a type the donor could not contribute to and obtain a deduction.

Under the present law these problems involving a control situation are approached as a matter of valuation of the property contributed and the donor has the burden to show the value of his contribution. While this gives rise to difficult valuation problems, it is probably a narrower field of controversy than that which would exist under the Treasury recommendations.

In this area, as in the case of contributions of unproductive property, the benefits to charity may be postponed but the benefits are likely to occur. Moreover, to the extent contributions of stock in a family business enable a family to continue to control a business through retained stock rather than being forced to sell the company to pay death taxes, the "evil" of such contribution may be merely a safety valve for a difficult situation involved in the impact of our tax structure. The Congress is faced with a choice, (a) to continue the valuation approach under the present law, which, though not perfect, is a reasonably satisfactory approach which does encourage contributions for charitable purposes with a limited present deduction, or (b) to take a different course involving postponement of deductions, with the difficulties that will arise under that approach.

The difficulties under the Treasury recommendation are not only the controversy that is likely to arise out of problems of definition (which may be greater than present valuation problems) but also the hardships and arbitrary results that can occur from the complete denial of deductions in many cases, including some traditional methods for contributing property. For example, a traditional form of gift is the contribution of a farm to a charitable organization with a life use retained in a widow. Under the language in the Treasury Report this apparently would be considered unproductive property, with a disallowance of a charitable bequest deduction because the property would not be immediately productive to the foundation. If the surviving spouse lives as much as three years, the estate bequeathing the farm to charity would receive no deduction at all.

5. Recommendations on "Financial Transactions Unrelated to Charitable Functions." (Treasury Report Part II-E, pages 45-52)

The recommendations here are that the foundation be prohibited from participating in any kind of trading or speculation with any of their assets. The difficulty here is again one of definition. The trustees of a foundation have a fiduciary obligation with regard to the handling of their investments and there are sound principles which have developed over the years as to the prudence with which they must act.

It is questionable whether some of the standards indicated in the Treasury Report or the standards which a Revenue Agent might apply should be substituted for those of the fiduciary. For example on page 52 of the Report, the Treasury cites a foundation which purchased unlisted securities (among other activities). It also cites another foundation which turned over approximately 20% of its stock in one year. Both of these actions could have represented sound investment policy. As previously stated in the discussion on the "income equivalent" recommendation, there are many factors that enter into investment policy, including the importance of maintaining the value of a fund. This may require purchases and sales—more at some times than at others. A trustee of a foundation has an obligation to act prudently, which includes timely investment action as well as inaction.

An example of the problem of defining speculation and the differences of opinion as to what constitutes speculation is seen in the decision of the Tax Court in *John Danz Charitable Trust*, 32 T.C. (1959). In that case the Commissioner characterized the foundation's activity as speculative. The Court responded (at pages 477-478):

"Nor do we agree with the respondent's contention that the petitioner's activities were so speculative as to subject its funds to a significant risk of loss and

that, therefore, it is not an exempt organization. Petitioner confined its activities to the purchase and sale of real properties and listed securities. The sales were all long-term, and were not so frequent and continual as to constitute a trade or business. Indeed, examination of the stock transactions during the years involved shows that, with one exception, none of the securities sold had been held for less than 2 years and that several had been held for as long as 8 years. We are unable to spell out from this pattern of investment activity, a speculative business subjecting the funds to a significant risk of loss. Certainly, a charitable organization otherwise exempt should not be denied the right to make such shifts in its investment portfolio as prudence may dictate from time to time."

This case illustrates how, but for a court intervention, the Revenue Service might construe "speculation". It also illustrates that the Commissioner has authority under existing law to deny the exemption of an organization which is engaged in such activities that it cannot be considered to be properly conducted for charitable purposes. To go beyond the present law the Congress would have to write into the statutes a definition of speculation. The Treasury Report does not indicate how this term could be defined. While it indicates that such activities as "puts" and "calls" etc. are inherently speculative (and there is no objection to this characterization), should it attempt to treat holding of over-the-counter securities as speculative, clearly it would become involved in a judgment area on which it is impossible to legislate.

6. Recommendation on "Broadening of Foundation Management" (Treasury Report Part II-F, pages 54-56)

This recommendation would require foundations, after 25 years of existence, to have management which is independent of their donors and parties related to donors. While this recommendation would involve definitional problems, it is not unreasonable to expect foundations to become managed over a period of time by persons other than a principal donor. It should be pointed out, however, that donor interest in the management of a foundation is not necessarily an evil and in many cases is beneficial. The tables on page 85 of the Treasury Report indicate that the ratio of grants to total income (i.e., the distribution of income of a foundation) is at a much greater rate where the donor-related influence on the foundation is 50% or more than when it is a lesser percentage.

7. Additional Problems; Definition of "Private" and "Public" Foundations

In Part III of the Treasury Report additional problems are considered by the Department and recommendations made, such as with regard to unproductive property (already commented on), contributions of \$300 stock and other ordinary income assets, computation of the estate tax marital deduction, and penalties. These recommendations involve other technical problems but they also make more serious the major question previously referred to in connection with other recommendations of the Department, namely the distinction between public and private foundations. There are, in general, two problems involved in the distinction made in the Report between public and private foundations. One problem is that of definition. The other problem is that of policy.

As to the matter of definition, the Report on page 1 indicates, in general, that a private foundation would be every organization exempt under § 501(c)(3) of the Internal Revenue Code with certain exceptions. The exceptions are limited to churches or conventions or association of churches, educational organizations with regular faculties, curriculums and student bodies, organizations whose purpose is testing for public safety and "organizations which normally receive a substantial part of their support from the general public or governmental bodies". The last quoted phrase is the important one and it is not at all clear. This definition is similar to that presently contained in § 170(b)(1)(A)(vi) as amended by the Revenue Act of 1964. Regulations under this section have not yet been issued and the delay is clearly attributable to the difficulty of determining the meaning of the statute and its application. It is possible that many institutions which are of a public nature and with public management may be regarded as "private foundations" under this terminology.

In any event, it would be exceedingly unfortunate to have the meaning of "private foundations" not clear because then institutions would be acting at their peril in determining whether they could enter into certain transactions, receive certain contributions etc., not knowing what set of rules applies to them. This would obviously increase the expenses of charitable organization (for professional fees etc.) and the work of the Revenue Service, with little benefit to charity.

Moreover the question arises as to whether the "evils" related to private foundations are, if they are evils, limited to private foundations. For example, consider the recommendation against self dealing, which would in effect prohibit the bargain purchase by a foundation of securities, (a method now commonly employed as a means of making a contribution of the difference between cost and value). If this is an "evil", why should it be prohibited only in the case of a so-called private foundation?

In the final analysis these recommendations should be weighed on the point of whether or not they will benefit charity, consistent with sound administration of the tax system. If the recommendations are tested as to their impact if applied across the board to public as well as private foundation, it becomes apparent that the adverse effect upon charity and the controversy that would be aroused in connection with the administration of the tax laws would bring results far short of desirable objectives. For example, if it is improper for a foundation to own 20% or more of the stock of a business or to have any unrelated business activity then the reasons given in the Treasury Report would seem to be equally applicable to colleges, universities and other similar institutions. Yet in those situations the Treasury apparently feels that the usual tests involving prudence and consideration of all the facts and circumstances are sufficient protection to charity and to the tax system. The question can properly be asked then—why can't we extract the element of difference between such public foundations and private foundations, which element seems to be primarily that of a responsible Board of Trustees, and permit the usual rules to operate, without having to involve all foundations and the Revenue Service with a new set of complex rules which will breed greater controversy?

8. Penalties

One of the principal questions arising from the Treasury recommendations is that if they are adopted what penalty should apply for violation of the rules so laid down. For example, a foundation may buy a listed security from a donor, paying therefor the market price; while this is technically a violation of the self dealing rule, it is seriously questioned whether a penalty of denial of the organization's exemption would fit the "crime." This would be even more the case, if the foundation paid less than the fair market value for the security so purchased and in fact received a contribution in the form of its bargain on the purchase.

Another example involves the matter of unrelated business activity. As previously stated, the determination of whether a set of activities constitutes an unrelated business is a very difficult one. If an organization is technically in violation of the Revenue Service's concept on unrelated business, it is doubtful that the proper penalty is that its exemption be denied, particularly when a determination that a set of activities constitutes an unrelated business may take several years to evolve.

This suggests that, in order to give effect to the Treasury recommendations, two practical aspects must be kept in mind:

1. The rules, to the extent possible, should be on a prospective only basis.
2. Many of the rules should be given effect only after notice has been given by the Revenue Service to the organization or other parties involved.

In addition the penalty of withdrawal of exemption is likely to be too severe and hit at the wrong party; the effect of withdrawal of exemption is more likely to impose a penalty on charity than on any of the offending parties. There are alternatives available, such as a tax penalty on donors who offend or a tax on some part of the offending activity of the foundation. The latter suggests, of course, the very solution which the Congress adopted in 1950 with respect to unrelated businesses, namely that if the activity is an unrelated business, it should pay an income tax but the organization can maintain its exemption nevertheless in other respects.

CONCLUSION

The above comments are not intended to detract from the conscientious efforts of the Treasury Department both in the study underlying the Treasury Report and in the administrative steps the Department has taken, through the Internal Revenue Service, to try to resolve many tax problems in this field. The comments are intended solely to reflect the difficulty of attempting to legislate in the field of charitable organizations on the basis of rules which would be arbitrarily applied.

It is my judgment that enactment of legislation as recommended in the Treasury Report will substantially increase the administrative tasks of the Revenue Service and involve increased expenditures by that agency not commensurate with the revenue produced. It should be recognized that the recommendations would place in the Revenue Service the function of regulating private foundations. This might be rationalized on the ground that, in effect, the Treasury Department is a "partner" of every tax exempt organization; but actually it is the Congress that must determine the public policy that should apply as to the relationship of the Federal Government to foundations, and this involves balancing many social and economic factors as well as whether foundations should be regulated by the Federal Government and, if so, by whom and to what extent. I think it should be recognized that regulation by the Revenue Service may go far afield from the basic purpose of the Revenue Service to administer laws for the purpose of raising revenue.

Moreover, before a whole new set of statutory provisions are imposed on the Revenue Service and foundations, it is believed that further efforts can and should be made to solve problems administratively. I see no objections to specific legislation to meet specific problems, such as the recommendations with regard to Section 306 stock, the estate tax marital deduction, and the penalties for failure to file returns. There are other specific problems referred to in the Report for which specific legislation can be devised but for which the Report instead recommends broad legislation which goes beyond the particular problem. It is the broad legislation which will require exception upon exception and result in greater complexity for both foundations and the Revenue Service with little benefit, and possible adverse results, to charity.

It is my belief that a great many of the problems in this area can be solved by proper education and greater administrative efforts by the Revenue Service. Many of the problems and so-called abuses are the result of misunderstanding as to the proper role of foundations and the responsibilities of trustees. Education through existing groups of foundations, bar associations and accountants' associations would help to remedy many of these situations. Moreover, the fundamental responsibility in the field lies with the states. The promotion of cooperative efforts by state authorities, through groups of the above mentioned types, could go a long way toward eliminating abuses while at the same time permitting flexibility and exercise of judgment, which permit the greatest contribution by foundations.

The Revenue Service can assist in and promote such an educational program including education of its own agents. With the best of intentions, the Revenue Service has a difficult problem of educating its own personnel in proper audits in this field, and I believe that the proposals in the Report, if enacted, would make the task of the Revenue Service even more difficult. I believe the Revenue Service could contribute greatly to resolution of many of these problems by going forward on the program it has already begun of issuing guidelines and other administrative rules for the application of the provisions on exempt organizations. The Service could take even bolder action by publishing more detailed guides and standards. It certainly would be advisable for the Service to obtain more experience in this field and to attempt to resolve more of the problems administratively and through cooperative efforts, than to be catapulted immediately into the administration of a whole new set of statutorily imposed regulations.

I therefore strongly urge that a program of further administrative experience and development of guidelines be undertaken as a first step. An attempt was made in this direction in the establishment of the Exempt Organizations Council. This should be revived and sufficient manpower in the Revenue Service assigned to the task of defining and clarifying problems, including the adoption of administrative rules to prevent abuses. It will be cheaper administratively to resolve these problems now than undertaking to enforce a set of new rules under sweeping legislation.

This is not to say that Congress should not consider specific legislation to deal with specific problems of the type referred to above. If further studies in the Revenue Service indicate there are other specific problems which cannot be coped with administratively, then these too should be reported to Congress for appropriate specific legislation.

Mr. ULLMAN. Thank you, Mr. Sugarman. You have indicated that you are here speaking in an individual capacity as a lawyer.

Mr. SUGARMAN. Yes, sir.

Mr. ULLMAN. Do you, in the course of your practice, represent persons who have family foundations which own a substantial interest in a family business?

Mr. SUGARMAN. I might say, Mr. Chairman, that I spent about 15 years with the Internal Revenue Service and about 15 years in private practice now, and I have seen this foundation field from all sides.

Our law firm represents all kinds of taxable organizations and all kinds of tax-exempt organizations, including tax-exempt organizations that pay the unrelated business income tax. Yes, we do represent some family foundations. As far as I know, I believe there is possibly only one that might have more than a 20-percent interest in any business. That is received by a bequest.

Mr. ULLMAN. Mr. Sugarman, do you really believe that a foundation should be permitted to operate a radio station or to sell photographic material to medical institutions, as indicated in your examples?

Mr. SUGARMAN. The particular revenue ruling in regard to this photographic material, I don't know the organization, but I believe from the published description it engages in medical research in the course of which it develops medical slides, for example, with regard to brain tumors as an example. A local hospital in connection with its services to patients needs those slides. The medical research organization makes them available to a hospital at a charge. I assume their charge is basically to cover their cost. It is possible that by the end of the year there is technically a net income resulting from that charge.

Now, it is my view that, if there is such a net income, that net income is properly taxed under existing law if it is an unrelated business. I think there may be some question about it, but assuming it is an unrelated business, but I would think no good purpose would be served to say that this result of the research cannot be made available to another organization, except free of charge, or else cut it out completely.

Mr. ULLMAN. What if it were available by a private business firm?

Mr. SUGARMAN. It might be available by a private business firm or it might not.

Mr. ULLMAN. Do you think that then the foundation should be in competition with private business?

Mr. SUGARMAN. I think that what generally happens in these areas is that the research is originally conducted by a research organization, a nonprofit organization.

The history of scientific research has been that, if it appears to be an activity on which someone can make a profit, private individuals will enter that business and compete with the research organization. At that point, yes, there may be competition, but I suggest that that doesn't make the research bad.

The best example of that in this country is what is going on in the hospital field. We have a growing trend in this country of private profitmaking hospitals. I suggest this is not a ground for denying the exemption of other nonprofit hospitals.

Mr. ULLMAN. Where do you draw the line? To what extent should there be competition? That is the problem.

Mr. SUGARMAN. I think the statute presently draws the line. It says, first of all, the organization must be operated primarily, taking the hospital, for the charitable purpose and for a nonprofit purpose.

Now, the difference is that whatever income comes into the hospital, for example, must be plowed back into the hospital operations. There is no one under the present tax law who is supposed to derive a private profit from that operation. That is, there are not stockholders who get any dividends or any type of a private reward from the money that goes into the hospital. That is in sharp contrast with a private profitmaking hospital, which I must say could do a good job in providing service to patients, but the profit is for the private benefit of the people who create the hospital and receive dividends on it, and more power to them if they can make a profit at it, but I think that should not deny the right of other hospitals to receive contributions and to operate for the benefit of the people in their communities.

Mr. ULLMAN. What about the radio station?

Mr. SUGARMAN. Educational radio is one of the developments that is going on in this country. I do not represent any educational radio stations. I do know that they have had difficulty getting off the ground and I am sure many educators feel that this is a very important and necessary development in this country. These, then, again are operated, to my knowledge, on the basis of providing educational programs under the basis of no private profit.

Mr. ULLMAN. Do you honestly believe that the taxpayers of the country are going to continue to allow this tax exemption and continue to allow a family owning 100 percent of the stock of a corporation to contribute 50 percent of the stock to a foundation controlled by the family and allow the donor to vote the stock and control the policies of the corporation and set up the program for which the income is going to be spent? Do you think it realistic to expect the taxpayers to continue those kinds of policies?

Mr. SUGARMAN. I think there is an important point that has to be recognized and that is—I have one criterion in my mind and just one.

That is, is that foundation actually being operated for charitable purposes? I refer to a published revenue ruling under which I think the Revenue Service can step in, and in those cases where the foundation is being operated for the benefit of the family in connection with the control of a business, where it is not distributing its income or isn't realizing income and, if it is, it isn't distributing it for proper charitable purposes in those cases where it doesn't meet that criterion. I think the exemption should be denied, the deductions disallowed, or any other appropriate action taken. But it seems to me that, in a case in which a foundation owns stock in a corporation, it is deriving a 7- or 8 percent return, its funds are being used entirely for proper charitable purposes, the same type of use of funds as might be used by the United Appeal or the Community Chest or a similar organization in the community; it is supporting hospitals, universities, and similar fine institutions. I see no advantage to the taxpayers or to the community in saying that foundation which is deriving a good return, a 7- or 8-percent return, should dispose of that stock and invest elsewhere at 4 percent.

I would like to add one thing in connection with that question if I may, because I think there is some misconception with regard to the income of these organizations.

Under our tax laws we have a tax which is imposed on net income, taxable income. If you regard a foundation as in the business of dis-

tributing funds, then I dare say that very few of them would have any net income or taxable income on which there could be any tax based.

I think the importance of the exemption really lies in the deductible contribution for that reason, and as to the concept that there would be any real revenue obtained by imposing a tax on present organizations, I think along the lines of what the latest Treasury report states, that there is a negligible or no-tax-revenue effect in this area.

On the contribution side, I think you have a different policy question of encouraging contributions, but I think in terms of net income of exempt organizations this is very flimsy, and as indicated by some of the witnesses such as from the Rockefeller Foundation all of their income goes out.

Mr. ULLMAN. The proposals, of course, that are before us are on net income before distribution.

Mr. SEGARMAN. Yes, sir.

Mr. ULLMAN. And not after distribution.

Mr. SEGARMAN. I merely wanted to point out that in any other organization the tax, of course, is on net income with an allowance of deductions of funds spent for the purposes of the particular operation.

Now, I realize it is quite a jump to allow a deduction.

Mr. ULLMAN. There isn't any other type of organization that gets 50 percent of its funds from Federal tax exemption, either.

Mr. SEGARMAN. Let me illustrate by taking the example of the educational radio station as one. If you regarded an educational radio station which under the present definition is probably a private foundation, it actually has operating expenses. It actually operates without a net income.

I am merely pointing out that in the cases of operating foundations, if you recognize the purposes of their operations you take any of the universities, and I would doubt that there are any universities in the country, and there may be one or two exceptions, but I would doubt that there are any that have really any net income.

Mr. ULLMAN. Thank you.

Are there other questions?

Mr. Broyhill.

Mr. BROYHILL. Sir, I came in a little late and didn't have a chance to go over all of your statement. I understand that you opposed all of the Treasury proposals; is that correct?

Mr. SEGARMAN. No, sir. I think my main concern is that there are a number of aspects of the Treasury report which, on the surface, appear to be solutions to problems, but which I think, if enacted, would merely put this committee in the position that for the next 10 or 15 years they would be revising that legislation to correct the problems that have been created.

My own view is that I think there are two things that could be done in this area.

One proposal is that included in the Treasury recommendations, that I think I would agree with in terms of—not necessarily its terms but certainly in terms of its concept—is the concept of the current use of income of foundations, that they should be productive and distribute their income.

The mechanics of how to do that, whether through an income equivalent or some other form, is something to be worked out. Any foundation that I am connected with I am very strong on that. I believe that is 100 percent correct. The existing law is somewhat in that direction. It is a prohibition against unreasonable cumulation. I think that could be tightened up and some standards established.

I think the other aspect of it is the problem of really who is going to police foundations and, having spent many years in the Internal Revenue Service, I have a feeling that, about that subject, that the Internal Revenue Service is basically an accounting organization entrusted with the responsibility of collecting taxes, and I know under the present law it is not authorized to regulate foundations, and it is expecting too much of it to regulate foundations.

There ought to be some form of regulation. Whether it should be in the Treasury Department or some other way which will encourage regulation as between the States and the Federal Government, I don't know. But I would like to see this subject approached on the basis of proper standards somewhere in the Federal Government in cooperation with the States, and then I think we can move in the right direction.

But what is really involved is some equity power in some of these parties, not these sweeping rules saying you can't have more than 20 percent of the stock, but see what is really in the interests of revenue on those particular facts. The attorney general would have authority to do that in most States, but he doesn't have money. I think the Federal Government could have authority to do that, but it would be necessary to give it enough appropriations.

Mr. BROTHILL. Possibly one of the reasons for these hearings is to determine whether we should adopt the recommendations of the Treasury in that regard or continue the tax exemption of these foundations.

Now, in answer to a question of Mr. Ullman, you commented on the fact that the income would be net insofar as taxing a foundation, but of course you immediately made the observation that that would be income after the expenditures.

Mr. SUGARMAN. That is right.

Mr. BROTHILL. If all foundations had their contributions limited as corporations and individuals have their contributions limited, the income to the Government would be quite substantial; would it not?

Mr. SUGARMAN. No, sir. All foundations could immediately become trusts which have an unlimited charitable deduction.

Mr. BROTHILL. If they became trusts.

Mr. SUGARMAN. You may have to change that law, too. I appreciate that, but under the existing law a trust doesn't have to apply for exemption, but it doesn't pay any tax either if all of its income goes out to charity.

Mr. BROTHILL. But you said the greatest amount of tax savings to the individual is to the donor of a foundation.

Mr. SUGARMAN. I am saying that I think that is where the important dollars and policy question is. I think it is the actual contribution, the policy of encouraging individuals and corporations to help support hospitals, schools, and other institutions which are adjuncts of those things and where that line is of an educational institution, whether it is the university or an adult education extension and so on.

I am merely trying to say the encouragement of contributions, I think, is the important policy aspect of it. I think the exemption follows somewhat by the way of definition, and if I am correct that these organizations are operated on a nonprofit basis, then from a revenue standpoint it would cost the Government money to police these organizations rather than derive any net income.

Mr. ULLMAN. Mr. Corman.

Mr. CORMAN. Sir, may I ask if you are familiar with the Americans Building Constitutionally?

Mr. SUGARMAN. I have heard of them. I have never had anything to do with them. I am as shocked as you are.

Mr. CORMAN. Sir?

Mr. SUGARMAN. I am as shocked as I am sure you are.

Mr. CORMAN. Our investigations in the Patman subcommittee led me to conclude that present laws and present policing invite this kind of conduct on the part of some people whose income reaches \$100,000 or more.

Mr. SUGARMAN. I don't agree with that. I don't think the present law invites that kind of thing at all.

Mr. CORMAN. What invited it?

Mr. SUGARMAN. I don't know.

Mr. CORMAN. I take it from the testimony we heard last year that their operation has been fairly extensive and that they probably have gotten in trouble because they put in writing some suggestions to engage in some illegal conduct, but a great many of the things which they suggest make it possible for people to legally avoid their normal share of taxes, particularly in the medical field, by putting it into hospitals and clinics. It seemed to me that that was the way it was.

Mr. SUGARMAN. My own reaction to that was that it made it possible for people to think they were saving taxes, until their returns were audited.

Now, I don't know who made these recommendations, and I probably shouldn't comment too much because all I know about it is what I have read in the newspapers, but what I read didn't sound like anything I have ever seen or done.

Mr. CORMAN. It seems to me one of the problems was that you get into area of total ownership of a business by a foundation and total control and very lax State enforcement of fiduciary relationships, that is the set of circumstances that makes it possible for people like ABC to operate.

Isn't there some place for Federal regulation to the tax-exempt foundation?

Mr. SUGARMAN. Let me comment two ways. One, I think the Revenue Service under existing laws can handle many of these abuses areas. I think the problem you have is really how far do you want to go in regulating foundations, actually regulating them, and I think that requires a somewhat different concept than our present law and a different role for whatever the Government agency may be.

I think that there is room for more guidance, direction, and so forth in this field. I think the standards should be made more clear. I think the Government should get more information. I am in favor of all of those things. I merely am suggesting that this proposed policy question of getting more regulation—and what agency should handle it I am

not sure—that that shouldn't be in Internal Revenue, not out of lack of respect for Internal Revenue, but simply that it is not really their field.

Mr. CORMAN. I am really trying to get to whether there ought to be Federal regulation or whether we should leave the matter to the States. I was rather surprised to hear this vigorous opposition on the part of some of the Nation's largest foundations to any regulation except by the States. I would like to hear your statement as to whether you think there is some reason for Federal regulation in this field so long as we are going to continue the tax exemption?

Mr. SUGARMAN. I think there is a place for Federal regulation in this field, but I think the concern of other people, and I share it, is the fact that once you move in that direction, you are going to completely undercut the job the States can also do, and I think that if there is a weakness in this field, it is the fact that today the States feel they can leave the job to the Internal Revenue Service, and they can't.

The result is that the States are not adequately staffed, and they don't have the funds, and they do what they can with the two or three people they have, and that is it.

Now, I would like to see the Federal Government take the lead in this, but at the same time I would like to see what they can do to get more State cooperation because fundamentally many of these problems with the smaller foundations is that they are local foundations. There is some advantage in getting some local judgment used as to whether or not their funds are properly being used, and Dr. Norton spoke on our experience in Cleveland that way, and I think this is all to the good.

I realize that was voluntary and is a little different, but I think the local communities' pressure is a good thing.

Mr. CORMAN. Yes, sir, but when you consider the number of foundations and we hear over and over again that our fear is that we will stop the flow of funds into these foundations if we impose taxes on them, there is no question about that. That is true. But with this kind of tax incentive to utilize this is sometimes just plain sham to attempt to escape individual income taxes and then we say we hope the States will take care of it, we have 50 States for the man who really is trying to circumvent the law. He can move easily. He can create his foundation in any of the 50 States and can go to the place where the regulations are the least vigorously enforced.

Mr. SUGARMAN. Let me illustrate what I had in mind, which I don't think is different from what you are saying. For example, if the Federal authorities, and this is an actual case I understand, find that there is a foundation abusing its exemption, they work with the State authorities and the State attorney general says, "Look, don't revoke their exemption, which will really put them in a form of business. I will remove their trustees. I can do that under the State law. I will get some other people in to run that foundation for the benefit of charity."

If the State attorney general is willing to do that, we are moving in the right direction. When they are not willing or able to do that, obviously there is something else that the Federal Government should do.

Mr. CORMAN. As you say, and I would tend to agree with you, IRS is probably not the best agency since their function is to collect money,

but it seems to me that we need at some point some kind of regulation and that we hadn't ought to leave the tax collection to the tender mercy of the least vigorous of the 50 States.

Mr. SUGARMAN. I agree with you on that, sir.

Mr. ULLMAN. Thank you, Mr. Sugarman.

Our next witness is Mr. Cuninggim. We welcome you before the committee, Mr. Cuninggim.

Please identify yourself and proceed.

STATEMENT OF MERRIMON CUNINGGIM, PRESIDENT, DANFORTH FOUNDATION

Mr. CUNINGGIM. Thank you, sir. My name is Merrimon Cuninggim. I represent the Danforth Foundation of St. Louis, Mo., of which I am president.

THE DANFORTH FOUNDATION

The Danforth Foundation has one or another form of intimate personal connection with the alma maters of all the members of this committee, save perhaps one or two about which I was not able to get information. This is as direct a way as could be found of noting the breadth of the foundation's interest in higher education.

We are active as well in precollegiate education, and beginning a year ago we entered the field of urban affairs. Our work in education is national and to a slight extent international in scope; our urban activities at present are limited largely to St. Louis.

That we have unusually close relationships with educational institutions and other agencies is explained by our twofold method of operation. Like other foundations we make grants; unlike most others we administer programs of our own design—several national fellowship programs for prospective college teachers and other personnel, curriculum, and management workshops, awards for distinguished teaching and able administration, and various forms of encouragement for hundreds of academic people who strive to look upon their students as individuals. A full recounting of the programs and grants of the foundation is available in our annual reports and other publications.

Such an extensive activity requires the wide use of talent in the making of decisions. Trustees set policy and decide on major grants and program changes; professional staff administer the foundation's work. But this is only the beginning of the consultative help of experts that the Danforth Foundation calls upon. Upward of 300 individuals serve on advisory councils, selection boards, and conference leadership panels. Several thousand persons are "associates" or liaison officers for the foundation in well over a thousand institutions. It is likely that more people, representing more institutions, participate in the shaping of our programs and grants than is the case for any other foundation.

Market value of the foundation's holdings at the end of our last fiscal year was \$173,072,307. Whereas income for the year was \$4,327,152, expenditures totaled \$11,367,711. The conscious policy of overexpenditure, placing the foundation among the 10 or a dozen largest in the Nation in dollar activity, reflects a desire to respond to

the urgencies of the moment on the campus, at school, and in the city, and thus better to serve the central purposes of the foundation.

These purposes date from our establishment in 1927 by Mr. and Mrs. William H. Danforth. Their abiding interests were in people and in values—persons of promise who could make a difference in their vocations and in society at large, and the values of our common Hebrew-Christian and Democratic-Republican heritage. The foundation does not work in the area of religion per se, though its efforts in the particular field of religion in higher education are of long standing. In the areas in which we do work—education and urban affairs—the present situation in this country suggests that the foundation's traditional concerns in people and values can now best be served through efforts to make the educational experience more personally enriching and the experience of urban residents more humane. We are currently working, therefore, on such problems of major import, whether or not highly visible, as student unrest, recruitment and preparation of teachers, institutional governance and management, citizenship education, fair housing and better housing, community reconciliation, and a host of related concerns.

This brief review of the Danforth Foundation suggests that we make certain assumptions about foundations in general. The chief of these are that, on balance, foundations do a very great deal of good, that prospective creators should be encouraged to use this means of contributing to society, and that the value of the contribution of any foundation turns on the quality of the thought and planning, by trustees, staff, and consultants, that lie behind its activities.

THE TREASURY DEPARTMENT'S REPORT: GENERAL AGREEMENT

It follows that a foundation such as Danforth is bound to be interested in the efforts of this committee, and of Congress as a whole, to frame wise legislation for regulating the behavior of tax-exempt philanthropies. As I wrote Mr. Mills and Mr. Byrnes on October 14, 1965, we believe that the Treasury Department report on private foundations is "an able and useful" document. In general, the recommendations of that report appear to us to be well conceived, and should they be incorporated into law they would pose no problem for the Danforth Foundation. On the contrary, we would look upon such legislation as an encouragement to continue the work in which we are engaged, in the furtherance of our founders' aims.

Specifically, we favor, in the words of the committee's press release, January 29, 1969, "tax reform designed to prevent self-dealing between the foundation and the grantor, to prevent the use of a foundation as a means of maintaining family control of a corporation or other property, to prevent a foundation from engaging in financial speculation or other similar financial transactions, and to prevent a foundation from remaining indefinitely under the control of the grantor or related parties."

QUESTIONS ABOUT DETAILS IN THE REPORT'S RECOMMENDATIONS

It occurs to us, however, that a few of the details in the report's recommendations may be more restrictive for the host of reputable

foundations than getting rid of the abuses by others might warrant. For example, in section II-C of the "Summary," page 7, "the report proposes the imposition of an absolute limit upon the participation of private foundations in active business," which seems to us to be a good idea. "This recommendation would prohibit a foundation from owning * * * 20 percent or more of a business * * *"; and that figure appears to be sound for large established funds such as the Danforth Foundation. But we think that such legislation might cause a problem for small foundations that own stock in an unlisted or family corporation, the shares of which are not readily marketable. The phrase, "a prescribed reasonable period" for reducing present holdings below the specified maximum, needs to be defined. Ten years might be an appropriate length of time for existing foundations; but a longer period would be advisable for foundations just getting started, especially if their donors are younger men. If a potential creator should want to get around the 20-percent limit, he might simply set up several small foundations rather than one large one; but the cause of carefully planned, adequately staffed, philanthropy for the public welfare might thereby suffer.

In this connection perhaps it will not be amiss to express a point of view on the "tax treatment of charitable contributions," item II in the committee's announced "Subject Matter of Hearing." With regard to the subsection, "Maximum contributions," if the "unlimited charitable contribution deduction" should not be retained, potential grantors would be less inclined to set up new foundations and thus private philanthropy would be unwittingly weakened. This matter has very little bearing for existing foundations, but could play a crucial part in the making of private benefactions not only for new foundations but also to universities, churches, hospitals and other tax-exempt agencies.

Other restrictions that may be harsher than necessary are found in section II-F, page 9 of the report, under the heading, "Broadening of Foundation Management." At the present time the trustees of the Danforth Foundation No. 13, of whom four are related to the original donors, two children and two grandchildren. The report's proposal that "the donor and related parties would not be permitted to constitute more than 25 percent of the foundation's governing body" would be no hardship for us, for we could easily add more trustees; but it is doubtful that there would be any gain in the effectiveness of the board.

FACTORS IN THE EFFECTIVENESS OF A FOUNDATION'S BOARD

Whether the board of any large, general-purpose foundation is effective turns on three factors: their ability, their representativeness, and their commitment. As to their ability, which includes their intelligence, imagination, courage, and expertise, legislation will probably not help, for a foundation, like a college or any other tax-exempt body, could still choose incompetent people if it wished. In this regard we of the Danforth Foundation are unusually fortunate in the high quality of our board.

Their representativeness can be encouraged if not guaranteed by carefully drawn legislation, and I assume that this is the intention of the report's recommendation. To "broaden the base of foundation management" by establishing a maximum proportion of "the foundation's governing body" for family membership is an action that we would applaud, as our own voluntary behavior attests. But the suggested figure of 25 percent appears to us to be too small. What about one-third? Or less than 50 percent? The point is of little significance for large, long-established foundations such as Danforth, but it might be of crucial importance for small or young foundations that must understandably possess strong donor interest.

This factor is related to the third ingredient, the trustees' commitment. The report recognizes that "close donor involvement * * * can provide unique direction for the foundation's activities and infuse spirit and enthusiasm into its charitable endeavors." Perhaps the report is correct for many foundations that "these effects tend to diminish with the passage of time"; but that they "are likely to disappear altogether with the donor's death" has not been the case with the Danforth Foundation. On the contrary, our family trustees are among those most deeply concerned about personal, religious, and democratic values, and the Danforth Foundation would be immensely the poorer without their commitment to its purposes and activities.

Even as 25 percent may be a low figure, so 25 years may be too short a time for a foundation's arriving at a proper proportion of family and nonfamily members on its board. Once again, such a rule would cause little difficulty for most of the large foundations, including Danforth, but might be unnecessarily limiting for small or newly established funds.

It is more the unspoken implications of this section than the actual recommendations to which we would like to draw your attention. Implicit in the report's discussion seems to be a hint that the smaller the proportion of family members on the board or the briefer time they are intimately involved, the better. We demur. Again, the superficial reader might infer that, among the three important factors of board composition, representativeness, and perhaps ability might more likely be present in nonfamily members and commitment in family ones; and my discussion of the factors above could be said to fall into the same trap. The fact of the matter is that all three factors can be, and in our case are, provided by family and nonfamily members alike. Unintentional harm may be done to the philanthropic urge in America if, in an effort wisely to broaden the base of financial governance, new legislation were to discourage the decent and law-abiding desire of donors and their families to contribute to the general welfare.

THE ELIMINATION OF ABUSES AND THE CONTRIBUTION OF FOUNDATIONS

Then what about abuses? Two things can be quickly said: they exist, and they should be eliminated. It is because the general tenor of the Treasury Department's report is directed toward the prevention of abuses, so far as we understand them to be, that we are in support of the recommendations. Furthermore, we feel that the practices of some foundations need improvement in other regards than just the matters touched on in the report, though perhaps they can best be handled not

be legislation but by self-analysis and self-direction, encouraged by the example of leading foundations and the advice of bodies such as the Foundation Center and the Council on Foundations.

To give one illustration: public accountability. The requirement that a foundation make annual reports to the Internal Revenue Service may not be enough, for the general public still may not know what the foundation is and does. Yet the pressure for full public disclosure of a private foundation's activities, beyond simply reporting to the Government, should be engendered not by overly explicit law but by public opinion. A private foundation is a public trust, as its tax exemption represents, and its own behavior should reflect this fact. It must be added that great strides in this direction have been made in recent years, and nearly all large and many small foundations now make periodic reports to the public as a matter of course.

In summary, the two chief contentions of my testimony are: (1) that Federal legislation is desirable in order to prevent abuses; and (2) that there is a danger that the legislation may be too restrictive. These two points converge, in my view, when one considers the overriding reason for the House committee hearings. The primary reason, I take it, is, in the words of the Treasury report, to "promote the values associated with philanthropy." Such promotion is well served by careful attention to the kind of abuse that can and ought to be eliminated by legislation and by equally careful restraint against enactments that would proscribe legitimate philanthropies from making their full contribution to the general welfare.

The story of the foundations' contribution to the public good, as I assume all of you know, is an impressive and inspiring chronicle. We in Danforth hail the record of public service of a host of our fellow foundations—working on problems all the way from highway safety to equal opportunity for every citizen, from food production to drug control, from the plight of our schools to the blight of our cities, and everything in between. False modesty aside, we believe that the Danforth Foundation shares in this record of accomplishment, and not least by virtue of our fundamental interest in persons and in values. It is our hope that out of these hearings will come legislation that will foster and make more fruitful the work of private philanthropy in the United States.

Mr. ULLMAN. Thank you, Mr. Cuninggim for a very constructive statement.

Are there questions?

Thank you very much. I don't believe Mr. Roberts is here today.

So the committee will stand adjourned until 10 a.m. tomorrow.

(Whereupon, at 5:05 p.m., the committee adjourned, to reconvene at 10 a.m., Thursday, February 20, 1969.)

Subject I. TAX EXEMPT ORGANIZATIONS:
Foundations and Treasury Report on Foundations

TAX REFORM, 1969

THURSDAY, FEBRUARY 20, 1969

**HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
Washington, D.C.**

The committee met at 10 a.m., pursuant to notice, in the committee room, Longworth House Office Building, Hon. Jacob H. Gilbert presiding.

Mr. GILBERT. The chair will recognize this morning the distinguished member of Congress from the State of New York, from the 15th Congressional District, Congressman Carey.

Subject. TAX EXEMPT ORGANIZATIONS:
Foundations and Treasury Report on Foundations

**STATEMENT OF HON. HUGH L. CAREY, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF NEW YORK**

Mr. CAREY. Thank you, Mr. Chairman. As always I am awed in the presence of this great and distinguished committee and I should like to begin by commending this committee on the action it takes in these hearings which we all hope will lead to the closing of major loopholes, by which, of course, the wealthiest escape their fair share of taxes and some measure of tax equity, and relief will be forthcoming for the hard-pressed low- and middle-income taxpayer.

This morning, Mr. Chairman, I should like to offer my thoughts on one issue that has been raised in recent press reports. It is the role of tax-exempt foundations in general, of the Ford Foundation in particular, and especially the foundation's role in two areas—the demonstration grant to the Ocean Hill-Brownsville community control experiment in New York City, and the travel-study grants awarded to eight members of the staff of the late Senator Robert F. Kennedy.

To the extent that private foundations may have been used as tax dodges for the wealthy, I agree that they must come under rigorous and exacting scrutiny, and any possibilities of inequitable tax avoidance eliminated.

I should like, however, to take issue with those of the Ford Foundation's critics who are directing their fire at these particular expenditures in the main.

First, as to the demonstration grant: There is no question in my mind that this grant could have been better thought out, better administered, with a far finer eye to the nuances of the community, the teacher-community relationship, and the long-established practices of the school system.

At the same time, that mistakes might have been made is no reason, in my judgment, for excessive criticism or special condemnation.

In the light of what transpired in New York City in the Ocean Hill-Brownsville district, I submit that a reasonable revision of the practice of having private foundations intervene in the public sector, particularly in elementary and secondary education, may be in order.

Without discouraging or abating innovative programs it might be appropriate for the Congress to suggest that grants made with tax-exempt funds be cleared through and coordinated with the State or local education agency. This might serve to obviate the confusion and unfortunate breakdown of communication which occurred at Ocean Hill-Brownsville.

This monitoring practice by a public agency would be in keeping with the legislative history of Federal aid to education which precludes any Federal interference in or control over local education. Since this is established policy with regard to Federal grant funds it should logically also appertain to foundation grants which are in reality Federal grant funds privately administered through the application of the internal revenue process.

I wish to make it clear that I am not suggesting that school boards impose undue restrictions on foundation grants but rather that coordination be arranged so that the foundations undertake activities consistent with sound educational policies and objectives.

I think it would be ideal if this could be undertaken and accomplished by voluntary self-restraint, and I think we can well understand the foundations, headed as they are by men of acknowledged business acumen, well understand the preference for such self-restraint rather than legislation.

I would hope that Congress would not want to inhibit this type of grant in the future. It is, after all, the role of private philanthropy to lead where Government agencies might rightly fear to tread; to assist those individual and community experiments whose potential is not determinably short of actual experience; to try five schemes where only one may succeed; and thus to give to the Congress and the administration a surer sense of what can work and what may not, of where the limited funds we appropriate may best be spent.

This role has been exemplified at its best by the Ford Foundation. Higher education, community development, preschool education—Headstart—all these have been the subject of Ford Foundation grants which furnished pilot models for some of the most important Federal legislation of the last decade.

We rightly allow a businessman to undertake unlimited experiments in the production of goods and services, the exploration of nature, and the exploitation of technology, all of which have great potential for changing our lives for better or worse.

All of these experiments are conducted, in a sense, at a cost to the taxpayer; for all are deductible under the internal revenue laws.

We do this, we allow this freedom of private action, because we think it better that our society should change and grow at the initiative of its people, without every decision being shaped by the sometimes awesome power of government.

As it is for those who seek to make money for themselves, so it should be for those who seek to devote their money for the benefit of others. In both cases, though the Government must and will continue

to exercise a limiting and policing function where appropriate, the decision should continue to be essentially a private one.

Second, as to the grants made to the staff of the late Senator Kennedy: I should like to comment on the presentation made by the gentleman from Texas, Mr. Patman, which made a tremendously valuable contribution in espousing, and I think indicating, some of the unfortunate excesses of some foundations.

With regard to these grants, many of us had personal experience of a fully acknowledged fact: that the Senator gathered about him a staff of uncommon intelligence, industry, and devotion to the service of the United States. All of them served him, and the Nation, at rates of pay considerably lower than they could have received from private industry. All of them received lucrative offers at the time of the Senator's sudden and tragic death.

When the Ford Foundation awarded these travel study grants, it was not merely rewarding them for past service, rather it was helping them to continue their contribution in the public life of the country. I trust that Mr. Bundy's testimony will show that the effort has been worthwhile.

There has been the specific criticism of the grants on two grounds: It is first asked whether the foundation is supporting a political "machine," whether these grants have been used for political activity.

So far as I am aware, Mr. Chairman, none of the grantees is a candidate for public office nor are any now actively engaged in promoting the candidacy of any other individual for political office.

Some of them, I understand, took minor parts in the election campaign last November, on their own time—just as did many thousands of employees of private corporations whose employers pay, and continue to pay, their salaries, and to deduct those salaries—as is entirely proper—as an ordinary and necessary expense of doing business.

American politics, as I am sure you will agree, are built on participation by citizens—whether they work for themselves, for private employers, or for nonpublic institutions such as a university or a foundation.

No legitimate occupation should prohibit a citizen from making his contribution, nor should charitable institutions—any more than profit-making organizations be limited in their ability to engage people in services merely because some portion of their time is spent in the political life of the Nation.

It has also been said that these grants were not awarded to all who sought them.

With all due deference to the undoubted abilities of others who may have applied, I believe the foundation must exercise its own best judgment on who is most deserving of such awards. It did make a comparable award to a former member of President Johnson's staff—this I approve—just as the Rockefeller Foundation has made one to former Secretary of State Rusk. All of these grants strike me as entirely legitimate.

Finally, let me reiterate my hearty and earnest support of your present efforts in these hearings. I have commented on these points only because they were raised by others; they seem peripheral to your own major inquiry.

I should like to do all I can to help preserve the private leadership that philanthropic institutions have played, and must continue to play, in this restless and ever-changing society.

I thank you, Mr. Chairman, for this opportunity to be heard on these matters and I do hope that your leadership again will take us in the direction of fair tax and equitable revision and reform and continue the great crusade which you began in the last tax revision bill to require the administration to come forward with tax reform programs.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Mr. Carey, for coming to the committee and giving us this fine statement.

I am sorry I couldn't be here at the very beginning of it.

Are there any questions?

Thank you, sir, very much.

Mr. CAREY. Thank you.

The CHAIRMAN. Our next witness is Mr. McGeorge Bundy, President of the Ford Foundation.

We appreciate having you with us this morning, Mr. Bundy, and you are recognized, sir.

**STATEMENT OF McGEORGE BUNDY, PRESIDENT, FORD FOUNDATION,
ACCOMPANIED BY MITCHELL SVIRIDOFF, VICE PRESIDENT, AND
DAVID GINSBURG, COUNSEL**

Mr. BUNDY. Mr. Chairman and members of the committee, it is a pleasure for me to be here. I have a brief prepared statement of which copies have been circulated. I would be glad to read it if that is agreeable to you.

The CHAIRMAN. You proceed in your own way.

Mr. BUNDY. I am glad to have this opportunity to present the views of the Ford Foundation on recommendations made by the Treasury Department about philanthropic foundations.

Before turning to the details of the Treasury's proposals, I would like to make three general observations.

First, we think that the Treasury has conducted a careful study and has given this committee a useful set of recommendations. We think the Treasury has approached its task with a sense of responsibility that commands respect.

Second, although we recognize that the Treasury has tried to offer reasonably specific remedies to correct abuses by a small number of foundations, we believe that still further refinements are necessary so that there will be no impairment of flexibility, initiative, and freedom of experimentation for foundations which have not engaged in the abuses noted in the report.

Third, we start from the conviction that the philanthropic foundation is one of the best and most fruitful of institutions in our national life, so that the object of tax policy should be to strengthen it, as well as to reform it. Since the Treasury report itself strongly affirms the value of foundations, and since the Congress and this committee have repeatedly shown their own support for this remarkable—and deeply American—institution, it seems reasonable to start from this

premise. But since your committee has heard criticism of the Ford Foundation—and will undoubtedly hear more as the days go by—I should be glad to respond to any questions you may have about our own work. I may also request permission to respond in writing to particular comments.

This much said, let me emphasize that the Ford Foundation strongly concurs in the desirability of eliminating abuses in the field of private philanthropy. What follows is a brief discussion of the broad legislative proposals which the Treasury Department has put forward. Our observations necessarily lack some precision since we do not have a specific bill before us.

1. PROHIBITION AGAINST SELF-DEALING

The foundation concurs generally in the proposed prohibition on business dealings between a foundation and its donor, or donor-related parties.

The Treasury recommends some special exceptions and in addition to those that it proposes, we suggest that consideration be given to exempting sales of stocks or securities by a foundation to a donor or donor-related party where the sales are for fair market value and the stocks or securities are either sold on a national stock exchange or in an active over-the-counter market. The Treasury itself recommends an exemption of this sort when it is for the purpose of a divestiture which may be required by law; we think that such sales should be permitted without any such limitation.

We have a direct concern because the Ford Foundation does have a current policy of selling shares of its Ford Motor Co. stock—all of our stock is in a special class of nonvoting class A stock—to the Ford Motor Co., and to the trustee of the Ford Motor Co.'s savings and stock investment program for salaried employees. In each instance we make these sales only after obtaining a favorable ruling from the Internal Revenue Service and we believe they serve the public interest. We think philanthropy is better served, since the foundation saves significant underwriting costs and at the same time diversifies its investment portfolio. It does not appear to us that the public interest would be better served by prohibiting such a transaction since we see no opportunity for abuse where the fair market value can be readily ascertained.

2. REQUIRED DISTRIBUTIONS TO CHARITY

(a) Realized Income Distribution Proposal: The foundation supports the proposal which would require foundations to distribute all of their current net income, exclusive of long term capital gains, not later than the end of the year following the year such income was received. Philanthropic foundations hold their capital in trust for the public benefit, and we believe that earned income should be used currently. Since it began operation, the foundation has distributed over \$1 billion beyond its net income, exclusive of long term capital gains.

A question does exist as to how the Treasury would treat a specific grant payable over a term of years, a form which we often use, especially with larger grants. Many foundations authorize grants payable over several years. This method of funding permits a more careful

development of a grantee's program, enables both the foundation and the grantee to review progress under the grant, and if necessary, to modify the schedule of payment or the program. We believe that a grant authorized to be paid over a period not to exceed 5 years should be eligible for treatment as a current expenditure in the year it is authorized.

While the language isn't precisely clear, some of the Treasury's own comments tend in this same direction.

We also believe that a grant to another foundation should be considered as a current distribution so long as the grantee is not controlled by the granting foundation or by its donor or a donor-related party. The Ford Foundation makes a number of grants to nonoperating organizations such as the Council on Library Resources and the Education Facilities Laboratories, which do excellent work in their own fields. So long as no common control exists, there appears to be no reason for prohibiting or discouraging that distribution to such organizations.

(b) *Income Equivalent Proposal*: We have some doubts as to the desirability of requiring a foundation either to earn annually a specified minimum percentage or to invade capital. Many prudent investments might not, in a given year, earn the required minimum percentage. For example, purchase at a discount of a noninterest bearing obligation which might mature in 2 years would not yield any income susceptible of distribution until maturity. So we think that consideration might be given to the alternatives of applying this requirement over a longer period of time—such as 5 years. Such a modification would allow investment flexibility to the trustees of foundations, while still, in our view, meeting the Treasury's objectives.

We also note that the income equivalent proposal gives rise to certain administrative and technical questions. For example:

(1) Will a foundation be required to earn the specified minimum percentage on any contributions received during a year, and how will this be calculated?

(2) How will the term "investment assets" be defined?

This is important to us because we have a new category of investments called program-related investments which are not designed necessarily to earn a maximum rate of return but to serve an overriding social purpose.

Now, how should they be handled?

(3) What will the criteria and procedures be under which the Congress will fix or the Secretary of the Treasury determine the required percentage of return?

Just what is a fair return and a necessary return is of course one of the permanently complex questions of all investment policy.

We think that answers to these questions can be worked out but it does appear to us that legislation will have to be carefully drawn to take them into account.

3. LIMITATION ON INVOLVEMENT OF FOUNDATIONS IN BUSINESS

We question the necessity or desirability of an unqualified rule which would prohibit all foundations from owning 20 percent or more of the total combined voting power of equity of a corporation conducting a

business which is not substantially related to the exempt functions of the foundation. A prohibition of this sort would have precluded the creation of a number of major philanthropic foundations such as the Duke Endowment, the W. K. Kellogg Foundation, the Samuel H. Kress Foundation, and the Lilly Endowment—as well as the Ford Foundation.

While the foundation concurs in the objective to eliminate the preoccupation of certain foundations with multiple and varied business interests, we think a more precise proposal directed to the particular abuses would be more constructive.

So far as I am aware this is the only one of the Treasury's several proposals which would affect the Ford Foundation's current operation. We do own more than 20 percent of the equity of the Ford Motor Co. We hold only nonvoting stock; moreover the policy of our board of trustees has been, and is consistent I think with the purpose of the Treasury's recommendation, to lower our holdings of Ford stock as rapidly as is consistent with the protection of our own interests in the strength of the stock. Under plans of orderly sale approved by the Treasury, we now expect to reduce such holdings below 20 percent by 1971. I might say parenthetically that we have come a long way because when the Ford Foundation came into its principal inheritance after the deaths of Henry Ford and Edsel Ford it had about 20 years ago over 85 percent of the equity of the Ford Motor Co. The trustees have, therefore, moved steadily, and in the light of the size of their problem I hope the committee would agree rapidly, to reduce their holdings in the company.

But this policy, however, has really nothing to do with any question of "control" of the Ford Motor Co.—no such control exists in the foundation. This divestiture has to do with prudent investment policy from the point of view of the foundation itself as we see it.

But we think the concept of the independent board of trustees is more important than prohibition of equity holdings. Almost without exception, we think that the abuses to which the Treasury report is properly addressed occur in foundations that do not have an independent board of trustees, that is—as suggested by the Treasury—a board on which the donor or donor-related parties constitute not more than 25 percent of the membership. Instead of prohibiting equity acquisitions of 20 percent or more, we suggest that any foundation which acquires such an interest in a business enterprise should, within a specified period of time, be governed by an independent board of trustees, or failing that, be required to divest itself of that interest. A reasonable period of time, although not necessarily as long as the 25 years suggested by the Treasury, should be allowed before the foundation is required to make its choice. We believe an independent board of trustees, plus the income distribution requirements and the prohibition against self dealing suggested by the Treasury, should guarantee that foundation investments in business will not be subject to the abuses described in the Treasury report.

Let me at this point give a special example of a possibly adverse effect of a flat 20-percent limitation on investments.

The Ford Foundation has recently begun a series of what we call program-related investments. I referred to them a moment ago. In

this undertaking at present, less than 1 percent of our assets are being invested in commercial as well as noncommercial enterprises which further the foundation's philanthropic purposes. The investments may take the form of loans, loan guaranties, or purchases of securities.

The foundation has made program-related investments to stimulate business development in ghetto areas, to provide jobs in certain areas in the South, to assist in developing integrated housing programs, and to support Federal conservation programs.

Although the foundation has not yet acquired an interest as great as 20 percent in any of these enterprises there are circumstances, or there might be circumstances, in which it would be advisable or even essential to enlarge that interest for a period of time beyond the 20-percent level. Under the safeguards noted above, we see no apparent reason that the foundation should not be allowed to do so.

4. DONATION OF CONTROLLED PROPERTY

The Treasury's fourth recommendation would prohibit an income tax deduction for gifts of an interest in a business where the donor or donor-related parties retain control until "(a) the foundation disposes of the contributed asset, (b) the foundation devotes the property to active charitable operations, or (c) donor control over the business terminates."

As a practical matter, we believe that this proposal would discourage individuals whose wealth is principally in the form of controlling interests in business enterprises from donating any part of their interests to a nonoperating foundation—unless, of course, they could afford to forgo the income tax deduction or unless they, and related persons, were willing to liquidate a sufficient interest in the businesses to permit the deduction.

Again we believe the abuse property identified by the Treasury can be avoided by the recommended prohibition on self-dealing, by an income equivalent distribution requirement, and by requiring foundations either to establish an independent board of trustees within a reasonable period following the gift or to dispose of the investment if the donor decides to retain control over the business.

5. UNRELATED FINANCIAL TRANSACTIONS

(a) **Foundation Borrowing:** We concur with the desire to prohibit the type of transaction involved in the Clay-Brown case—transactions in which, by means of borrowing, some foundations have acquired businesses with tax-exempt business income. We believe the proper method of attacking this abuse is to impose a tax on debt-financed unrelated business income, as the Treasury has proposed, and not to prohibit all foundation borrowing for investment purposes. As we understand the Treasury's recommendation, such a prohibition is not contemplated.

(b) **Foundation Lending and the Question of Speculative Practices:** Again, we think foundations like other charitable institutions, should have considerable flexibility in their lending policy. The responsibility for a foundation's investment policy is vested in the trustees, and at least in the case of foundations having an independent board we think

the trustees should not be restricted in the exercise of their best judgment.

A broad limitation on foundation lending to loans which are in the Treasury's language "clearly necessary, safe and appropriate for charitable fiduciaries" will inevitably impair a foundation's ability to manage its portfolio, unless the particular practices which give the Treasury concern are clearly spelled out.

6. BROADENING OF FOUNDATION MANAGEMENT

Here we come, I think, to a most important problem—one about which we feel deeply. As I have already indicated, the Ford Foundation endorses as a minimum requirement the Treasury's proposal to limit the participation of the donor or donor-related parties to 25 percent of the governing board of a foundation after the first 25 years of its existence. But I wonder whether this is sufficient, although I realize how difficult it is to seek to legislate ethical conduct and good practice.

All foundations now file a Federal information return or should, form 990-A, and when properly filled out, this form provides a good deal of information about the operation of the foundation. Still, we believe that it might be advisable for the Treasury to undertake a review of the present form 990-A to determine whether it should be revised to provide more complete information for the Government and the public about the management and operations of foundations.

In the case of the Ford Foundation we publish and distribute widely each year a full, detailed, and audited annual report which not only describes the policies and program objectives of the foundation but lists every grant the foundation has made and identifies its purpose. Moreover, throughout the year, the Ford Foundation publishes information about grants as they are made so that there will be no delay in public awareness about what the foundation is doing.

Generally speaking, with regard to our grantees, we respect their privacy and refer to them questions about their operations and details of their activities under our grants. However, we respond fully to requests from the press and other media for information regarding amounts and purposes of grants; we publish interim reports showing the progress of work and ideas within the foundation; we respond fully to all inquiries from Congress, whether from individual Members or from interested committees; and we respond to requests from the executive branch, from State and local governments, and from educational, civic, and philanthropic organizations, both local and national for information which we are in a position to provide.

In my view this attitude of candor and this sense of public accountability are highly desirable and indeed essential, on the part of foundations. I am inclined to believe that it describes the position not only of the Ford Foundation but of all the large professionally staffed foundations governed by independent boards of trustees. Whether reporting requirements of this magnitude—which are costly—can reasonably be imposed on the smaller foundation is problematic. Surely, however, public accountability of philanthropic foundations is in the public interest. In any case, it may be possible for the Treasury to go somewhat beyond the present form 990-A.

Furthermore, as a matter of voluntary policy and practice, I would hope, however, that all substantial philanthropic foundations will adopt policies which will enable the Government and the public more fully to understand the work.

Let me say one more word here, Mr. Chairman, if I may, about the important and the decisive role in a philanthropic foundation's affairs of its independent board of trustees.

We are very proud of our board and I would like to take a moment to enter in the record the names and positions of the board of trustees of the Ford Foundation, a board of which I am a member and to which I am accountable.

Our chairman is Julius A. Stratton, formerly president of MIT; Stephen D. Bechtel, senior director of the Bechtel Corp. of San Francisco, Calif.; Eugene R. Black, whose name carries no identification on our list for obvious reasons; Mr. John Cowles, just retired at the end of last year along with Mr. Black, the chairman of the Minneapolis Star & Tribune Co., of Minneapolis, Minn.; Mr. Benson Ford, vice president of Ford Motor Co.; Henry Ford II, chairman of the board of Ford Motor Co.; Kermit Gordon, president of the Brookings Institution; Alexander Heard, chancellor of Vanderbilt University, Nashville, Tenn.; Edwin H. Land, chairman and president of the Polaroid Corp. of Cambridge, Mass.; Roy E. Larsen, the chairman of the executive committee of Time Inc. in New York; John H. Loudon, the chairman of the board of the Royal Dutch Petroleum Co. in The Hague, the Netherlands; Robert S. McNamara of the World Bank; J. Irwin Miller, chairman of the board of the Cummins Engine Co. of Columbus, Ind.; Bethuel M. Webster, partner, Webster Sheffield Fleischmann Hitchcock & Brookfield of New York; Charles E. Wyzanski, Jr., chief judge, U.S. district court, Boston, Mass.

These are the gentlemen who hold responsibility for our affairs to whom we are, as members of the staff, accountable and who set the policies and programs of the Ford Foundation.

Before concluding I want to say again that we appreciate the responsible way in which the Treasury Department has sought to analyze the abuses of foundations and to find solutions which do not impair their functions. We are also grateful that this committee has undertaken to review the several recommendations with an equal sense of care and thoughtfulness.

Now, Mr. Chairman, if there are questions I would be glad to try to respond to them.

THE CHAIRMAN. Mr. Bundy, we appreciate your coming to the committee and we appreciate your statement. Let me ask just one question if I may because I didn't hear in your statement, a discussion of a point which interests me greatly with respect to this particular subject matter as well as with respect to all of the subject matters which will be discussed in these hearings.

Under the situation which presently exists do you believe that foundations should continue to be insulated from the responsibilities which fall upon taxpayers generally by being allowed to retain the tax exempt status that was given them initially in the income tax law enacted during the Civil War and also in the present income tax system adopted in 1913?

Mr. BENDY. I do, Mr. Chairman; and I would like to take a moment to explain why I believe that.

The CHAIRMAN. I would like you to do that.

Mr. BENDY. The organizations which are given this specific charitable exemption under 501(c) (3) are churches, universities, schools, and organizations dedicated to educational and charitable purposes, including a very considerable number of philanthropic foundations, of which ours happens to be the largest.

Now, the justification for that exemption fundamentally has been, I believe, a belief on the part of the country and of the Congress that private philanthropic activity effectively dedicated to public purposes was an important part of the fabric of American life.

Voluntary organization of all sorts was noted as a remarkable American characteristic by the greatest of foreign visitors, De Tocqueville, more than a century ago. Charitable organizations are one major form of voluntary organization and foundations are one major form of charitable organizations. The main business of foundations is making grants to other charitable organizations such as universities, schools, and public agencies. We are in that sense a supporting force, independent and diverse, but serving a public policy concern and a public interest. That there should be diversity in this kind of activity is, it seems to me, a fundamental American tradition.

More than that, Mr. Chairman, I think that the case for such independence and variety in sources of support for human welfare activity, has been increased and not decreased by the growing role of government at all levels in our society over the last generation.

Broadly speaking, I am one of those who believe that this growth in the expenditures of Government has been necessary. Great good has been done, and I am not here to tell you that private institutions are always wiser than, or better than, public institutions in making decisions in the allocation of funds. But I do believe that diversity—that pluralism—is important.

I believe that as the role of public agencies grows the need for independent sources of evaluation, of initiative, sometimes of criticism, is increased and not decreased. I, therefore, believe that even if there were not the special advantage and tradition of charitable exemption for the whole great field of education and charitable organizations, there would now be a special reason for urging that Congress make provision for this kind of variety and independence in the processes by which funds are used for public interest purposes. Even if there were not such a tradition and if your committee were simply asking itself should we take 10, 20, 30, 40, 90 cents, of these tax-exempt dollars because there is a great need for public revenue and a great concern in our country about who shares in the tax bill, even if you were confronting this question alone, I would still say that the public would get a better return by leaving the well-organized, properly accountable, open foundations free to pursue the public interest in their independent way.

Now, I admit that there can be mistakes by foundations. There are bound to be. They are, after all, human institutions. But I think that diversity, plurality, independence, and variety, are so important to our life, and are getting harder to find because of the pressures of

modern life, that there is the deepest kind of justification, and indeed necessity, for the strength of our democratic society to encourage these institutions, and not to impose a tax burden on them. Certainly not at this time, and I would add, Mr. Chairman, that nothing should be done to discourage men of means from adding to foundation resources as the years go by.

The CHAIRMAN. Thank you, Mr. Bundy. Mr. Byrnes.

Mr. BYRNES. Mr. Bundy, of course, one of the things that I think concerns the committee is that, to a large degree, much of the funds that are used by foundations, would really end up in the Treasury of the United States were it not for the incentive interest in exempt status. To some degree such contributions result in an increase of tax liability to other people who are not fortunate enough to be able to have the luxury of making these contributions.

I would like to delve if we could, into the Ford Foundation. Yours is the largest foundation, isn't it, in this country?

Mr. BUNDY. Yes, we are.

Mr. BYRNES. Had it not been for the exemption, and had it not been for the encouragement through the tax device, your funds would have ended up as tax liabilities.

This fund was created basically out of the estates of Henry and Edsel Ford in the mid-40's, wasn't it?

Mr. BUNDY. That's right.

Mr. BYRNES. Do you recall what the value of the assets was at the time of these bequests?

Mr. BUNDY. It was principally by bequest and I am sorry to say, that my own detailed knowledge of the Ford Foundation's history doesn't go back that far, but we would be glad to enter this information in the record. It was very much less at the time of the deaths of those two gentlemen than the value (including our stock) is now because of the successful management of the Ford Motor Co. over the following 20 years.

Mr. BYRNES. That stock has appreciated.

Mr. BUNDY. Yes.

Mr. BYRNES. But to the degree that this fund and foundation was really created by these bequests; I think it is appropriate that we look and see what would have happened to these funds if they had not been given to a tax-exempt foundation and had not been eligible for exemption from the estate tax.

If I am correctly advised, the estate tax at that time was about 77 percent of the value at which these kinds of moneys would have been assessed. Is it accurate, therefore, to presume that, if it had not been for the tax situation, 77 percent of these moneys would really have gone to our public funds?

Mr. BUNDY. Yes; if the assessment figure is accurate, I think that would be right.

Mr. BYRNES. So today, as I understand it, the value of the foundation's assets, as of September 30, 1967, was a little over \$3 billion. I suppose we could say then that at least 77 percent of that was attributable to appreciation and to proper management of public funds.

Mr. BUNDY. I think one has to make the point that it was a very much smaller amount of money 20 years ago, probably in the hundreds

of millions and not in the billions. The Federal Government is not in the business of holding equities. You would have had to have cash, so that the appreciation in the Ford Foundation's assets is really the product of the later 20 years and not of that initial gift.

Mr. BYRNES. But it still has its base and root in public funds; that is our concern as a committee with respect to the operation of foundations.

Can you tell me what is the foundation's general purpose under its charter?

Mr. BUNDY. The general charter purpose of the Ford Foundation is to receive and administer funds for scientific, educational, and charitable purposes, all for the public welfare.

Mr. BYRNES. But it is limited to those.

Mr. BUNDY. That's right.

Mr. BYRNES. It isn't the public welfare that becomes the determinant. Would you please repeat those purposes?

Mr. BUNDY. Scientific, educational, and charitable purposes.

Mr. BYRNES. That seems to be four square within the language that is used in the Internal Revenue Code itself.

Mr. BUNDY. Yes.

Mr. BYRNES. Have your trustees developed any criteria with which to determine what is scientific, what is charitable, and what is educational?

Mr. BUNDY. We do it case by case or program by program, Mr. Byrnes. That is, we take a particular proposal or an area of possible activity—conservation, population, humanities and the arts, for example—and then we ask, Would work in this field be scientific, educational, and charitable, and is it one which seems particularly appropriate for us? We have a whole series of other questions, but we ask ourselves at every level of the foundation whether any given proposal is consistent not only with our charter but with the provisions of the Internal Revenue Code and other applicable portions of the law, so that we are constantly alert to this question of staying within the boundaries of our assigned field of activity.

Mr. BYRNES. In other words, you make a determination in each case as to the merit of a particular program and, if found to be meritorious, you presume that it can be classified as that it can at least come within the realm of being scientific or educational or charitable.

You then have no general rule to apply immediately to a new application—

Mr. BUNDY. Well, yes.

Mr. BYRNES (continuing). Other than whether it looks like a good idea.

Mr. BUNDY. Yes sir, I think we are a little more precise than that. There are a whole series of categories which are excluded from our activities. We do not, for example, in our foundation make grants for a number of activities within areas permitted under the Internal Revenue Code now of course, for any activities in areas not permitted.

We do not make grants that are plainly for the political advantage of a candidate. We do not provide assistance to commercial or advertising enterprises. We are constantly asking ourselves whether the chartered purposes are being met. Every grant, for example, is re-

viewed on the way to its approval by our secretary, an officer of the foundation, who is a lawyer, for consistency both with the purposes of our charter and with the requirements of the Federal regulations. And every grant is monitored as it is paid out by our comptroller.

So we have a legal review on the way to approval and a financial review during the process of administration. Moreover, we have a policy review at two levels. Every grant is reviewed by a committee of the officers of the foundation, which the president or the acting chief executive officer in my absence, David E. Bell, chairs.

Every grant is reviewed for consistency with basic policy guidelines and program objectives of the trustees themselves. We come under rather more criticism from our friends who are applying for money because we have so much procedure than we do for any opposite tendency of just picking and choosing at random.

Mr. BYRNES. I find it difficult to understand the wide latitude which the statute gives to activities, and I would not criticize foundations mostly because they take advantage of this great latitude. I suppose that in someone's mind or judgment almost anything that man might do could have some educational significance, even in any day-to-day activities; an education can be gained through experience, and that experience might be characterized as scientific and/or charitable.

It would be difficult to find an activity without the scope of these three basic categories, at least under the determination of someone's judgment.

Mr. BUNDY. That is true, Mr. Byrnes.

Mr. BYRNES. That of course, is why I was trying to find out whether any of these foundation have tried to post some limitations on their own judgment as to what is education.

Recognizing that honest men can differ, I wonder as to the educational aspects of some things that are done. Mrs. Griffiths referred to a study of tombstones the other day, and questioned its "educational" value. We can always differ. I believe I interrupted you.

Mr. BUNDY. No. I think you are right, this is a very broad charter. So is the charter of the Internal Revenue Code, and I would say that this is again squarely within the American tradition and that it is the right way to go at it.

Mr. BYRNES. What we are saying, then, is that one can do almost anything one wants if it is done through a foundation. Some people have the economic luxury of being able to make contributions to foundations; rather than absorbing tax liability which would otherwise have accrued had such contribution been reported as income they can spend their money in practically any way they desire, due most to this wide latitude. I wonder frankly whether we ought not to impose certain limitations on foundation activity, inasmuch as the tax rate is becoming increasingly burdensome, especially for the average taxpayer who is not in a position to enjoy the luxury of making charitable contributions. I don't think that a foundation, merely by its sponsorship, automatically lends an air of validity to the donation.

Mr. BUNDY. I agree on that last point. Let me comment two ways to your point. The principal reason, I believe, for the breadth of this authorization is that the consequences of an attempt to legislate or to impose by code specific restrictions have never been attractive to those considering that choice.

Let me, if I may talk about a university which is operating under the same provisions of the code and which is engaged at any given time in a wide variety of activities. I know about this because I spent most of my life at a university before I came down here 8 years ago.

What is attractive to one professor seems like nonsense to another and what seems like an extremely promising line of activity to one university seems like a waste of money to another. You have heard testimony about the supposed unwisdom of certain kinds of grants from the Bollingen Foundation. In other parts of this city you can be told with conviction that it is the most imaginative and fruitful philanthropic institution there is. People who tell you that are people whose interests fall into that area.

I think it would be a very dangerous path for us to try to say that the cities are in great trouble, these matters of artistic scholarship are no longer educational or charitable; or on the other hand that foundations ought to stay out of these tricky businesses that exist in cities, and that, instead, they ought to do safe things like giving money to professors of philosophy. And after all professors of philosophy can be very dangerous.

The problem is, I think, that we are dealing with the free activities of human beings, educational and charitable activities.

Mr. BYRNES. But, as I pointed out previously, you are operating on a basis which excludes 77 percent of income from the funds needed for basic services of government; which services then have to be provided by the great majority of the people.

Mr. BUNDY. That is true, Mr. Byrnes. The Government is doing it itself in very wide areas.

Mr. BYRNES. Yet it seems to me to be a situation where one doesn't have to pay one's full share of the Government's operations; and one can decide that one is going to be a little government unto itself. And I am afraid that that has already occurred in cases of certain foundations.

Mr. BUNDY. The final judgment as to be, it seems to me—and this takes us back to the question that the chairman asked and my first response—is it on the whole better in our society to have many places where responsible men try to make this kind of decision or better to have only one; within the Government.

Mr. BYRNES. No. I am not suggesting a complete elimination of foundations. Please don't get that impression. Frankly, I am wondering whether we haven't gone too far already. I don't wish to be placed in a position whereby it appears as though I wish to discourage foundations or inhibit foundation activities in the private sector. I probably have been as much a critic as any one as to the degree to which the public sector has taken over the private and as to what should be included in the definition of private sector activity. But I seriously question the degree to which we have sanctioned foundation activity.

Mr. BUNDY. It seems to me you have to measure it by performance, really, like other kinds of human activity: Have the foundations and other charitable organizations justified the decision to grant them tax exemption? I think the record shows that they have.

Mr. BYRNES. I should like to inquire a bit into some of the activities which the Ford Foundation has sponsored to see whether they really

meet the test. But let me just ask this. I noticed in going through the list of your contributions that in many cases these contributions are made to other foundations. At least these recipients are created as foundations and enjoy a tax exemption in their own right.

Have you created some of these yourselves?

Mr. BUNDY. Yes, we do.

Mr. BYRNES. To what degree, then, do you follow up on how your money is spent, and how do you determine whether the objectives achieved by these foundations are in fact within the intent of your charter?

Mr. BUNDY. It varies.

Mr. BYRNES. Have they become completely autonomous?

Mr. BUNDY. Well, they are autonomous in the sense again that they are set up characteristically with an independent board of trustees under separate charter.

These organizations to which you refer may have been established primarily as the result of a large grant from the Ford Foundation—a starting fund of one sort or another. They are a rather special case in the sense that very often the idea that such an institution was needed came out of the deliberations of advisers, officers, or trustees of the foundation.

Let me give you two or three examples. One here in Washington which perhaps members of the committee will be familiar with is Resources for the Future. It has an independent board of trustees, has been in operation for many years, and I know about the process of review and evaluation because we went through one a year or so ago when the question of a renewed large scale grant was before our board of trustees. That review was a very serious matter involving the advice of professional consultants in the field of resources and conservation, discussions between members of our staff, and members of their staff, and discussions between members of our board and members of their board.

Our conclusion was that the work of Resources for the Future in trying to get a more accurate understanding of the problem of physical resources for the human race had been enormously constructive, that that work was not finished, and that it was a proper use of our resources to permit it to continue.

Another institution which falls in this same category is the Educational Facilities Laboratories, in this case in New York. That is an organization operated by a quite remarkable man, Harold Gores. I am not sure you could have set it up without a man like Harold Gores, who came to that operation from a remarkable career as superintendent of public schools of Newton, Mass.

The function of that organization is to help public and private authorities with questions of imaginative new design regarding educational facilities and to relate the actual and enormously expensive physical process of building to the best ideas of architecture and planning.

This grant has not come up for major review in my time because of the timetable of the granting process but from what we hear from our own experts and from public authorities up and down the country, we think it has been an extraordinarily productive enterprise.

A third example which relates to the matter of our citizenship in the city of New York and which is quite new is the Fund for the City of New York.

We moved a year and a half ago from rented space where a landlord paid taxes into a building of our own which, of course, under our charter was tax exempt. It happened that we were building on what had formerly been hospital property so we had not taken land off the tax rolls.

Nevertheless, there we were with an office building which required the usual services and protection provided by the city. Our trustees, accordingly, addressed themselves to the question whether that changed our responsibilities to the city of New York. Their decision was that it did. It seemed to them that at the same time it was very important that the action of a single institution not call into question the position as real estate holders of other tax-exempt institutions which are not in our position, such as hospitals, churches, schools, and universities.

So we did not make a payment directly in lieu of taxes. What we did, instead, was to consult with the city authorities and with responsible city leaders of the city of different persuasions, politically, and we organized, again with an independent bipartisan board of directors, a fund called the Fund for the City of New York.

One and one-tenth million dollars a year is the current figure granted to the fund and it is comparable to what we would otherwise pay in real estate taxes in New York. We have undertaken for the future, subject to review from time to time, to make a grant to the fund annually.

We believe on the basis of a first year of activity, and again more on the basis of informal than on the basis of formal evaluation, that we have here found a constructive way of establishing an institution which on its own decision and by its own professional and trustee judgement will make grants and provide moneys for needs of the city of New York that seem to be of high importance.

Mr. BYRNES. But those are grants which you created yourself. In other cases you have made grants to certain existing organizations, which organizations have filed their charter with the Internal Revenue Service, and have been certified because they came within the exemption as being charitable, educational, or scientific endeavors.

To what extent do you then follow what they do with the funds to make sure that their expenditures are in keeping with your concepts of charity, education, and science? Alternatively, do you use these foundations for insulation so that the Ford Foundation doesn't have to be responsible for how the money is spent?

Mr. BUNDY. No, if we make a bad grant, or somebody spends the money badly, we would accept the fact that we had made a mistake. Sometimes we find that out too late, and sometimes we find it out in time to do something about it. Situations differ.

Grants which fall into highly traditional forms of activity and for which there is no problem of policy or of hard choice for our trustees and where the pattern is well developed, require relatively little supervision.

As an obvious example of that, one might take a fund granted to a well-established private university for a professorship in a subject

that seems to be of great importance. Over the period of the fifties, for example, when I was on the begging end, we sought and got funds at Harvard, where I was, then, for professorships in international studies, especially of areas not much known by the United States before. I think this was a very good field of activity both for foundations and for universities. From where we sat at Harvard University, we would not have expected the Ford Foundation to tell us whom to appoint or even to tell us that our appointment was not very good; and we ought to do something about it.

We would have expected the foundation to watch us by our performance and to decide whether it would support us in the future on the basis of how we had behaved. But we would have felt, and I think rightly, that a university must accept the responsibility for its own choices in the appointment and promotion of faculty members.

Mr. BYRNES. I have no grievance with the use of funds by universities or other well-established educational institutions; I am concerned with some institutions which may be rather new in concept or operation.

Mr. BUNDY. Well, Mr. Byrnes, before the law and—I think in public policy they have the same standing—and I am trying to give you a picture of the whole spectrum.

I am just coming to the fact that there are other and much more difficult areas which require more supervision, and more evaluation, and a more constant association between the foundation and the grantee. Some of the ones that have been before you for critical discussion fall into that category; so perhaps it is best to start with one of those.

When we made grants in Cleveland, in the summer of 1967, to a number of organizations, one of which was Cleveland CORE, it was our recommendation to the trustees that, if they approved this grant, they should also approve the appointment of a special consultant, who would maintain continuous contact with the grantees—specifically to make sure that the operations of that grant did not trespass upon the field of political contest as such.

It seems to us very important that that boundary be patrolled, and it seemed to us it was part of our responsibility to help in patrolling the boundary. We do treat each case on its own merits and by its own requirements.

In my disquisition on the university, I suppose I was acting partly like a retired dean—and partly really trying to suggest the range of this question.

Different grantees require different kinds of association with foundations.

Mr. BYRNES. Was the grant made in the Cleveland area to the Congress of Racial Equality Special Purpose Fund?

Mr. BUNDY. That's right.

Mr. BYRNES. The report for 1967 showed a grant of \$175,000. Was there an additional grant in 1968?

Mr. BUNDY. Yes; there is a further grant in 1968.

Mr. BYRNES. What was that amount?

Mr. BUNDY. \$300 thousand.

Mr. BYRNES. Was that all for voter registration?

Mr. BUNDY. No indeed. There is a wide and varied program. Mr. Sviridoff, my colleague in the national affairs division of the foundation, is here and could discuss in detail that and other grants within the national affairs program; but not all of it is for voter registration.

Mr. BYRNES. Was that the principal purpose?

Mr. BUNDY. It is the smallest of three purposes.

Mr. BYRNES. What was the largest purpose?

Mr. BUNDY. Economic development, and leadership training.

Mr. BYRNES. To what degree will you develop a fundamental appraisal of what has been accomplished and learned as a result of these educational—I assume that's educational rather than charitable—experiments, and will these results receive wide public dissemination so that the Government and other interested parties may obtain some benefit from your experience?

Mr. BUNDY. We try to keep track continuously of the broad progress of our program efforts in fields like this one, in fields more specifically and narrowly educational in the sense that they relate directly to school systems. We try both informally and by formal publication to disseminate what we learn.

In the last 2 or 3 years as our activities have become more closely related in some areas to the urgent issues of today and tomorrow, we have intensified our own process both of monitoring and of evaluation. Sometimes, it is true, these evaluations relate to the internal concerns and obligations of grantees; and we have an obligation to respect their right to decide which of these affairs are made public.

On the other hand, where we find lessons, both of what has worked out and of what has not worked out, we have an obligation to disseminate them. We have quite a wide program, both of publication and of consultation; and our officers are glad to confer with, and to respond to, the inquiries of interested authorities up and down the country.

There isn't a day that we don't get letters asking for our judgment on this or that problem in these areas, and we offer them as honestly as we can.

Mr. BYRNES. But after each one of these grants is made, is there an evaluation made to find out what has really been accomplished?

Mr. BUNDY. Yes: there is always a final report by the grantee, and there is always a review of that final report in the foundation.

Mr. BYRNES. For what purposes do you review it?

Mr. BUNDY. You review it to find out, did they follow the obligations they undertook, whatever they may have been. That's the actual financial accounting. If there was, for example, an undertaking on their part that they would put their funds in to support part of the project, or that they would obtain other funds from other sources, did they meet that requirement. Then, there is the substantive question, did in fact the experiment follow the course they had planned, or did they modify it along the way, sometimes with consultation, sometimes on their own responsibility.

And then, how did it come out, would we do another one like it again, have we in fact learned from this that it can be repeated or should not be repeated, how does it feed into the kind of decisions that we and others will be making in this same field in the future.

Mr. BYRNES. Have you ever made any contributions to the SDS?

Mr. BUNDR. I don't think so. To my knowledge, no.

Mr. BYRNES. Have you ever made any contributions to other foundations which, in turn, have then made grants to the Students for a Democratic Society?

Mr. BUNDR. We have never made a contribution of our money with the understanding or expectation that it would be used for the SDS.

Mr. BYRNES. You make some of these grants to foundations or other institutions just to help them carry on their basic activities, don't you?

Mr. BUNDR. I am not sure I understand you. We generally make our grants with an understanding of a particular programmatic purpose. Sometimes we make the kind of general grant for the support of an institution; this will ordinarily be a college or a university.

We do that also with institutions in which we have a large participatory role. I spoke of some earlier. Overseas, the most notable ones are, of course, our institutes for agricultural research. In those we share responsibility with the Rockefeller Foundation.

So, we do make general-support grants; but, in most cases, what we are doing is responding to a request from an institution which comes in and says, "Look, we would like to do this. This seems to us urgent. It has the following constructive purposes. We need help."

I think an important point to be made is that nearly all our specific grants to institutions proceed from their initiative, not from ours.

Mr. BYRNES. Well, I don't imagine that any of these foundations are so endowed with funds that they wouldn't like to have more.

Mr. BUNDR. That's the human condition, Mr. Byrnes.

Mr. BYRNES. Applications, then, can be initiated from outside sources. What I am trying to get at, however, is the degree to which you look at these groups' basic objectives and determine that those are fine objectives. The Internal Revenue Service has already said that yours is a tax-exempt institution. And their response is, "But we still need additional funds if we are really going to get our job done. Will you give us some?"

You must support these foundations. Don't you have many such arrangements?

Mr. BUNDR. I am not sure I fully understand your point.

Mr. BYRNES. Rather than seeking support for a particular aspect of their program—

Mr. BUNDR. Mostly, it is a particular idea or a particular undertaking, or a part of their work. We don't mostly say, "You are a very good outfit and here is some money just because, generally speaking, you are a good outfit." We don't usually do that.

Mr. BYRNES. You look, then, at their other activities to see whether, in general, their other activities are consistent with what you think are good objectives? But by giving them a grant to obtain certain objectives you are also making funds available for A, B, and C activities as well, thereby releasing the pressure on their funds.

Mr. BUNDR. You raise an interesting point in that question. I think the answer is not a simple one. We do ask ourselves, generally, whether a grantee is going to try to behave in a responsible way, is a suitable instrument for the particular purposes that it tries to undertake, which it is asking us to support, and whether the prospect of good result is high enough to justify the grant. It is a question that, I suppose, comes up in one way or another every time.

We don't ask ourselves, however, whether everything that this outfit is doing is something we would do. Indeed, we have had occasion to make it clear in particular cases—the Cleveland CORE grant is an example—that, in making a grant for these particular purposes, we were not saying that everything done by that organization, or any branch of it, anywhere in the country, was something we agreed with.

We wouldn't take that responsibility or give that kind of blanket approval.

On the whole I believe the trustees have felt that if we undertook to say that we won't make grants to anybody unless we approve of everything he is doing, we would be keeping our money in a fairly restricted circle.

Mr. BYRNES. But by giving them money when they are also acting in undesirable or illegitimate areas, aren't you making it more possible for them to continue those activities by relieving the pressure on what funds they do have available, would I, in effect, be giving them your Good Housekeeping Seal of Approval? Aren't you in fact, approving their general activity by the fact that you donate a contribution to a particular foundation?

Mr. BUNDY. Well, sir, I see the point you are driving at and if the outfit were, you know, bad hats clear through, and I am not now talking about any particular organization—I guess neither of us is really.

Mr. BYRNES. No.

Mr. BUNDY. If the outfit were bad hats clear through and it was only the paper application that was good, then we would make a great mistake in giving them a grant and we would in effect be setting them free to do their bad things.

Mr. BYRNES. I am not considering that kind of a case. I am concerned with that situation where XYZ foundation is involved in many questionable activities.

Mr. BUNDY. Well, you define the degree.

Mr. BYRNES. Does this occur to you to be inconsistent?

Mr. BUNDY. My feeling is that there is a limiting position where, however good the proposal, we clearly ought not to be associating with that institution.

On the other hand, there is also a very important proposition here that for institutions and organizations which are young and which are not fully shaped as to their direction it can make a great deal of difference as to the degree and way in which they develop if when they have a responsible and constructive proposal they can find support for it.

If they cannot find such support, those within the organization who may be tempted to move in paths of disruption, discord, and even violence, may be confirmed in their view that American society doesn't care about their needs.

On the other hand, if they do have a good project constructively put forward, and they run it responsibly and they get help for it and it works, then those who feel that that kind of activity makes sense may be encouraged.

Now, these are hard choices and they won't always be made correctly, but I think it would be a great mistake for an organization like ours to back away from them.

Mr. BYRNES. Did your organization ever make grants to the League for Industrial Democracy; the predecessor of SDS?

Mr. BUNDY. I don't recall that we did.

Mr. SVETKEY. I don't either.

Mr. BYRNES. No.

Mr. BUNDY. I am not aware of any. We would have to check it.

Mr. BYRNES. Again, I would have to ask you whether you made these grants indirectly through another foundation.

Mr. BUNDY. I would have to answer again that I don't know of any.

Mr. BYRNES. You don't know if you have ever made any grants to SDS, but you are also unsure that any foundations to which you did make contributions made contributions to SDS, is that correct?

Mr. BUNDY. I would tell you that to my knowledge the foundation has not. I won't speak for universities now because there have been cases where universities to which we have given wide and varied support have for this reason or that decided to give this or that facility to an SDS chapter. I take it you are not asking about that.

Mr. BYRNES. I am not talking about universities permitting them to use their hall or similar such support.

Mr. BUNDY. But I would say I know of nothing in the activities of the Ford Foundation that tends directly or indirectly to the support of SDS.

Mr. BYRNES. That, of course, doesn't encompass the possibility that support through a chain of contributions might finally have wound up in SDS.

Mr. BUNDY. Mr. Byrnes, if you will offer me the case you are concerned with or the evidence that I should respond to—

Mr. BYRNES. I am just searching.

(The following letter was received by the committee:)

THE FORD FOUNDATION,
New York, N.Y., March 3, 1969.

JOHN M. MARTIN, Jr., Esq.,
Chief Counsel, Committee on Ways and Means,
U.S. House of Representatives, Washington, D.C.

DEAR MR. MARTIN: During Mr. Bundy's testimony before the House Ways and Means Committee on February 20, Congressman Byrnes asked whether the Ford Foundation had ever made a grant to the Students for a Democratic Society (SDS) or its predecessor (the student arm of the League for Industrial Democracy) or grants to other foundations which in turn made grants to the Students for a Democratic Society.

The Foundation has at no time made a grant to either SDS or its predecessor. Grants were made in 1967 and 1968 in support of the League's Apprenticeship Training Program for training Negroes in construction skills, but when those grants were made SDS was no longer affiliated with the League and was not involved in the programs supported by the grants.

With regard to the second part of Congressman Byrnes' question, we are not aware of any Ford Foundation funds ever having been channeled to SDS by any of our grantees.

Respectfully,

HOWARD R. DRENNER, Secretary.

Mr. BUNDY. I am not aware of anything of this character.

Mr. BYRNES. Fine. I have taken too much time. Allow me just briefly to get into this question of grants which were made to certain members of the late Senator Kennedy's staff to facilitate this transition from public to private life.

I don't know when I myself, may have to make that transition. It may be that after we are finished with the tax reform bill that it will be faster than I had anticipated. I don't know.

Last July the Washington Post first carried an article about it, and I presume it resulted from a press release:

The grants are provided under a Foundation program of long standing that seeks to ease the transition from public to private life. They provide up to a year of leisure and freedom from immediate financial concerns.

What is educational about that? What is scientific about it? I suppose I would be treading on dangerous ground if I asked what is charitable about it, I don't know that these people's incomes were below the poverty level; certainly, they were taken out of it by the degree of the grant.

Would you be able to clarify that situation?

Mr. BUNDY. Yes. Would you think it appropriate if I sort of begin at the beginning and explain that whole affair?

Mr. BYRNES. Surely.

Mr. BUNDY. Rather than respond to the particular question.

Mr. BYRNES. Yes.

Mr. BUNDY. The grants to members of Senator Kennedy's staff and related grants—Travel and Study Awards are what we call them—are individual awards. That question has to be considered in the wide framework of grants to individuals, which is one of the most traditional, one of the most important, one of the most constructive, and one of the most often questioned of the activities of foundations and indeed of universities and colleges.

The question has sometimes been asked why should there be a power in charitable organizations to make individual decisions of this kind when the individual citizen is not able to take a charitable deduction for a grant or an award directly to an individual?

It is a good question. I address myself first to the question of whether it is a good thing for charitable organizations to make grants to individuals and if so, why. I think it is a good thing. I think it is so important, indeed, that if that were not within the powers of charitable foundations they would be threatened with a kind of bureaucratic atrophy in which they could make only large scale grants for large scale projects and the human factor would tend to get lost.

So, it has been true in the history of charitable foundations that, in varying degrees and for many different purposes they have made grants to individuals.

Probably in the foundation field you would find a high level of feeling, perhaps almost agreement generally, that one of the best and most constructive of American foundations is the Guggenheim Foundation which does nothing else but make grants and awards to individuals for the pursuit of their individual activities. Most foundations, including the Ford Foundation from its beginning as a large scale organization, have engaged in this same kind of work.

Sometimes we do it as "wholesalers"—that is, through grants to other institutions. That is much the larger part of our program of individual awards involving over the years literally hundreds of millions of dollars. Sometimes we do it as "retailers," either through small programs tailored to kinds of educational work which seem to us particularly important or through individual travel and study awards.

We would say that those individual awards stand comparison favorably with the large scale use of our funds for big projects and that both as a wholesaler and as a retailer we are very proud of the grants, awards, and fellowships for individuals that have been made, either directly by us or indirectly by other agencies over the years.

It is obvious that in a process in which there have been literally tens of thousands of choices mistakes will occasionally have been made. Forecasting the performance of a human being is one of the most uncertain of human activities.

Also the process of choice always means that someone gets an award and someone does not, and there is always a danger that those who are not selected will feel that the process is unfair.

Nevertheless, with all those risks it is, I think, a very important part of philanthropy. Actually over the years before we had our modern tax exemption system that kind of charitable action by individuals was often terribly important too. If you ask me why an institution is allowed to do it and an individual is not given a charitable deduction for it, my own answer would have to be that I think the only real reason for that is the very great difficulty of policing against abuse in the individual case, whereas it is much easier to keep a general eye on the fairness and accountability of institutions, universities, charitable scholarship organizations, or foundations, so that the question of charitable awards to individuals can have a broad surveillance.

Mr. BYRNES. If you don't mind my interrupting at this point, and keeping in mind that a large part of these funds are in a sense public funds because of your exemption, I wonder if you would discuss this question a bit further.

Mr. BUNDY. Well, I am taking it as an assumption—I think I have to do so in this discussion—we are talking about the activities of an institution that currently has a charitable tax exemption.

I assume that. Could I then turn to the particular question of the decision to make travel and study awards to some members, by no means to all, of the late Senator Kennedy's staff.

In order to set that decision in its context I must take you back to the spring of 1968 and to the two terrible things that happened in that spring because it was in that context and from those events that we addressed ourselves to this question.

Those two terrible events, as we all remember, were the assassination of Martin Luther King in April, and the assassination of Robert F. Kennedy in June. I don't need to remind men of the experience and public concern of this committee of the impact of those two events on the nation, on the world, and on all of us. The reaction which we had in the Ford Foundation in each case was, what can we do to help? What is there that under our charter and with our purposes we could do?

When we addressed that question in the case of Martin Luther King, his associates and his work, it was at once apparent that we were already in a continuing relationship with that work having made a grant to its charitable wing, the Southern Christian Leadership Foundation. There was no current reason to reconsider that or to make a new grant. The members of his staff, whatever might be their intensity of feeling, were at work and their commitment was to continue the work of the SCLC. No question arose there.

We addressed ourselves to the question of Mrs. King and her family and after careful review it became clear that an act of personal charity was not within the guidelines of our Foundation or its policies and that, however much our concern and sympathy might be, we could not help there.

It did appear, however, that there was an important need for prompt efforts to establish and consolidate the records and the historical archive of Martin Luther King's life and achievement.

That seemed to us important, proper, educational in the highest sense of the word, and in due course we did make a grant of \$85,000 to the Atlanta complex of universities to make a start on that work. It seemed to us that there was both the immediate professional, charitable, foundation purpose and, if I may say so, a human purpose served by that decision.

In June Robert Kennedy was killed and we all recollect the face of Washington in those days and the same kinds of questions occurred. There was no question of offering anything but sympathy and concern to his family although as it turned out it was mostly they who were offering sympathy and concern to others in those days.

There was no question of an ongoing enterprise. He had been engaged in a political campaign which would have been quite outside our jurisdiction and in any case that was over.

There was a question about the group of men whom, I think, Congressman Carey accurately described as generally considered and recognized to be unusually talented, dedicated, devoted, and concerned. What were they going to do? And was that a question which it was pertinent for us to consider within the policies of the Ford Foundation?

I raised that question with my colleagues and there was a strong and immediate feeling that it was a question we could consider. We have a category of travel and study awards, of which we have made more than 2,000 over the years, which relate to the educational development, the capacity for increasing one's ability to be of effective service, of individuals. It seemed to us that these were men who fell in that category. As we estimate eligibility for that category we ask ourselves whether the professional interest and concerns of individuals are interests and concerns which we are trying to advance under the guidelines and programs approved by our trustees.

We thought it likely that these individuals would have those kinds of concerns, especially because in the recent years in the Ford Foundation the interlocking crisis of our cities and of opportunity for our minorities has been right at the forefront of our agenda, and it seemed to us a reasonable assumption that some of these young men would have that kind of concern.

In any event, we set out to find out, and at that point the process of discussion and inquiry shifted from the general policy questions to professional inquiries by professional members of the staff which we initiated.

As a result of those inquiries, we did in the end make grants to eight members of Senator Kennedy's staff, in varying amounts. Some of the amounts were larger than is normally characteristic of our travel and study awards although not larger than our procedures call for

because of the relatively individuals concerned no

Ordinarily when we n an individual who is eitl leave or with a leave of a he may need a salary s salary replacement.

I would share Represe earlier testimony before could have made a lot mo the point. The point was that a special blow had been struck here. They had a special promise. They met the criteria, according to professional examination of their qualifications, concerns, and interest. Our board of trustees approved of the principle. The action was taken.

Now, you ask me whether I am sure that that money was well spent and my honest answer would have to be that I will answer that question several years from now. You ask me whether I think that judgment was well advised, and I would say that all of us at the foundation—trustees, president, the officers concerned—are glad to accept that responsibility.

Mr. BYRNES. The question I asked you was not whether these funds were well spent. I asked you where these grants fall within the purview of your charter of educational, scientific, or charitable purposes.

It looks to me as though these grants amount to a type of severance pay. That, of course, can be a very desirable manner of assistance. We all know people who have dedicated their time and effort to the service of one individual or one family, and who have been left in a state of shock and serious economic despair when tragedy struck.

Mr. BUNDY. Let me finish then, Mr. Byrnes, by coming back to your original question, which I agree is not fully answered.

I believe that these are grants which are fully justified in educational terms. I believe that the development of individuals by individual awards of this kind is one of the most important things which foundations can do.

My own belief when I approved them was that these individuals had the kind of promise that would be developed by this kind of opportunity for travel and for study on the projects which were discussed and approved between them and our staff and it seems to me very plain that this is an educational form of activity.

Mr. BYRNES. That is exactly why I suggested earlier that it is conceivable that man in his daily living, serves an educational purpose and there, we are supposed to learn a little something every day.

As you make that day a little easier for someone, perhaps he will learn a little more; but is that the test of what a foundation deems educational, and supports in large part, with public funds?

Mr. BUNDY. It is a test, yes.

Mr. BYRNES. This, then, is the answer. One of our problems is that these foundations can do what an individual can't do in the way of contribution; the luxury of being able to create a foundation enables certain parties to do things with their money which they couldn't have done as individuals and they also obtain tax exemption.

usual characteristic that in this case the ger had any salary of their own.

travel and study award we make it to taking a brief time off with a sabbatical ce. If he is in a public government office eement. Sometimes he needs a complete

ive Carey's judgment—expressed in his Committee—that these are all men who money doing something else. That was not the point. The point was that a special blow had been struck here. They had a special promise. They met the criteria, according to professional examination of their qualifications, concerns, and interest. Our board of trustees approved of the principle. The action was taken.

You have made a grant to an individual to make life more comfortable for him and because he is a talented individual and because his talent can be improved, somewhat, by travel and by the elimination of financial need. If that is condoned, then we are in dire need of guidelines to determine exactly what is appropriate for a foundation, and to prevent them from doing indirectly what they can't do directly.

Mr. BUNDY. I am not sure what you mean by doing indirectly what they can't do directly.

Mr. BYRNES. As an individual, I could not set up a foundation and say to my trustees, "I want you to pick out people whom you think have talent and who have been visited with a shocking disaster" and who are therefore temporarily out of a job; these individuals don't have any severance pay to bind them over, to help them make the transition. You make grants to these people.

Mr. BUNDY. You couldn't do what Guggenheim does as an individual.

Mr. BYRNES. That is what I say.

Mr. BUNDY. That is quite right.

Mr. BYRNES. There is no doubt good reason in some cases for a foundation's trustees having wide decisions, although I would still question its validity in general. You are letting the foundation do what the donors to the Guggenheim or to Ford could not do individually. But your definition of education, as explained here today, causes me to wonder whether we ought not place some limitations on this discretion and not permit just anyone to decide what is educational so as to come within the statutory requirement.

Mr. BUNDY. Let me make two comments if I may. One, the problem as you define it in the case of these individuals and the problem as I see it are two quite different things. This is not a question of severance pay. This is not a question of purely feeling that these people have had a shock.

This is a question of people with a high capacity for development and of whether at this moment, a period in which an opportunity to pursue important subjects and work on them and write reports on them and learn about them and consult with us about them, is in fact an educational activity.

To me it is very clear that it is.

Mr. BYRNES. One of the oddities which occurs here and which attracted so much attention is the fact that these grants were made not to one or two individuals, but to eight out of one office, and a relatively small office at that.

I don't know whether you envision this as a very unusual situation even in that respect.

Mr. BUNDY. The numbers are unusual. The case is unusual. The quality of the staff is unusual, and I expect the results to be good.

Mr. BYRNES. To whom are they going to report, what are they going to produce, and is what they produce going to be made publicly available? What is expected to be gained from this in terms of reporting and dissemination?

Mr. BUNDY. We are going to have a series of reports. We have a couple of them already. The degree of publication that they deserve will vary in individual cases and the projects of course vary. We have

two in already. One is from Mr. Dolan on a study of teaching methods, text materials, and other writings used in university and law school courses which deal with the lawyer's role in the legislative process.

His travel included visits to Yale, Harvard, Columbia, the University of Chicago, the University of California, Stanford.

The hope that we have, that he has, is that this study will help to expand knowledge and techniques in the improvement of legal education, which is a topic of great interest to law schools, to us in our office of Government and Law, and I would hope to the public generally. That is one example.

Mr. BYRNES. Have you yet decided whether or not to publish that report?

Mr. BUNDY. No; we have not.

Mr. BYRNES. There is nothing to assure that any of these reports will be published or that the findings of these people will be disseminated.

Mr. BUNDY. It is not a rule of our travel and study awards or of any other system of individual awards of this kind that I know of that publication is a condition of the award, no. It would be very unusual in my judgment to make such a rule.

Mr. BYRNES. We are then left with a situation, Mr. Bundy, where the judgment of a handful of people determines the use of what might otherwise be public funds. That, it seems to me, is where there arises a public responsibility, as opposed to merely the private concern of donors, who wish to—

Mr. BUNDY. You are absolutely right.

Mr. BYRNES (continuing). Make grants to individuals to finance whatever they think would be helpful to the individual, or which might also produce some information that could be helpful to others.

Mr. BUNDY. Mr. Byrnes, the charter of the Ford Foundation, the provisions of the Internal Revenue Code and the agreements reached at the time the foundation was established have created this general situation.

Mr. BYRNES. I do not mean to suggest that you are violating the law at all.

Mr. BUNDY. I am not saying that either. The board of trustees of the Ford Foundation could give \$3 billion tomorrow to any one of thousands of institutions in the country.

Mr. BYRNES. Or to any individuals.

Mr. BUNDY. And individuals. They do not do so. They accept the responsibility of making judgments. They stand on their record, I stand on that record.

My view is that the kind of purposes for which our travel and study awards have been made are high and good purposes, that their returns have been good.

I think it would be very unwise for the Federal Government to try to accept that responsibility of decision and, as I said earlier to Mr. Mills, it seems to me that the diversity and pluralism of judgment on these matters is precisely what our country is about.

Mr. BYRNES. But we recognize that such a high percentage of the base, in this case almost 77 percent, was public funds, and we run into a problem not of distribution according to law, but to distribution

of and by man and, men who got to this situation simply because they decided to make a contribution to the foundation rather than to incur the tax liability which would otherwise have accrued.

This situation is particularly difficult for us on the committee, since the burden of taxation and the burden of providing for the services of government, falls on those people who are not fortunate enough to have any more money than they need to meet their daily living costs.

Mr. BUNDY. I think you have to judge, and I think we do come right back to that, whether the Ford Foundation and other foundations make a contribution to the public welfare and educational, charitable purposes—purposes appropriate under their charter—which justifies that policy which is the historic policy of our country.

Mr. BYRNES. You frame the issue very well, but I think it could also be approached in this manner: Isn't this process too valuable to be placed in the hands of a small group to determine what is in the public good with any specific basic criteria? The only limitation on criteria now is imagination. Should they make this determination rather than those who are charged with a public responsibility and who are accountable to the public for those funds? Not that foundations aren't doing some wonderful work, but haven't we perhaps done too little in supervising this area?

It is not that foundations are bad; nor am I suggesting that we should eliminate them or charitable contributions or the exempt status of other organizations. I just wonder whether it hasn't gotten somewhat out of hand, and whether we ought to seek to limit the latitude that is given to some small groups to determine what is in the public good, especially those whose base is bolstered by a higher percentage of public funds.

You may respond if you care to. I am making a speech and I probably shouldn't.

Mr. BUNDY. My view is really that it is very important to have regulations of the kind the Treasury has been discussing, subject to the modifications I suggested in my prepared statement, and that the fundamental protection is accountability.

I do not think the way and means of accountability are at all perfect in our society and there are, I hope ways, that they can be improved, either through strengthening procedures in the Treasury or by increased efforts to be accountable by foundations or by both. That is certainly our position as an institution and that is why I have done my best to try to explain these particular actions and others about which we may be asked where there is public question.

Mr. BYRNES. Thank you very much.

The CHAIRMAN. Mrs. Griffiths.

Mrs. GRIFFITHS. Mr. Chairman, thank you. I would like to ask you, Mr. Bundy, was 85 percent of the equity of Ford Motor put into the foundation to begin with or in the first few years?

Mr. BUNDY. It is that order of magnitude, yes, not at the beginning. The foundation was chartered in 1936, Mrs. Griffiths, but the large scale foundation as we know it comes after the deaths of Henry Ford and Edsel Ford and it was that amount roughly of the equity of the Ford Motor Company, yes.

Mrs. GRIFFITHS. And this was in nonvoting stock?

Mr. BUNDY. Nonvoting stock.

Mrs. GRIFFITHS. How could that stock have become voting stock?

Mr. BUNDY. Well, a lot of it has become voting stock since leaving our hands.

Mrs. GRIFFITHS. And how did it?

Mr. BUNDY. It became voting stock in a number of different ways which involve a fairly complex process and a different one in different cases. Not being a tax or equities lawyer I don't want to try to pretend to give you a precise accounting, but in all cases, it became voting stock under regulations approved by the Internal Revenue Service. One way was by public issue which required an SEC registration, as I understand it; there have been two or three large scale public issues of the stock which on the issue and with the approval of the appropriate public authorities changed from nonvoting stock to voting stock and became voting common stock.

Mrs. GRIFFITHS. Was it still within the foundation's control when it became voting common stock?

Mr. BUNDY. No, no share of voting common stock has ever been within the foundation's control as far as I know.

Mrs. GRIFFITHS. So for practical purposes the nonvoting stock was traded in?

Mr. BUNDY. It was traded in and voting stock was issued.

Mrs. GRIFFITHS. And what was issued to the foundation for the nonvoting stock?

Mr. BUNDY. Cash.

Mrs. GRIFFITHS. Pardon?

Mr. BUNDY. Cash.

Mrs. GRIFFITHS. In what amounts was it changed?

Mr. BUNDY. Well, the foundation at one point owned, as we say, approximately 88 percent. Now the foundation owns 27.4 percent of the total equity of the Ford Motor Co.—still in nonvoting stock—so it has been reduced, and our policy, as I said earlier, is to try to continue, is to continue to reduce it below 20 percent.

Mrs. GRIFFITHS. Did the voting stock pay the cash for the nonvoting stock?

Mr. BUNDY. Well, it depends again on the situation. If you go to underwriters for an issue they undertake to make the issue under terms approved by the Government. Then they sell it. Then they give you the money they have.

Mrs. GRIFFITHS. When the voting stock declared a dividend, did the nonvoting stock get a dividend also?

Mr. BUNDY. Dividends have been paid to both classes of stock without distinction.

Mrs. GRIFFITHS. The same dividend was paid.

Should the voting stock not have issued a dividend, could the nonvoting stock have brought a suit to require it?

Mr. BUNDY. I don't know the rights of the nonvoting stock. The question has never arisen in my time. I would have to look that one up.

Mrs. GRIFFITHS. Would you answer it for the record?

Mr. BUNDY. I don't believe that there would be a possibility under the existing charter of the Ford Motor Co. to declare a dividend for one class of common stock and not for another.

Mrs. GRIFFITHS. Well, supposing the voting stock simply had declared no dividend at all, had kept whatever returns there were within the company?

Mr. BUNDY. Oh, the decision on the size of the dividends has been within the power of the motor company, that's right.

Mrs. GRIFFITHS. Yes. Now, could the nonvoting stock, had no dividend been declared at all, have brought an action to require that a declaration of a dividend be made?

Mr. BUNDY. Nothing remotely like that has ever arisen so I just don't know the answer to the question. It is highly theoretical.

Mrs. GRIFFITHS. I am interested in knowing whether they could have required it.

Mr. BUNDY. We will try to find out.

(The following letter was received by the committee:)

THE FORD FOUNDATION,
New York, N.Y., March 11, 1969.

JOHN M. MARTIN, Jr., Esq.,

Chief Counsel, Committee on Ways and Means, U.S. House of Representatives,
Washington, D.C.

DEAR MR. MARTIN: During Mr. Bundy's testimony before the Ways and Means Committee on February 20, 1969, Representative Griffiths asked several questions concerning the rights of the Ford Foundation as the holder of Class A non-voting stock of the Ford Motor Company with respect to the declaration of dividends by the Company. I am pleased to provide the following information in response.

Under the express terms of the Charter of Ford Motor Company, the holders of the voting and non-voting stocks are entitled to share equally, share for share, in dividends when and as declared. All dividends have accordingly been paid in equal amounts per share on all outstanding shares. In the very remote contingency that any board of directors should violate the Charter by declaring dividends on the voting stock but not on the Class A stock held by the Foundation, the Foundation could bring suit to assert its rights.

If the board of directors declared no dividends at all and kept surplus earnings within the Company, the Ford Foundation could bring suit to require the payments of dividends on its Class A stock. The declaration of dividends in the case of every company is a matter within the discretion of the board of directors, having in mind the needs of the business, and the court will tend to uphold the directors' exercise of business judgment. However, if the directors of a company abuse their discretion and arbitrarily or fraudulently refuse to pay a dividend, accumulating the earnings within the company beyond the needs of the business, any stockholder may bring an action to compel the declaration of a dividend. The fact that the Ford Motor Company stock held by the Foundation is non-voting would not in any way affect or limit rights to sue for dividends under such circumstances.

Please let me know if we may provide any further information on this matter.

Sincerely,

HOWARD R. DRESSNER,
Secretary.

Mrs. GRIFFITHS. Whether they could have brought an action and required it. If there had been no income tax at all, in your judgment, would there have been a foundation?

Mr. BUNDY. I think the question really addresses itself to estate tax.

Mrs. GRIFFITHS. Yes, partly, estate tax.

Mr. BUNDY. I think there would have been a foundation. The Ford Foundation begins in 1936, but I really don't know the history of the estate planning of Henry and Edsel Ford, and I don't really believe I am the right person to try to answer that question.

Mrs. GRIFFITHS. Under any circumstances, the foundation evaded the inheritance tax; did it not?

Mr. BUNDY. No, that is not my view, no. The foundation wouldn't pay an inheritance in any case.

Mrs. GRIFFITHS. On 80 percent of the equity the Ford Motor Co. did not pay!

Mr. BUNDY. The estate did not pay the inheritance tax.

Mrs. GRIFFITHS. On 80 percent of the equity of Ford Motor?

Mr. BUNDY. On whatever the percentage was at the time.

Mrs. GRIFFITHS. Eighty or eighty-five percent of the equity of Ford Motor, and the ownership, the real control, the ownership of the company, has been permitted to go on the market in an orderly process, so that the value of the company did not go down and the management did not change; isn't that right?

Mr. BUNDY. That seems to be roughly right; yes.

Mrs. GRIFFITHS. Well, personally, I would have been most unhappy to have seen the management of Ford Motor change or to have seen it hurt in any way. It is a large employer and it has done a good job. There have been 1,500 motor companies in this country. It is not easy to run a motor company. It is mighty easy to go broke.

At any rate, though, what we are questioning here, it seems to me, is not the right of charities. I think that we would have done better from the beginning if all witnesses had removed their halos and we would have talked about exactly what is happening within these organizations.

The question I would think is, Why don't we repeal all inheritance taxes? Wouldn't we do away with part of this problem? Wouldn't this be a simpler way to make it equitable?

Mr. BUNDY. I think your question may be addressed to the chairman and not to me, Mrs. Griffiths.

Mrs. GRIFFITHS. Oh, the chairman worries about how much money we have. The second question is, When the foundation receives its dividends from Ford Motor it does not pay an income tax on those dividends, does it?

Mr. BUNDY. It doesn't pay a tax on those dividends.

Mrs. GRIFFITHS. Whereas an individual receiving it does pay it.

Now, another way to make it equitable, since the company already pays a tax on its income, is to say we will not tax anybody's dividends. I wish I had back that vote I cast some years ago on the whole thing. These are some of the ways in which we could make this equitable besides those we are doing, and the real situation within these foundations is that there are very few of them really set up for charity.

That's not the real purpose of them. Maybe we should consider the status and purpose so one of the things is when Ford Motor has been ordered disposed of in an orderly manner why shouldn't the foundation go out of existence.

Mr. BUNDY. Well, let me say we haven't given that stock away—except on those occasions when grantees have accepted Ford stock in lieu of cash. We have sold it, Mrs. Griffiths.

Mrs. GRIFFITHS. Right, but once the Ford Motor stock is safely out of there, why shouldn't you have perhaps 20 or 25 years for a foundation? After that, you pay taxes like anybody else and have some re-

quirement that not only the income from whatever you own that you give that away, but that you also give away the capital.

But in the meantime, you pay taxes.

Mr. BUNDY. Well, that would change the rules very drastically, and think it would lead to a quick end to the creation of new foundations

a. I would say gradual reduction—

Mrs. GRIFFITHS. I don't think that would be—

Mr. BUNDY (continuing). To a gradual reduction in the relative weight of private and independent organizations as against the growing part of government, and I think that would be a mistake.

Mrs. GRIFFITHS. Well, I am very unimpressed by the arguments. I have heard them made over and over again, and I am not really very impressed by those. I am impressed that I don't think Ford Motor Co. should have been destroyed necessarily, but I would think that there could come a day when a foundation could go out of existence.

I don't think that would necessarily mean you would not have foundations, particularly out of the Ford family. It begins to explain to me why we have eight separate Rockefeller Foundations. You don't have to have all control of stock within any one foundation.

Mr. BUNDY. I am not sure I follow that.

Mrs. GRIFFITHS. You could get down to 3 percent of the controlling stock of a donor, and if you have eight foundations and eight members of the family own 24 percent of it, you can control.

Mr. BUNDY. Mrs. Griffiths, I would like, if I may, to make it categorically clear that that hypothesis does not apply to the Ford Motor Co. or the Ford Foundation. The Ford Foundation holds only non-voting stock. It takes no part in the work of the Ford Motor Co., in its management or its administration.

Mrs. GRIFFITHS. That isn't what you are set up for.

Mr. BUNDY. It had nothing to do with it. Therefore, it may not be your suggestion, but one might draw the implication that there is a league of foundations keeping control of the Ford Motor Co.

I want to say if that is the implication, I think that is totally inaccurate.

Mrs. GRIFFITHS. No; not control the Ford Motor Co. When 80 percent of the stock was neutralized, 15 percent of the stock controlled Ford Motor Co. There isn't any problem in your position at all. You were set up so that 85 percent of the stock wouldn't be put on the market and somebody else control it.

Mr. BUNDY. Perhaps I misunderstood what was your suggestion of collusion by foundations.

Mrs. GRIFFITHS. It seems to me there are other ways of approaching this problem than the one by which we are approaching it, but the least of all the arguments and the poorest of all the arguments in my judgment that are being made are the arguments that this charity should be continued and we should have a plural view of charity.

Over and over again in this committee we have pointed out that many of these things now being done are being done by Government. The question is should we have some of us paying taxes and other large amounts of wealth not paying taxes. That is really the question.

Mr. BUNDY. I don't presume to think that I can change your mind when others have obviously failed, Mrs. Griffiths, but my own view is to take other foundations—

Mrs. GRIFFITHS. I think it would be better, Mr. Bundy, if we really just made statements as honest as we could on how the thing works and how it worked.

Mr. BUNDY. I resent the suggestion that people are not trying to do that.

Mrs. GRIFFITHS. No, you are saying by your lights this foundation was really set up for charity, Mr. Bundy. It is obvious that this is not the sole purpose of it.

Mr. BUNDY. I would disagree then.

Mrs. GRIFFITHS. Certainly not the whole purpose, and it is not the prevailing purpose.

The CHAIRMAN. Mr. Schneebeli.

Mr. SCHNEEBELI. Mr. Bundy, I will probably start off by saying that I generally agree with your premise that foundations are good and worthwhile. I would like to question the statement you have made on page 8.

Since it began operation, the foundation has distributed over \$1 billion more than its net income, exclusive of long-term capital gains.

Now, isn't your present policy generally to cut down this excess distribution over normal income which practice prevailed up till about a year ago? Until you returned it is my understanding they were spending considerably in excess of their income and you formulated a policy to cut back on this, let's say, excess spending over income. Is this true?

Mr. BUNDY. It is true that we have reduced the budgeted expenditures in the last couple of years because we were going so far beyond our regular income that the question did arise to whether we were going to put ourselves out of business.

Nevertheless, our own judgment, the trustees' judgment, was that there was no reason currently to suppose that there would be less need for a large independent foundation 10 years from now than there is now.

Put it another way. As we look at the needs that we are confronted with, the people who besieged us for help in 1968, we think the foundation would have made a great mistake if it had decided to go out of business in its first 10 years of existence as a national institution—beginning in 1950—which was an option. We are still however budgeting well beyond our income from dividends and interest.

Our current budget is on the order of \$224 million and our expected income from dividends and interest in this year is on the order of \$150 million to \$155 million, so we are programming our spending at about 50 percent beyond our annual income.

Mr. SCHNEEBELI. But are your assets at the same time still appreciating?

Mr. BUNDY. Our assets over the last 10 years, and I thought I had the chart here, but I do not find it, have stayed within a range of 20 percent on either side of \$3 billion, so we are about the same size we were a decade ago, which of course means that in relation to the national economy we are considerably smaller.

Mr. SCHNEEBELI. Yes. This leads me to the question I have in mind. You people have the authority of course to determine the top limit to which you can let your foundation assets appreciate. Is it your

thought to keep this around \$3 billion, or is it your policy generally to let it appreciate further, and if you do, is there any top limit that you set for your foundation at the present time?

Mr. BUNDY. We don't have a formal policy here.

Mr. SCHNEEBELI. I realize that, but you have some figure?

Mr. BUNDY. The question is reviewed every year really at budget time; what is the likely impact of this budget upon the rough position of the corpus? I would think that if we sat tight and merely spent our income and let the thing grow—supposing for the moment that the investment market behaves in the next 20 years as it has in the last 20 years—

Mr. SCHNEEBELI. Not like the market in the last 3 days.

Mr. BUNDY. In my view that would be an excess of caution in spending. On the other hand, I don't think one can be sure and state it as a flat policy that \$3 billion is the right size forever. If there is severe inflation the value of that sum of money might be drastically reduced and our policies might have to be adjusted accordingly.

Mr. SCHNEEBELI. And you probably won't change from your present policy too much that of putting some ceiling in the asset value of your foundation?

Mr. BUNDY. I think what I prefer to say is I really see no likely change, no drastic change, in our current policy of spending substantially beyond our annual income.

Mr. SCHNEEBELI. Although you have cut down about twice the amount of this excess spending?

Mr. BUNDY. We have cut down from about twice as much as we took in and are spending about 50 percent more than we take in.

Mr. SCHNEEBELI. Would you expect that to be the policy?

Mr. BUNDY. I am honestly not in a position to predict the trustees' policy. The matter is under review now and it would be wrong for me to try to be too precise about it.

Mr. SCHNEEBELI. But it is generally something like that. Thank you very much.

The CHAIRMAN. Mr. Burke.

Mr. BURKE. Mr. Bundy, going back over your statement about that building that the Ford Foundation put up in New York City. As I understand it, it was built on hospital-owned land and the foundation decided that they would spend a million dollars on charity in New York City in lieu of taxes.

Was that spent per year?

Mr. BUNDY. It is per year, yes.

Mr. BURKE. You conferred with the city officials at the time, is that correct?

Mr. BUNDY. That's right.

Mr. BURKE. Did Mayor Lindsay approve this type of expenditure or did he express a desire to have that million dollars paid into the city treasury to bring some relief to their tax rates?

Mr. BUNDY. We didn't make a flat offer to put the money in the city treasury. We asked him whether this way of making a contribution to the work of the city would be in his judgment a constructive and useful use of the funds. We asked former Mayor Wagner the same question. We asked that question of a number of people active in city

affairs and they said it was a constructive way of doing it, which was our own opinion and so we went ahead.

Mr. BURKE. Don't you think in view of the terrific problems of a city like New York with 10 percent of its population on welfare that it could have put that money to better use if it had gone into the city treasury?

Mr. BUNDY. Our own belief is that precisely because New York is a very large area with a very large budget and with a very complicated process of financing and of administration that a relatively small unit of this kind with higher flexibility run by disinterested trustees, citizens of New York and leaders in New York, could make a better contribution than the average tax dollar.

Mr. BURKE. Could they make better use of Mayor Lindsay's officials?

Mr. BUNDY. I didn't put it that way; I said that it could be made better use than the average tax dollar, Mr. Burke.

Mr. BURKE. In relation to these 2,000 persons that you mentioned who have been awarded individual grants, did you award them in one year?

Mr. BUNDY. They vary in time from a period of as short as a few weeks to a period as long as several years, when a man is engaged in advanced training.

Mr. BURKE. In other words, how many individual awards did the Ford Foundation make for the year 1968?

Mr. BUNDY. Direct travel and study awards in the last year are on the order of 300 as I understand it. I would like to have the right to revise and sharpen that figure, and of course other kinds of awards are much larger in number, generally through large-scale fellowship and scholarship programs which are administered by other institutions with our money.

Mr. BURKE. In relation to the individual awards, were any public officials, elected public officials, given any of these awards for travel and study?

Mr. BUNDY. I don't think we have given this kind of award to persons holding elective office in the United States. We have done it on occasion to people after they have left public office, both elective and administrative.

Mr. BURKE. In other words, what I am trying to find out is has any public official had transportation, hotel bills, travel expenses, and the like provided for him?

Mr. BUNDY. That might happen, yes. Indeed there are a number of intercontinental parliamentary groups where in response to requests from Members of the Congress and others abroad we have provided funds for parliamentary meetings. We have one before us right now from leading Members of the Congress and we have it under consideration.

Mr. BURKE. Do the Members of the Congress make these requests for grants of the Ford Foundation?

Mr. BUNDY. Yes.

Mr. BURKE. Thank you. May I follow that just a bit further. Do you believe any of these grants would in any way influence these Members on public policy?

Mr. BUNDY. That is a very important, difficult, and hard question. If you mean are these intended to buy votes for this or that bill—

Mr. BURKE. I didn't say buy. I said influence.

Mr. BUNDY. Influence votes on a particular bill?

Mr. BURKE. Yes.

Mr. BUNDY. Obviously and categorically not. If you mean that when we make a grant of this kind we are interested in the educational effect of the experience on the individual involved then we are back where I was with Mr. Byrnes. We do believe that.

That the issues involved are issues of public policy and that people should have opportunities to inform themselves further on issues of public policy is to us a proposition to which we say "Yes," the question then being who are they, what are their qualifications, what are they likely to gain from this exposure, and can we afford it? We made another kind of grant that may be worth mentioning, for travel expenses of Members of Congress, again at the request of leaders of Congress, in the case of the U.S. Conference of Mayors, to permit Members of the Congress to travel and see conditions in some of our large inner city areas, and we have a whole file of letters on how this has affected the way in which those Members of Congress think about that problem of the inner city.

That seems to us to be good.

Mr. BURKE. I am not questioning whether it is good or bad. The only question I had in my mind is when corporations spend money to influence legislation under the law they are compelled to file with the Clerk of the House a statement of their expenditures and their lobbying activity.

Now the question is whether or not this is a good thing. It may be that they are doing wonderful work. They are creating a manner of thinking among the elected officials that should be brought about. The question in my mind about some of these family controlled foundations is whether or not there is a conflict of interest there that could affect our tariff, trade, and a great deal of other legislation that affects the average every day American.

I am not impugning the Ford Motor Co. as such. I am merely pointing out that these foundations can be set up, that they can be allowed to perform these activities, and that they certainly can go pretty far afield from doing good work. It certainly could result in lobbying activity and there would be no control exercised over it.

Mr. BUNDY. Well, the current regulations, as I am sure you know, provide that no substantial part of the activities of the foundation shall be devoted to attempts to influence legislation. We observe that. Indeed we have stricter guidelines than that.

We try to stay away from anything that anyone can fairly consider to be lobbying.

Mr. BURKE. Suppose you were to take a group of elected officials, whether they are State legislators, U.S. Congressmen or Senators, and fly them on very beautiful planes, to a convention in Hawaii or in Miami during the wintertime or to New Orleans during the mardi gras. I don't say that your foundation does that, but I am just raising this hypothetical question. Suppose these elected officials find themselves in beautiful, lush quarters, and they enjoy themselves by living and eating pretty high on the hog, as they say, for a period of 2 or 3 weeks or a month. You don't believe that this would have any influence on them whatsoever?

Mr. BUNDY. Mr. Burke, the difficulty in dealing with your question is that that is not the way we look at it. If the problem were that kind of a problem it is certainly true that any organization with large funds could spend its time and money that way.

That is why I believe that it is the accountability and the public reporting function and the readiness to explain what specifically you are doing, which are the fundamental ways of protection.

Now, I am prepared, and I suspect Congressmen and Senators, and mayors and Governors who have attended conferences that were financed in terms of travel and expenses by the Ford Foundation could be too—I am prepared to justify and explain those. I am sure that those Members of Congress are prepared to justify and explain them, in public interest terms as educational activities.

Mr. BURKE. Mr. Bundy, I have looked over reports of some of these foundations. I find that they are very vague and they do not list the names of public officials who made on trips or what expenditures were made. I see a general statement but I don't see any complete report of the financial expenditures that were made or where the money went.

Where in your report do you have a list of public officials who traveled at your expense during the past year?

Mr. BUNDY. The principal complaint about our report now, Mr. Burke, from most of its readers is there is too much of it and it is much too long, but the programs that you describe are listed and questions about them are promptly answered.

If you want to find any list of any Member of Congress, any mayor, any Governor, any public official, for that matter private citizens, who have attended conferences the foundation has paid for, a letter to us will bring the answer.

Mr. BURKE. In other words, you would have to go down and dig it up.

Mr. BUNDY. You would simply have to ask for it.

Mr. BURKE. Well, I am asking.

Mr. BUNDY. Do you want such a list?

Mr. BURKE. I think that this entire committee should be given a complete and full report of all your expenditures last year because we are going into an area that is really a serious area to the public. The general public is questioning these foundations. There is a gray area, an element of doubt in minds of the people, whether the wealthy in this country are evading taxes, whether they are seeking these foundations as tax shelters. And we have to come up with the answers.

Mr. BUNDY. That is quite right.

Mr. BURKE. You have already volunteered to give this information and as one member of the committee I would like to have a complete report on every individual who received a grant, every elected Member of Congress who traveled at the expense of the foundation, and a real breakdown on how that money was spent. I think that we are entitled to that information as long as it is tax exempt.

Mr. BUNDY. Mr. Burke, I would like to make it extremely clear that we can provide information and will provide it to the limit of our ability. Our report is at the printers now for fiscal year 1968. Copies will be sent to the committee as soon as it is off the press and in advance of the release date and the questions which you have asked will

be addressed as promptly as we can put our report staff to work on them and the reports will be submitted with pleasure.

Mr. BURKE. I examined the reports that are published but they don't give any real information.

Mr. BUNDY. I honestly can't agree with that. I think they give a great deal of information.

Mr. BURKE. The questions raised in the minds of the public are hidden in those reports. Those questions should be answered very frankly and openly.

Mr. BUNDY. There is no question but that if we were to print every activity of 450 members of our staff and every activity of every grantee we would be publishing hundreds of volumes a year. We have a problem of choice. We are already under criticism from one of your distinguished witnesses for spending too much money in our office of reports.

Mr. BURKE. I am not asking you to put out an annual report that will go that much in depth, but I think some detail is needed to clear the air, to remove the cloud of suspicion. Possibly the time you have spent has been well warranted and merited—I am not questioning that, but I think to remove that gray area, that clouded area, that we should have that information. I would appreciate receiving it.

Mr. BUNDY. We have taken note I am sure.

Mr. BURKE. I not only direct that statement to your foundation, but I say that to the Rockefeller Foundation and any other foundation that can amass billions of dollars, I think that we should have that information.

Mr. BUNDY. We would much rather err on the side of providing too much than too little and we will act accordingly.

(The full information as requested in the questions of Mr. Burke was not received in time to be included in the printed record. The information is contained in the files of the committee.)

The CHAIRMAN. Mr. Bush.

Mr. BUSH. Mr. Bundy, certainly I am sympathetic and I don't want to seem to be harassing you on a number of your points, but because I think you have made a very meticulous statement about the very human motivations I do hope that I can get on the record just a few more questions on that subject and the first is on the Post story dated July 10.

Was that based on a handout from the Ford Foundation?

Mr. BUNDY. No. It was based on inquiries at the foundation but I myself think there was no full understanding between the Post and our people on that.

Mr. BUSH. So when they took the language "To ease the transition from public to private life" that is not your language.

Mr. BUNDY. That is not the official language of the foundation, no.

Mr. BUSH. Secondly, did you make a grant to Joe Califano?

Mr. BUNDY. Yes, we have.

Mr. BUSH. What amount, sir?

Mr. BUNDY. About \$12,000.

Mr. BUSH. Have you made any grant to any other members who have just left, within the last month or two, the administration?

Mr. BUNDY. We are discussing a summer study project with Walt Rostow.

Mr. BUSH. But Mr. Califano is the only one so far to receive a grant?

Mr. BUNDR. Yes, that's right.

Mr. BUSH. That was \$12,000. What is the duration of that?

Mr. BUNDR. It is a 3- or 4-month period. I forget the exact time.

Mr. BUSH. Let me just ask you a hypothetical question. Suppose I felt and I think each of us did feel in his own way the same general concern that you felt about the death of Senator Kennedy—you moved toward doing something about it in the foundation—but my hypothetical question is this, If some of us felt that way and wanted to go that direction in expressing the emotion the country felt at the time, do you think a grant by individuals for this purpose should be tax exempt?

Mr. BUNDR. That is, of course, not our problem. That is a problem for the Government, but in fact these are taxable grants.

Mr. BUSH. I see. These are taxable grants.

Mr. BUNDR. Yes.

Mr. BUSH. But would you then answer my question yes, no, or it is none of my business?

Mr. BUNDR. Well, I have to be careful here because the whole area of fellowships and taxation is a very complicated one and I don't want to say something that would seem to take up sides on an issue that affects a very large number of people. In the particular cases of this kind, where work is being done and the payments are of the character that they are, namely, that they take the place and are calculated on the basis of the salary as it was before the other job ended, that has been consistently ruled to be taxable and we have no quarrel with that judgment.

Mr. BUSH. And where, sir, in your report under your breakdown of your accounting purposes are these travel grants? What category do they come under?

Mr. BUNDR. They are generally budgeted under travel and study awards division by division and program by program.

Mr. BUSH. In the 1967 report could I get you just to point to the page.

Mr. BUNDR. I haven't got a way of pointing the page but I will have it sought out and put in the record for you, which page it is, or just indicate it to you individually.

Mr. BUSH. What I was really getting at is you have a general breakdown of the foundation activities, international training and research, international economic development, and so forth. I was wondering under which of these broad categories were these grants in?

Mr. BUNDR. I don't know the classification of this particular set of grants. They are within the division of national affairs and some of them program by program within that division.

Mr. BUSH. How many of these staffers' reports—maybe you covered this in previous question—are publishing their work. Is that hard to say at this point?

Mr. BUNDR. I wouldn't be able to predict. We have two reports in hand. We think in their separate ways they are excellent. They both raise questions for us in terms of our program activity, of what we are going to do, and with whom we are going to consult next, and the question has to be considered therefore in this wider framework.

Mr. BUSH. If these grants run over for these seven staffers, are they to be renewed?

Mr. BUNDY. I don't want to say that none of them would be renewed because quite often the travel and study awards create situations or develop possibilities that we want further exploration in one way or another, but the ordinary expectation is that they would terminate.

Mr. BUSH. This question certainly takes cognizance of the very special circumstances that you spelled out but were all these grants applied for or did you go to the staff?

Mr. BUNDY. The discussion was initiated by us.

Mr. BUSH. And I believe your language was all but not nearly all or something like that.

Mr. BUNDY. Several but not nearly all. The actual situation was simply that there was a larger staff, and therefore choices were made and so forth in the usual way.

Mr. BUSH. Recognizing the Ford Foundation's crusade against discrimination, I was surprised to see no girls on there.

Mr. BUNDY. I am not absolutely sure you are right.

Mr. BUSH. Is Thomas Johnston a girl?

Mr. BUNDY. No.

Mr. BUSH. You can't tell these days.

Mr. BUNDY. No, there are none. You are quite right.

Mr. BUSH. But I am glad Mrs. Griffiths is not here. Let me go on to the next one.

How do you decide on the amounts? Is there any relationship to past salary?

Mr. BUNDY. Yes, the relationship to past salary, length of the grant, places that are involved in the travel where there is travel, need, if any, for research assistance—I don't know that that came up in these particular cases—the whole series of criteria which are reviewed by an officer experienced with precisely this kind of analytical question.

Mr. BUSH. In probing in on this area in which you made clear it wasn't your intention that this be severance pay—in a sense I can find no relationship between grants and salary, which I think is good.

On these grants to Members of Congress that will be supplied to Mr. Burke, the names of the Members of Congress, would they fall into the same grant category as this? Is this an unusual circumstance?

Mr. BUNDY. Mostly these payments for travel and other expenses would be for particular undertakings where the request comes to us to sponsor a conference to have a study group work on a subject, or to provide for an international meeting of parliamentarians or of others of which Congressmen would be a part of the group. These would in these cases be confined to travel expenses and things of this sort, and would be again measured by standards and criteria which we try to review carefully and which we are prepared to explain.

Mr. BUSH. Most of the grants would not be direct applications from Members of Congress. They would come in like this Japanese application

Mr. BUNDY. No; a question might come from a Member of Congress if he is a sponsor of the kind of undertaking or the meeting or is particularly interested in its subject. I must say that my own feeling about

this, and I would like to say this much on the record right now, is that there is just no kind of relation of influence over legislation or influence over Congressmen.

Congressman and Senators of both parties of very widely different views have been involved in public interest and policy meetings of this sort, not because they are or are not sponsored by the Ford Foundation, but I would think because they are or are not interested in the particular undertaking, and I would not want to give any suggestion or any support to any suggestion that there is any relationship between this and the fidelity with which the Congress discharges its responsibility to keep an eye on foundations and everybody else.

Mr. BUSH. Just by way of example, Mr. Bundy, on that trade grant to Japan or that Japanese application, how did that originate? That comes under the purview of this committee internationally. Did that come from a Japanese request or somebody in this country would request it, or how was it?

Mr. BUNDY. I think actually in the main that is one of those cases where we have had a concern with Japan in the foundation for many years. I think this is right and proper. Indeed Japan was the first country to which I went when I became president of the Ford Foundation because of my own feeling that this question of the strength and effectiveness of Japanese-American relations, cultural relations, and others, was of high importance to the public welfare of all concerned and a legitimate area therefore of inquiry and action for the foundation.

I found what others have found before me, a very high degree of interest in Japan in maintaining and intensifying effective Japanese-American relations.

Now, while the initial arrangements for those meetings came before I was at the foundation and I couldn't off the top of my head give you a precise account, my strong impression is that this was a meeting of minds between foundation officials, Japanese citizens and leaders, and American citizens concerned with Japanese-American affairs, so that all would have been involved in the generation of the idea.

Mr. BUSH. I hope you don't feel this is a frivolous question because it vitally affects trade policy and that gets into politics and gets into quotas and the reason for this line of questioning is so many of us are concerned about the involvement of these foundations in what eventually becomes political activity, so if you could look that one up, sir, and if it would seem appropriate, and I am certainly not insisting but if you could just say how that one originated—

Mr. BUNDY. Let me try to get you a properly studied account of the origins of that particular undertaking.

(The following letter and attachment was received by the committee:)

THE FORD FOUNDATION,
New York, N.Y. March 3, 1969.

JOHN M. MARTIN, JR., Esq.,
Chief Counsel, Committee on Ways and Means,
U.S. House of Representatives, Washington, D.C.

DEAR MR. MARTIN: During Mr. Bundy's testimony before the Committee on Ways and Means on February 20, Congressman Bush asked how the Foundation-supported U.S.-Japan Parliamentary Exchange Program originated. In the

course of his response, Mr. Bundy indicated we would provide a fuller and more precise answer by way of a written report to the Committee.

I am pleased to enclose for your information a statement outlining the development of the program from its beginning in September 1967 to the present time.

If we can provide any further information on this subject, we shall be glad to do so.

Respectfully,

HOWARD R. DRESSNER,
Secretary.

UNITED STATES-JAPAN PARLIAMENTARY EXCHANGE PROGRAM

In September 1967, a Japanese-American Assembly was held in Shimoda, Japan. Among approximately forty Americans taking part, there were seven members of the American Congress (two Senators and five Representatives). Of the forty Japanese taking part there were seven members of the Diet, including former Speaker Funada. The parliamentarians of the two countries were very pleased that they were able to get together through the medium of the Assembly. On the last day of the conference, they held an informal meeting of their own to consider what might be done to continue these exchanges in the future. As a result of this meeting they adopted a unanimous resolution calling for steps to be taken to insure a continuous and informal exchange of information (including periodic inter-parliamentary conferences)."

After their return from the Shimoda meeting, a number of Congressmen urged the Ford Foundation to assist in implementing this resolution and proposed to establish an informal study group on Japanese-American problems to further their own understanding.

In Japan a group of approximately fifteen members of the Diet representing all political groups, except the extreme left-wing of the Japan Socialist Party and the Japan Communist Party, undertook to organize Japanese participation in such a study group, were it to eventuate. They told Foundation representatives that they would be willing to carry their full share of the financial burden. In addition, approximately 125 Liberal Democratic Party Diet members formed a U.S.-Japan Parliamentary Exchange Group, with a Steering Committee consisting of seven leading representatives from all the major groups of the Party.

It was in response to these initiatives that, on February 21, 1968, the Foundation approved a grant of \$50,000 to Columbia University (School of International Affairs) to conduct a one-year experimental program of parliamentary exchange between the U.S. and Japan.

The Japan Council for International Understanding (JCUI) undertook responsibility for the Japanese participation. The JCUI is an organization somewhat along the lines of the Council on Foreign Relations, and is made up of leading businessmen, parliamentarians, journalists, and academicians.

After carefully studying several alternative formats for private sponsorship, the Foundation staff decided that Columbia University's School of International Affairs could most conveniently undertake the role of sponsor. The Advisory Committee established to assist the development of the exchange program consists of the following members: Professor Edwin O. Reischauer (Harvard University), Professor Robert Scalapino (University of California, Berkeley), Professor William W. Lockwood (Princeton University), and Senator Mike Mansfield. The Executive Director of the program is Professor Herbert Passin (Columbia University) and the Associate Director is Mr. Gerald Curtis, Instructor in Political Science (Columbia University).

The Japan Council for International Understanding invited American Congressmen to meet with their Japanese counterparts in April 1968. The participants were selected through discussion among the American participants in the Shimoda conference, the Japan Council for International Understanding, the Informal Parliamentary Exchange Group in Japan, and the members of the Advisory Committee of Columbia University's U.S.-Japan Parliamentary Exchange Program. The Ford Foundation was not involved in the selection of participants.

The success of this first parliamentary exchange conference suggested the desirability of continuing the program and the Ford Foundation, on January 16, 1969, approved a grant of \$130,000 for a two-year continuation. It is expected

that the international meetings will alternate between Japan and the United States, although not necessarily on a fixed schedule.

It was expected originally to have the second international meeting in the United States, but at the urgent request of the Japanese, it was held in Tokyo in February 8-16, 1968. Thirteen American Senators and Representatives took part in meetings with each of the major political parties in Japan, the Prime Minister, the Speakers of the Upper and Lower House, two major trade unions, leading businessmen, and a group of chief editorial writers from the Japanese press and television. The meetings attracted national attention in press and television and were widely considered to have had great significance for the future of Japanese-American relations. A list of U.S. participants at the meetings is attached.

Except for the small number of Diet members who had taken part in the first meeting in April 1968, this was virtually the first occasion for leading Diet members to have direct and continuous discussions with American Congressmen, to hear the American point of view on issues concerning the relations of the two countries, and to present their own points of view. Particularly noteworthy were the meetings held with the two major opposition parties, the Japan Socialist Party and the Komeito (the political party of the Sokagakkai, the well-known lay order of the Nichiren sect of Buddhism).

**U.S. PARTICIPANTS—JAPANESE-AMERICA ASSEMBLY, SHIMODA, JAPAN
SEPTEMBER 14-17, 1967**

Senators Mike J. Mansfield (Democrat, Montana) and Edmund S. Muskie (Democrat, Maine).

Representatives John Brademas (Democrat, Indiana), Jeffrey Cohelan (Democrat, California), James G. O'Hara (Democrat, Michigan), Donald Rumsfeld (Republican, Illinois), Wendell Wyatt (Republican, Oregon).

**FIRST UNITED STATES-JAPAN PARLIAMENTARY EXCHANGE PROGRAM,
TOKYO, JAPAN, APRIL 15-20, 1968**

Senators, none.

Representatives Jeffery Cohelan (Democrat, California), James G. O'Hara (Democrat, Michigan), John O. Culver (Democrat, Iowa), Robert L. Leggett (Democrat, California), William S. Mailliard (Republican, California), Donald Rumsfeld (Republican, Illinois), Herman T. Schneebeli (Republican, Pennsylvania) and Wendell Wyatt (Republican, Oregon).

**SECOND UNITED STATES-JAPAN PARLIAMENTARY EXCHANGE PROGRAM,
TOKYO, JAPAN, FEBRUARY 8-16, 1969**

Senators Howard Baker (Republican, Tennessee), Clifford Case (Republican, New Jersey), Lee Metcalf (Democrat, Montana), Frank Moss (Democrat, Utah), Edmund S. Muskie (Democrat, Maine), James Pearson (Republican, Kansas) and Hugh Scott (Republican, Pennsylvania).

Representatives Jeffery Cohelan (Democrat, California), James G. O'Hara (Democrat, Michigan), Spark M. Matsunaga (Democrat, Hawaii), William S. Mailliard (Republican, California), Donald Rumsfeld (Republican, Illinois) and Wendell Wyatt (Republican, Oregon).

Mr. BUSH. Thank you, Mr. Chairman. I have a couple of questions or several questions on a matter relating to this neighborhood control of schools. Is that in order or would you rather wait?

The CHAIRMAN. Can you be back at 2 o'clock?

Mr. BUNDY. I am at your service.

The CHAIRMAN. Let's recess then until 2 o'clock this afternoon.

(Whereupon, at 12:40 p.m., the committee recessed to reconvene at 2 p.m., the same day.)

AFTER RECESS

(The committee reconvened at 2 p.m., Hon. Wilbur D. Mills, chairman of the committee, presiding.)

The CHAIRMAN. The committee will please be in order.

Mr. Bush, do you desire to resume your questioning?

Mr. BUSH. Yes, Mr. Chairman.

**STATEMENT OF McGEORGE BUNDY, PRESIDENT, FORD FOUNDATION,
ACCOMPANIED BY MITCHELL SVIRIDOFF, VICE PRESIDENT, AND
DAVID GINSBERG, COUNSEL—Continued**

Mr. BUSH. Mr. Bundy, on these grants is there any consideration of the financial ability of an individual to sustain a program like this himself? Is that relevant as you make your decision on who gets these grants?

Mr. BUNDY. Yes, it is relevant but the specific standard which we use is to measure that against the situation the man is in as we begin to consider the question.

Now, in the case of Mr. Califano, he was in a staff position at the White House and our baseline for considering the needs that he might have was his salary there for the relatively short period. I think it is shorter than I described it as this morning, on the order of 7 weeks.

Now, it is a good question, I think, whether we should go beyond and ask ourselves questions about the financial prospects of individuals or things of that kind, but normally we have not done so.

In fellowships and individual awards, this is a recurrent question, and fellowships and awards of this sort have historically been granted according to two different categories—examination of needs, which is the characteristic method now in undergraduate scholarships for example, and the so-called prize fellowship, in which no account is taken of the needs of the individual. Our practice in travel and study awards falls in between I would say.

Mr. BUSH. I think we probably could agree on the latter in his case because his record is \$30,000 at the White House and ever since 1961 in excess of \$10,000; \$26,000 in 1964 which I think most people would agree would put him out of the level of need.

Now, there is a difference I recognize between cumulation of funds and a reasonably high salary.

Mr. BUNDY. The question really in this case under our awards is if a man is qualified and if we think the project that he has for travel and for study is a rewarding one, do we pay him a stipend as well as the travel and study expenses? We think we should. Then the question is, how do you calculate that stipend and I say, if a man is on a continuing job and is simply doing this while his professorship or institutional or organizational salary continues then, of course, the question does not arise. If he is not receiving any pay, then the question does arise, and our benchmark has been his preceding salary in such cases.

Mr. BUSH. Thank you, sir.

I have just a couple of other general questions. In reference to Mr. Byrnes question this morning about satellite foundations do you have a list of those you could submit for the record at this time, sir?

Mr. BUNDY. I think that what we had better do is look it up because it is longer and a little more complex than any single classification. For a variety of reasons I think the word "satellite" was not wholly accurate as a description because in most cases these organizations have

completely independent boards of trustees which often take positions which are very clearly of their own initiative and by their own decision and which do not represent gravitational guidance of any sort from the Ford Foundation. But we will prepare a list of organizations which have most or all of their functional support from the Ford Foundation and in which the Ford Foundation had a role in their coming into being. Some of them indeed have gone out of being over the years and the list will be, I hope, not only an instructive and useful response to your question, but I would hope also a demonstration of the very wide range of accomplishment and achievement that these funds have been used to produce.

Mr. BUSH. Mr. Bundy, if you could get that list for the record at your convenience it would be helpful.

Mr. BUNDY. We certainly will.

(The following letter and attachment was received by the committee:)

THE FORD FOUNDATION,
New York, N.Y., March 27, 1969.

JOHN M. MARTIN, Jr., Esq.,
Chief Counsel, Committee on Ways and Means,
U.S. House of Representatives, Washington, D.C.

DEAR MR. MARTIN: During Mr. McGeorge Bundy's testimony before the Ways and Means Committee on February 20, 1969, Congressman Bush requested a list of those organizations to which the Ford Foundation has given substantial or all of their operating support and in which the Foundation had a role in their coming into being. I am pleased to forward the attached report listing the organizations, their purposes, and aggregate amounts of the Foundation's general support grants to date.

Sincerely,

HOWARD R. DRESSNER

ORGANIZATIONS WHICH RECEIVE SUBSTANTIAL SUPPORT FROM THE FORD FOUNDATION

CENTER FOR ADVANCED STUDY IN THE BEHAVIORAL SCIENCES, PALO ALTO, CALIF.

The Center for Advanced Study in the Behavioral Sciences was established in 1954 with the support of the Ford Foundation. Leading behavioral scientists spend a year in residence at the Center devoting their time to their own studies or to interdisciplinary cooperation with fellow scholars. Total granted to date: \$11,846,765.

CENTER FOR APPLIED LINGUISTICS, WASHINGTON, D.C.

The Center was established with the support of the Ford Foundation in 1958 as a branch of the Modern Language Association. In 1965 the Center was incorporated as an independent organization. The Center is relied on nationally and internationally by academic and government personnel as the leading authority on the applied aspects of teaching second languages. Total granted to date: \$4,500,000.

COUNCIL ON LEGAL EDUCATION IN PROFESSIONAL RESPONSIBILITY, NEW YORK, N.Y.

The Council on Legal Education in Professional Responsibility was established with the support of the Ford Foundation in 1968 for the purpose of encouraging and supporting clinical legal education and related improvements in legal education. Total granted to date: \$2,598,028.

COUNCIL ON LIBRARY RESOURCES, WASHINGTON, D.C.

The Council was established with the support of the Ford Foundation in 1959. It has as its principal objective the development of techniques, methods, and devices to improve the usefulness of libraries. Total granted to date: \$18,000,000.

EDUCATION AND WORLD AFFAIRS, NEW YORK, N.Y.

Education and World Affairs was established with the support of the Ford Foundation and the Carnegie Corporation in 1962 in order to mobilize the resources necessary to develop American competence in world affairs, to encourage international exchange in students, research, and ideas; and to promote international cooperation in education and the advancement of education in other nations through studies, conferences, communications, and publications. Total granted to date: \$5,553,000.

EDUCATIONAL FACILITIES LABORATORY, NEW YORK, N.Y.

The Educational Facilities Laboratory was established with the support of the Ford Foundation in 1958 to provide information and to encourage and underwrite research and experimentation having to do with improving school and college buildings and equipment. Total granted to date: \$19,500,000.

FUND FOR ADULT EDUCATION, NEW YORK, N.Y.

The Fund was established with the support of the Ford Foundation in 1951 to develop methods and opportunities in adult education. The regular program of the Fund came to an end in June 1961. Total granted: \$41,105,000.

FUND FOR THE ADVANCEMENT OF EDUCATION, NEW YORK, N.Y.

The Fund was established with the support of the Ford Foundation in 1951 to work in the field of formal education from elementary grades through college levels. The regular program of the Fund came to an end in April 1967. Total granted: \$72,647,286.

FUND FOR THE CITY OF NEW YORK, NEW YORK, N.Y.

The Fund was established with the support of the Ford Foundation in 1968 to serve as a small but sensitive grant-making agency, alert to the problems of New York City and to opportunities to use modest sums to improve the performance of government and of government-related activities. Particularly it will support creative efforts that are difficult or impossible to finance from public funds because governmental budgets are too tight or because the machinery does not respond rapidly enough to the right opportunities. Total granted to date: \$1,100,000.

INTERNATIONAL CENTER FOR TROPICAL AGRICULTURE, PALMIRA, COLOMBIA

The Center was established with the support of the Ford and Rockefeller Foundations in 1968. It has the twin objectives of contributing to the economic development of the lowland tropics of Central America and South America and of contributing to the production of important food crops. Total granted: \$680,000.

INTERNATIONAL INSTITUTE OF TROPICAL AGRICULTURE, IBADAN, NIGERIA

The Ford and Rockefeller Foundations provided funds for the establishment of the Center beginning in 1965. The Center is an international center focusing on crop and soil management and the production of food crops in the tropics. Total granted to date: \$6,675,000.

INTERNATIONAL MAIZE AND WHEAT IMPROVEMENT CENTER, CHAPINGO, MEXICO

The Center was established in 1966 with the support of the Ford and Rockefeller Foundations to develop improved strains of grains and vegetables for use in developing countries. Total granted to date: \$1,609,993.

INTERNATIONAL RICE RESEARCH INSTITUTE, LOS BANCOS, PHILIPPINES

The Institute was established in 1960 with the support of the Ford and Rockefeller Foundations in cooperation with the Government of the Philippines in order to speed up the development of substantially improved varieties of rice and production techniques. Total granted to date: \$12,160,000.

INTERNATIONAL LEGAL CENTER, NEW YORK, N.Y.

The Center was established with the support of the Ford Foundation in 1966 to give systematic and continuing attention to the role of law in the development of modern nations and the reshaping of the world community; to help in the creation and mobilization of personnel, here and abroad for the solution of legal problems in the international field, and to provide an international vehicle for developmental services on the basis of the best available knowledge and competence, legal and non-legal. Total granted to date: \$3,000,000.

MEXICAN AMERICANS LEGAL DEFENSE AND EDUCATIONAL FUND, SAN ANTONIO, TEX.

The Fund was established with the support of the Ford Foundation in 1968 to help the Mexican-American community, through a program of litigation and related educational activities, achieve its rights under law. Total granted to date: \$2,200,000.

NATIONAL EDUCATIONAL TELEVISION, NEW YORK, N.Y.

NET provides an informational, cultural, and educational program service for noncommercial television stations in the United States. It was founded in 1952 with the support of the Foundation's Fund for Adult Education and included activities in the field of non-commercial radio until 1963. Total granted to date: \$60,037,390.

NATIONAL MERIT SCHOLARSHIP CORP., EVANSTON, ILL.

The National Merit Scholarship Corporation was established with the support of the Ford Foundation and Carnegie Corporation in 1955. The broad purpose of the organization was to establish a nationwide scholarship program to identify and to assist outstanding high school students to attend college who would not otherwise be able to do so. An additional aim of the organization was to enlist industry and the public in support of its program. Total granted to date: \$46,000,000.

NATIONAL OFFICE FOR THE RIGHTS OF THE INDIGENT, NEW YORK, N.Y.

The National Office for the Rights of the Indigent was established with the support of the Ford Foundation in 1967. NORI extends research and test-case litigation support to attorneys (both private practitioners and legal aid societies), who are providing legal services to indigents. Total granted to date: \$1,000,000.

NEGRO ENSEMBLE CO., NEW YORK, N.Y.

The Negro Ensemble Company was established with the support of the Ford Foundation in 1967. It is a professional theater company and workshop dedicated to developing American Negro actors, playwrights, directors, technicians, and managers. The group aims to provide a new off-Broadway platform for a repertoire to include works on racial themes and problems, expand opportunities for experienced Negro theater artists, and offer professional training to potential new talent with materials which emphasize the Negro identity. Total granted to date: \$1,184,000.

RESOURCES FOR THE FUTURE, WASHINGTON, D.C.

Resources for the Future was established with the support of the Ford Foundation in 1963 to foster, encourage, and conduct scientific research and study on the use and conservation of natural resources. Total granted to date: \$28,812,000.

SOUTHWEST COUNCIL OF LA RAZA, TUCSON, ARIZ.

The Council was established with the support of the Ford Foundation in 1968. It is a national organization of Mexican-Americans established to coordinate efforts to achieve civil rights and equal opportunity. Total granted to date: \$630,000.

TAMARIND LITHOGRAPHY WORKSHOP, LOS ANGELES, CALIF.

The Tamarind Lithography Workshop, a nonprofit organization devoted to the stimulation and preservation of the art of the lithograph, was established with

the support of the Ford Foundation in 1960. Tamarind awards fellowships to artists, printers, curators, and researchers active in the lithographic medium; and it conducts apprenticeship and workshop programs for technicians. It also provides advisory services and seminars for teachers of printmaking, undertakes studies, and promotes exhibitions and other programs for the cultivation of public interest in original prints. Total granted to date: \$1,465,000.

THEATRE COMMUNICATIONS GROUP, NEW YORK, N.Y.

The Theatre Communications Group was established with the support of the Ford Foundation in 1961 for the purpose of improving professional standards in theatre. Its funds are used to provide a variety of means of communication among resident, professional theatres to assist them in improving the quality of their programs. Total granted: \$1,039,000.

WOODROW WILSON NATIONAL FELLOWSHIP FOUNDATION, PRINCETON, N.J.

The Woodrow Wilson Fellowships were first awarded in 1945 to increase the supply and quality of college teachers. In 1957, newly incorporated as the Woodrow Wilson National Fellowship Foundation, the program began its first year under a Ford Foundation grant. Total granted to date: \$55,000,000.

Mr. BUSH. I won't use the word "satellite," but do these subs or affiliates that you have helped either create or support or operate within, roughly, the same guidelines as the Ford Foundation itself?

Mr. BUNDY. They generally have more specific purposes. One of those I talked about this morning, Resources for the Future, I would feel confident has a charter which defines its concern as study and research on an appropriate public policy concern with the resources problem and would spell out that specific obligation in the charter.

National Educational Television, another organization of which we are certainly a principal founder, and the principal financial backer, is clearly dedicated, I am sure, by its charter to the educational television field, and so it would go.

Mr. BUSH. In that connection the Metropolitan Applied Research Center, was that one of these foundations or satellites that would fit that description? It was covered in your 1967 report.

Mr. BUNDY. The Metropolitan Research Center, often called MARC, has grants from and support from other institutions besides the Ford Foundation and is not in that sense one for which we are responsible totally.

Mr. BUSH. You don't make a donation?

Mr. BUNDY. It was set up and formed by the Field Foundation and we have been one of its important supports.

Mr. BUSH. The Field Foundation started it, as a matter of fact.

Mr. BUNDY. That is my understanding.

Mr. BUSH. Mr. Chairman, I have one or two questions, sir, on this.

The CHAIRMAN. Go right ahead. I am sure Mr. Bundy thought he might be here most of the day when he came.

Mr. BUSH. Mr. Bundy, I would like to go over a couple of questions that we are going to hear some testimony about from perhaps a slightly different viewpoint later on on this neighborhood control of schools in New York. You were chairman of a panel in New York appointed by Mayor Lindsey which recommended the establishment of 30 to 60 partly autonomous school boards. It is my understanding that thereafter the organization provided grants to at least three decentralization school districts in New York. Is that substantially correct, sir?

Mr. BUNDY. Most of it is right. The general question of the plan for the decentralization of the New York schools was the subject of inquiry by a panel of which I was the chairman and the foundation made grants in 1967 and beginning 1968 for certain aspects of the work of the demonstration districts. Both points are right, but I think it is important for the record to have it clear that the demonstration projects as such are not the result of the mayor's panel recommendations. They came into being and the idea for them was developed mainly at the board of education and in particular by the superintendent of schools before the decentralization panel reported.

Mr. BUSH. One of these districts, sir, was the Ocean Hill-Brownsville District of which a Rhody McCoy was the administrator, is that a correct fact?

Mr. BUNDY. That is correct.

Mr. BUSH. The early grants to the Ocean Hill Brownsville District amounted to about \$200,000, is that correct?

Mr. BUNDY. The earlier grants were in much smaller amount and not incidentally directed to the Ocean Hill-Brownsville School District but to a church in the neighborhood that was willing to administer the funds and was prepared to do so and qualified to do so in our judgment but a later grant to Queens College in the City University of New York system would bring the total probably somewhat above the figure that you have.

Mr. BUSH. Who was given the authority to spend this money to employ people and things like that?

Mr. BUNDY. Well, the planning grants provided for a relatively small amount of employment and the procedures were not as detailed as the ones which were developed later through Queens College. Under those procedures budgets were submitted and the overwhelming amount of this grant was for particular educational projects, special reading projects, gradeless classroom projects and other educational innovations, innovations in the sense that they were new to this system, and new to this project, and new to this pattern of relations between the community and the schools.

I think it is really quite important for me to make it clear that the board of education has had the main control and given the main direction to the demonstration projects throughout their existence. Their rights and privileges and 97 percent of the funding come from the board of education and the New York Public School system. This is important because sometimes people make quite erroneous charges about the degree to which these are a Ford Foundation project and their moneys are Ford Foundation money.

Mr. BUSH. But the actual expenditures in the employment of local workers, was not that left in the hands of Mr. McCoy and others and not under the direct control of the foundation?

Mr. BUNDY. As in all our grants there is a process by which we approve budgets, but we don't try to take the direct responsibility in most cases for the choice and appointment of personnel. There would be discussions of the professional qualifications of proposed personnel in particular cases, I am sure, between the demonstration districts and the Queens College authorities and that faculty of education there, but if you are asking whether we at the foundation would make the

individual personnel choices in the Ocean Hill-Brownsville School District, or in most of the projects we support, the answer would certainly be no.

Mr. BUSH. One of the charges was that people were employed generally temporarily in such a manner as to guarantee their support for the program. I guess that you have answered that then. You don't care to comment further on that.

Mr. BUNDY. I don't think that a general charge of that kind is something on which it is useful for me to comment.

Mr. BUSH. Yes, sir. You are aware that Mr. Shanker, chairman of the United Federation of Teachers Colleges, the foundation, with exerting undue influence on the school system and he is going to be here testifying, and would you care to comment on that or would you rather hear what he says?

Mr. BUNDY. I think it is inappropriate for me to try to comment in advance on what Mr. Shanker says.

Mr. BUSH. Has the Ford Foundation made grants to the San Antonio Mexican-American Unity Council through the Southwest Council of La Raza in Arizona?

Mr. BUNDY. We have made grants to the Southwest Council of La Raza.

I would have to check the question of whether grants have been made by them to the particular organization you mention.

Mr. BUSH. If you could furnish that at a later time.

Mr. BUNDY. We will check that.

(The following letter was received by the committee:)

THE FORD FOUNDATION,
New York, N.Y., March 28, 1969.

JOHN M. MARTIN, Jr., Esq.,
Chief Counsel, Committee on Ways and Means,
U.S. House of Representatives, Washington, D.C.

DEAR MR. MARTIN: During Mr. Bundy's testimony before the Ways and Means Committee on February 20, Congressman Bush asked whether the Ford Foundation made grants to the San Antonio Mexican-American Unity Council through the Southwest Council of La Raza.

In May 1968, the Foundation made a grant of \$630,000 to assist in the establishment of a Southwest Council of La Raza, a regional organization of Mexican-Americans to coordinate efforts toward the achievement of civil rights and equal opportunity. The Southwest Council of La Raza in turn assisted in the creation of three area councils—in Los Angeles, San Francisco, and San Antonio—to each of which it gave \$110,000. The local councils use the funds they receive to provide technical assistance and to develop leadership training programs. The area council in San Antonio is called the Mexican-American Unity Council.

If we may provide any further information on this subject, we shall be glad to do so.

Sincerely,

HOWARD R. DRESSNER.

Mr. BUSH. Do you give grants to any television in the Southwest?

Mr. BUNDY. Yes, indeed: depending on how far south and how far west is the Southwest? We make grants in the field of public television throughout the country.

Mr. BUSH. A charitable foundation being exempt from taxes in a basic sense financed by all the taxpayers of the country, conservatives, liberals, progressives, and any kind of a philosophical classification

you care to put on them. Since this is so, does it seem proper to you to spend foundation money to advance a particular political or social philosophy however admirable such a philosophy might be in the minds of many people? Is this a correct function for the foundation?

Mr. BUNDY. I don't think any foundation ought to approach the question of judgment and decision in the field of public policy by picking part of a political spectrum and saying, "That is for us." I think it does not work that way either. What you do when you come to a question of public policy or a question that has aspects of public policy, is to try to make the best judgment you can, and I think in our case we would try consciously to make a broad judgment as to the range of issues and the variety of persons who might be able to make an important contribution to it. If you take, for example, a field which used to be very controversial and is now not, or at least not nearly so much so, the field of population policy, we have been in that area and worked in it increasingly for 15 years now, I would guess, certainly 10, and the demands which that field makes on our resources grow every year and the range of views as to what is effective and what is desirable in the field of family planning and population is, of course, very wide.

We have two protections there. One is our own concern to support research of quality even when it comes from groups which have differing views of what the urgent issue is. The second in this case, as in others, is large-scale support to another in a sense wholesaling organization, namely, the Population Council, which has a balance of concern and a set of experts differing from ours.

So I think that the larger a foundation is, Mr. Bush, the more it has a responsibility not to get caught in doctrinaire views of problems in public policy. There is always a risk of that. A very good man of deeply conscientious conviction can think there is only one good way in considering an important social or public issue. We try to be on guard against that within the foundation staff and by widening the range of our consultants continuously; and our board of trustees keeps a good sharp eye on us, too.

Mr. BUSH. I can understand that. You can't duck controversy. I have a personal concern about political activity. I mean if the power of the foundation is ever unleashed in that area it would be a very dangerous one it seems to many members of the committee.

This last question would be in this general area. Do you sponsor or support organizations whose main activity would be voter registration, for example, not in a broad range like League of Women Voters, which might be across the whole country or the District.

Mr. BUNDY. Our last grant to the League of Women Voters was to their education fund and was really precisely in this area of voter registration and increasing voter registration so that you have hit on one that we have supported.

Mr. BUSH. Theoretically, the League of Women Voters is not going after a specific segment of the population and register them so that they can show concern about political or social action. At least, the league professes total nonpartisanship and they will register the martin-drinking country club women as soon as they would these underprivileged somebody-else.

My question required to specify areas where the voter registration drive is targeted or pinpointed at a specific group which might have a pattern of political activity that will always vote one way.

Let me put it this way. Do you view voter registration as a legitimate function for foundations to sponsor?

Mr. BUNNY. Yes, I do, but I would not feel that we should be in the voter registration business with a partisan eye on where the people doing it essentially are a holding company for a particular candidate. I think that is not the right way of doing it and would be an improper use of Ford Foundation or any other foundation's funds. I do think there is a problem here which you are right to raise and which is important to discuss. Going back to the example, the League of Women Voters did, in the particular case of this grant, want to move into areas where registration was conspicuously low. That does have a tendency to move you into certain economic and social situations where, while you can't be sure a priori, you know that people in the area aren't necessarily going to vote the same way as the martini drinker you were speaking of earlier, so that you can't say that there is going to be no political consequence to voter registration. I am not trying to suggest that to you.

I think, however, that you have to set against that the national policy confirmed repeatedly, most notably in the Civil Rights Act of 1965, and I believe in, I am sure, by all of us here, that the participation of American citizens in the political process, the simplest and most important act of which is registering and voting, is just terribly important to the fabric of our society. We don't argue about that I am sure.

Not only that, in a time of turmoil, when many of those who are troubled in our society are facing choices in their own minds and asking, "Will this society work, can I be in effect a part of it?"—encouraging the increasing practice of political participation seems good not only for all the reasons we understand and appreciate as practicing citizens but also because of the alternatives that may otherwise develop in time of trouble.

So I would say with energy that I believe in voter registration as an important and legitimate activity of philanthropic organization, charitable organization.

Our own activities in this area have been by grants to organizations which themselves have properly registered exemption under 501(c)(3) from the Internal Revenue Service. The Internal Revenue Service, I am sure, is faithfully interpreting what it understands to be the meaning of the statutes of the Congress so that I take it that is really currently the policy of the Congress. You then have a policy question: do you want to change that? I would hope very much that the Congress of the United States would continue to take the position that voter registration as distinct from partisan political activity is a kind of public activity which deserves this kind of treatment.

Mr. BUSH. In conclusion, I would say that I could not agree more with the need for voter registration. The question thought is whether it comes under the purview of the tax exempt nature of the foundations, whether this is one of the major things that foundations were set up for, and I would hope that the committee, Mr. Chairman, would take a hard look at that. I could not agree more with Mr. Bundy. I practice

and preach and urge people to register to vote and do things about it, but I think the question that we are missing fire on here is that I agree with his speech on voter registration, but the thing that I hope we take a tough look at is do we need to expand the language so that these foundations can participate in this kind of activity or, should we see that the committee and the Congress do not want to expand it, should they be restricted to operate at least under the exempt status, in the areas defined. I think that is the question that lingers in my mind and my reasoning for questioning the grants to a rather well-off man who just left the White House, and with all due respect to Mr. Bundy's total sincerity and his total concern on the Kennedy question, I know it is right and I know it is proper that they express something but is it within this language; and, if it is not, should we change the language; or, if it is not, should we insist that foundations stay within these more narrow guidelines that the Ford Foundation has not in the following. I think this was at least the purpose of the questions I asked and I thank the Chairman and the witness for their indulgence.

Mr. VANIK. Mr. Chairman.

The CHAIRMAN. Mr. Vanik.

Mr. VANIK. I was wondering. Mr. Bundy, if you could tell me the difference between the class A stock and the common stock issued by the Ford Motor Co.?

Mr. BUNDY. You have now got me into a question which really relates to the charter of the Ford Motor Co. Precisely because it is non-voting stock and because, as I was trying to say this morning, we are engaged in the orderly and timely reduction of our holdings there. I really have not studied closely the classes of stock or their precise privileges.

I can tell you generally that the nonvoting stock has the same rights with respect to dividends, with respect therefore to returns on the success of the Ford Motor Co., as other common stock. It has no voting privileges. We are its only holders. When our stock is disposed of, therefore, in one way or another, either by a retirement and re-issue or by conversion, it becomes voting common stock broadly held throughout the country.

Mr. VANIK. Let me ask you this: Why not convert it? Why wouldn't it be to your advantage to convert it and get rid of it if it can be converted on an equal basis? What are the terms of conversion to the common?

Mr. BUNDY. At the same fair value either way. There is no market in nonvoting stock because we have it all. When we dispose of it it converts to common stock at the market value or the issuing value if there should be a new issue.

Our current method of exchange for the moment is to sell every year to Ford Motor Co. or its agencies or elements that are related to it a very substantial amount of our stock for which we are paid in cash which is then gradually reinvested in diversified equities.

Mr. VANIK. Is there an agreement which compels you to sell only to the Ford Motor Co.?

Mr. BUNDY. No, there is not an agreement that compels sale only to the Ford Motor Co. It happens to be a good way from our point of view. Put it another way, there is an understanding now that this is the way by which we will do it.

Mr. VANIK. In other words, you have a commitment?

Mr. BUNDY. We have a contract with the Ford Motor Co., subject to cancellation.

Mr. VANIK. With Ford's present management?

Mr. BUNDY. Subject to cancellation by either side.

Mr. VANIK. Subject to cancellation by either side which obligates you to sell your class A nonvoting stock only to the Ford Motor Co.?

Mr. BUNDY. Not only. We undertake to sell it to them. That is to say, if the question arose of a separate issue, a separate large-scale sale, that would be a matter for further discussion in which we would have an interest, the Motor Co. would have an interest, and the Treasury would have an interest, and the SEC would have an interest because it would probably require a registration at the SEC.

Mr. VANIK. But the arrangement you have now, is that a written arrangement?

Mr. BUNDY. It's a written contract.

Mr. VANIK. And it specifies that whenever stock you are going to sell of the nonvoting A will be sold to the Ford Motor Co.?

Mr. BUNDY. No, I can't say that. It is an understanding to sell stock to the Ford Motor Co. and its employee benefit plans, and it meets our purpose of moving downward our Ford Motor Co. holding.

Mr. VANIK. Well, the question is that at the present time you have these 32 million-odd shares or 29 percent or almost 30 percent of the total.

Mr. BUNDY. I think it is lower than that. It has been reduced at the rate of 2 million shares a year or something on that order.

Mr. VANIK. My question is that I was just wondering whether any arrangement to sell stock by a foundation to its source company or the management of the source company isn't something that should be reviewed by the Treasury Department?

Mr. BUNDY. It is. This is done only with Treasury approval.

Mr. VANIK. How does it get to the Treasury Department?

Mr. BUNDY. We take it to the Treasury before we do it, and they either approve the contract and we do it or they don't and we don't.

Mr. VANIK. Do they approve it solely on the basis of taxability? They do, do they not?

Mr. BUNDY. No, they approve it on whether it is an arm's length transaction in which the interest of both parties is being followed by the parties and neither one is being used as a cat's paw for the other. Their current regulation calls for arm's length dealings in situations of this sort.

Mr. VANIK. That is right.

Mr. BUNDY. And that's our policy, and that's the Ford Motor Co.'s policy, and that is the Treasury's policy, and therefore these arrangements have been approved.

Mr. VANIK. Mr. Bundy, in your 1967 statement on the last page, Summary of Investments, you go to point three where you talk about the market price of the stock, and you refer to the shares that you hold in 1967, \$1,728 million worth, and you say, "Based on the September 30 market price of the Ford Motor Co. common stock but does not necessarily represent the realizable value."

What does that mean?

Mr. BUNDY. What I think that means is that unlike all the other equities in our account which are reported at market value and also at book value in the usual reporting way, we are not in a position to take our holdings of Ford Motor Co. stock into the marketplace and produce a fair market value for them tomorrow. Thirty million shares of stock thrown on the market would produce a new price for Ford Motor Co. shares and, since it is nonvoting stock and has no market except through these procedures I was discussing, there is no way of saying flatly that this is what you would get for it if you had a forced sale tomorrow.

Mr. VANIK. Yes, but if there was a sale and the control of the company were the issue, would it be a value greater or less than what your estimate is in 1967?

Mr. BUNDY. I honestly don't know the answer to that question.

Mr. VANIK. Would you hazard a guess that it would be less?

Mr. BUNDY. I really don't know. I honestly don't know.

Mr. VANIK. Or isn't it likely that if the control of the company were involved it would be a tremendously greater sum.

Mr. BUNDY. I really don't think I can answer the question. I should say that in my own judgment on the question of common stock control of the Ford Co., that stock is now so widely held as distinct from the very concentrated holdings that do remain in the hands of the Ford family that the question of effective control of the company is not a live one right now.

Mr. VANIK. The point that I was raising is if that were involved, wouldn't it have a great deal of effect on the value?

Mr. BUNDY. Well, certainly you are right that in situations in which there is a contest for control of a company there is often at least a temporary increase in the price of stock. The reason I don't want to answer it is that it is so difficult to envision the situation, it is so contrary to the real situation of the Ford Motor Co. and the relation to that situation of our nonvoting holding that it is a wholly speculative question.

Mr. VANIK. My question is whether or not the foundation holdings wouldn't have the effect of suppressing the value of the stock?

Mr. BUNDY. I think that is not the case. There was question, I believe, and I am not commenting entirely as an outside observer, that the problem which the foundation faced in making large-scale dispositions of its nonvoting stock led to at least two and maybe more large-scale offerings in the fifties and maybe even in the early sixties, and that did raise a question of whether the Ford Foundation's holding was hanging over the market.

Now, the current arrangement is very much to our advantage and gives us an orderly market for annual and timely disposition of the stock, and provides the Ford Motor Co.—and they think it is to their advantage—with substantial amounts of stock which they can then use in various of their financial programs mainly concerned with pensions and annuities.

This arrangement doesn't hang over the market and is good for everybody.

Mr. VANIK. And in your opinion is the present regulation of Treasury dealing with arm's-length transaction sufficient for these purposes to preserve and protect the public interest?

MR. BUNDY. As I said in my opening statement on the fair market value of a marginal amount of Ford stock, leaving aside the large question you asked about what happens if a billion and a half dollars' worth is thrown on the market or there is a fight by contestants for control, the fair market value of the next thousand or 10 thousand shares of Ford Motor Co. is established every day on the stock exchange.

It is perfectly clear that both sides are dealing in fair terms about the value of what they are exchanging, that is, the price of that commodity that particular day.

MR. VANIK. There is just one other question that comes to my mind, and that is if the arrangement by whatever way it is worked out provides that this stock is only sold to management, then it insures the control, it serves to perpetuate the control of the same management rather than put it out on the market so that everyone can have access to it.

It would seem to me that that might be better served if this distribution of stock or this sale were something that was made available to the general public which would broaden the base of the management participation in the corporation over the long pull rather than this method which would serve to perpetuate.

MR. BUNDY. Well, the stockholders' representatives, of course, are the management of the Ford Motor Co.

MR. VANIK. That is a part of the mythology of the American corporation. We don't always feel that that is true. But it would seem to me that a plan that would provide for the release of these shares in a more orderly fashion in probably the same proportion to the general public might be more in the public interest than a compelled sale, by whatever arrangement it works out, to a limited group within management control.

MR. BUNDY. It is not a compelled sale, Mr. Vanik.

MR. VANIK. But it works out that way whether it is compelled or an agreement. The point is that it is an agreement that restricts the sale only to management for stock option purposes or retirement purposes or whatever purposes management seeks to have, but for all practical purposes under the present arrangement I would say present management has this block of stock pretty well locked in.

MR. BUNDY. There is a very large publicly traded area in Ford Motor Co. stock. You are really talking about questions between the Ford Motor Co. and the Treasury, not questions between the foundation and the Treasury.

MR. VANIK. I think it involves each year disposing of a substantial number of shares, 2 million, which is a substantial number, and certainly the disposition of these shares every year is a matter I think that is of broader concern than simply that between the Government and the Ford Motor Co.

It deals with what the foundation does and the method of disposition of these shares every year in the sum of 2 million shares is a matter of substantial public interest, and it seems to me that it is broader than the relationship between the Government and the Ford Motor Co. It doesn't concern the Ford Motor Co. at all. I think they have the advantage of having this device to insure that the shares do not get

to the general public. I think they gain by that. I think the public ought to have access to these since it is a foundation, since it is something separate and apart from the Ford Motor Co.

It would seem to me that it would bring about a better situation if you could say that "The shares are put on the market and they are sold to the general public, 2 million shares a year, and we are gradually liquidating our holdings in this one corporation."

I think that would be a far more acceptable arrangement than to tell us that you were selling it every year to the Ford Motor Co. at the rate of 2 million shares. Don't you agree?

Mr. BUNDY. No, I don't.

Mr. VANIK. Well, I think that argument we can carry on some other time.

Mr. BUNDY. It's a perfectly fair argument, but I don't happen to share it.

Mr. VANIK. My fear is that the arrangement is obviously designed to protect the voting power of these shares and isolate them. That is the whole idea. It would seem to me that the long-range benefits of the country would be served if there were a broader base of ownership of a corporation of this kind of magnitude and this kind of size. That is my opinion.

Thank you very much.

The CHAIRMAN. Mr. Schneebeli.

Mr. SCHNEEBELI. Mr. Chairman, I realize that the hour is getting late and I will try to be brief.

Mr. Bundy, I think there was some discussion here about a Ford-sponsored trip abroad.

Mr. BUNDY. Yes.

Mr. SCHNEEBELI. I was on one of those trips myself last year. I was one of eight Congressmen to go to Japan. There were four Democrats and four Republicans. We came from a broad spectrum of political beliefs. I never worked so hard in my life. I think the trip was very worthwhile. I think it was a fine investment on the part of the Ford Foundation insofar as the benefits that accrued to the nominal interest.

During the trip we discussed three subjects, and I was interested in the subject of tariffs and trade. Before I left I discussed the problems with some of the members of the committee. I was particularly concerned about the mounting steel imports from Japan. We were there a week and worked hard. The only time I had to see Tokyo was on Sunday morning. I think it was a very good investment, and I am all for this type of dialog between members of the legislatures of two important countries.

Thank you.

The CHAIRMAN. Mr. Burke.

Mr. BURKE. Mr. Chairman, so I can clarify, my question to Mr. Bundy today wasn't directed specifically at the Ford Foundation, it was leveled at all foundations. Nor was I impugning the motives of any member of this committee, the Members of the House, or the Ford Foundation itself. I was merely trying to find out to what extent this type of practice is going on. I have no intention to impugn your motives or the motives of the Ford Foundation or of any Member of the U.S. Congress in either the House or the Senate.

But I do believe this: Where corporations and other groups are compelled to file their expenditures for lobbying activities, I believe that we will have to put something in the law that will require foundations to report similar expenditures.

Mr. BUNDY. Mr. Burke, let me say that I didn't interpret your remarks this morning as impugning anyone's motives or practices, and I share your view that whenever there is even a faint question about a thing of this kind, even though those most familiar with it have the view that Mr. Schneebeli has expressed of his immediate experience, and it would be our view of these kinds of activities insofar as we have direct knowledge and responsibility for them, it is important that there be no question or uncertainty about it and that is why my only concern this morning was to find an expeditious means that would not be too cumbersome and expensive, and I am sure we can find one that will respond to the questions which you raised and avoid any possibility of a question that these matters are not being adequately reported.

Mr. BURKE. I just wish to emphasize that I am not singling out the Ford Foundation. I believe that all foundations, particularly those with great masses of money accumulated, certainly should be answerable to Congress for any moneys that they spend in the field where legislation is served.

The CHAIRMAN. Mr. Conable.

Mr. CONABLE. Thank you, Mr. Chairman.

Mr. Bundy, I understand and appreciate your argument in behalf of pluralism in the field of public welfare and for the need for problem solving at every level. I think that is the great American secret weapon in our society.

Now, the Ford Foundation has \$3.2 billion in assets, as I understand it, is that correct, sir?

Mr. BUNDY. I think it is in my mind as \$3.1 billion.

Mr. CONABLE. It is a very substantial sum. May I ask you, in the interests of pluralism, do you think that there is a ceiling that should be put on the size of foundations?

For instance, might we get a more diverse use of funds if wealthy people were prohibited from endowing foundations above a certain point or if there were some sort of a ceiling on the foundation corpus?

Mr. BUNDY. Yes, I think there is certainly a point at which you could say this is too much money in one place.

Mr. CONABLE. Do you have any idea where such a point would be?

Mr. BUNDY. I am not sure I am the most disinterested witness on the point. Let me say seriously that as we were saying this morning, the fact of the matter in our own history is that if you take the last 10 years, we have stayed at or near about the \$3 billion level while the size of the national economy and the expenditures in all segments, public and private, have gone way up, so that however large we may be, and we are considerably the largest, we are smaller in the whole American scene than we were in 1960.

For example, our trustees have never felt that it was particularly appropriate to encourage additional large gifts from any source to the Ford Foundation. We get the question every now and then from lawyers. Someone is making his will and wants to include a provision

for a charitable purpose. We haven't said that we would never accept such a gift or bequest, but we don't look for it.

I would think that if someone came to me and said, "I have a large estate, maybe even a billion dollars or \$500 million," and this is not impossible in the light of some of the great fortunes that have been made in expanding industries since the war, it would be better for that person to organize a separate institution or join with a smaller one rather than to add it to one which is by a factor of three or four the largest now.

But I don't want to sit here and tell you today that 25 years from now it would be wrong to have a \$10 billion foundation because I don't have that kind of foresight or that kind of understanding of what the problems will then be.

Mr. CONABLE. You can't believe that public policy might require the placing of a limit on foundation assets at some point?

Mr. BUNDY. The practical consequences then would be rather like an antitrust act in its impact on very large companies, and you would simply get a division.

Mr. CONABLE. There are certain social implications which accompany the concentration of tremendous amounts of wealth in one place, subject to the control of a limited number of people?

Mr. BUNDY. That is right.

Mr. CONABLE. Regardless of whether the Ford Foundation has grown or not in the past 10 years, relative to the whole complex of the national resources, there isn't any doubt, is there, sir, that the Foundation movement generally has been picking up substantial growth?

There are between 20,000 and 30,000 foundations now and increasing amounts of our national assets are being diverted into these special situations which are outside the tax structure. There isn't any doubt that there is an increasing amount of national assets going into foundations, is there?

Mr. BUNDY. Well, I am not sure I can answer that question as against other areas. I can say this much: That when I last measured the sort of growth in foundation assets as against the largest single area to which we made contributions and with which we are in regular contact, which is the world of education, especially the world of colleges and universities, the reporting then was that the assets of foundations were going up more slowly than the budgets of colleges and universities which, of course, have been going up at a very substantial rate, over 10 percent per annum if my memory serves me at all well.

So I don't think one should have the picture of the foundation world as really growing very much more rapidly than other sectors of society. I doubt if foundation assets are growing at a rate as fast as the Federal budget right now.

Mr. CONABLE. Since taxes go up in response to the Federal budget, these would seem to lend impetus to the formation of foundations, wouldn't it.

Regardless of the individual foundation, can you conceive of a situation in which it might be socially desirable to limit the amount of national assets which go into the foundation field?

Mr. BUNDY. Yes, that is obviously a possibility, but I think before the committee were to reach the conclusion that that is the current

situation, it would need a more precise measure of whether in fact foundations are growing that much as against other growing sectors of the economy and the society and as against the needs for this kind of independent center.

Mr. CONABLE. You would say that that is an appropriate area of inquiry by this committee?

Mr. BUNDY. I think the committee has to ask itself this broad question of the impact of tax policy on the relative size of all sectors, yes.

Mr. CONABLE. Mr. Bundy, I would like to return to the line of questioning begun by Mr. Bush. The Honorable Wright Patman, when he appeared before this committee, quoting from the New York Times of December 23, 1968, said: "Ford grants have gone lately for widening voter registration in Cleveland's slums," and are said "to have aided the election of Carl B. Stokes in November 1967."

Would you agree that that was the effect of some of these grants, that it tended to aid the election of Mr. Stokes?

Mr. BUNDY. We have never examined the question of the relations between any voter registration campaign and the election of any candidate, and I think it would be improper for us to do so.

Mr. CONABLE. Surely this question has been raised before?

Mr. BUNDY. Raised by others, but when we looked at this question, we looked at it as to whether voter registration was a suitable element in a program which was much larger and wider—in fact it was a small part—whether this grant was a proper part of a larger grant in the Cleveland area, and our chief question was the civic peace question in Cleveland, and the best comment I can give you really on this question is that the question of renewing this grant came up in 1968, and we sent a field team to Cleveland to consult with all and sundry, and one of the most important and pressing of the recommendations to continue the grant to CORE came from Mr. Taft, who was the defeated candidate in that election.

Mr. CONABLE. You feel, then, that in the area of grants, effect should not be a proper subject of our inquiry and that we should concern ourselves only with motive?

Mr. BUNDY. No, I think you have to concern yourselves with whether the particular activity voter registration is in fact an appropriate use of charitable funds, and you have to concern yourselves with the question of whether those who undertake to work in the field of voter registration take proper precautions not to enter the direct political arena. That is the way I would look at it. At least that is the way we looked at it when we were making this decision.

Mr. CONABLE. It does involve a broad definition of the word "educational." Of course, where you conduct voter registration drives or where you support organizations directing voter registration drives could have a very significant effect on the question of whether the decision was, in fact, made for an educational purpose, I guess that is obvious. All right, sir. Thank you.

The CHAIRMAN. Mr. Ullman.

Mr. ULLMAN. Mr. Bundy, we have been talking a lot about expenditures. To what extent is your investment policy regulated by the Federal Government?

Mr. BUNDY. Our investment policy is really not regulated sharply by the Federal Government except in the requirement that I am aware

of, the arm's length transaction requirement. Charitable trusts, which is the class under which we fall for legal regulation of our endowment practices, of our investment practices, are usually regulated by the States. Insofar as there is regulation pertaining to our trading that is not the normal regulation of trading it is with the SEC.

The regulation specific to a charitable trust as distinct from an ordinary investor would be under the jurisdiction of the attorneys general of the States, as I understand current law.

Mr. ULLMAN. To what extent are your charitable proclivities carried over in your investment policies?

Mr. BUNDY. We have a particular program called program-related investments which is new this year and about which we are still without extensive experience because we have only just begun to work on it. Our trustees have authorized a fund which now amounts to, I think, \$16 million for investments which may not meet or treasurer's ordinary requirements of prospective return, as against prospective risk where program officers and responsible people concerned with the objectives of the foundation as a philanthropic institution say that an investment of this sort is desirable because of its program value, and they are prepared to make a claim on part of that \$16 million.

Then, if it survives the competition, and the competition has been very severe in the relatively few months since that program has been in existence, then we can make an investment or guarantee, and we do. Is a relatively small program against our overall investment program as of now.

Mr. ULLMAN. Are you in any way getting involved in the movement toward "black capitalism"?

Mr. BUNDY. Yes. Some of it is for enterprise in the ghettos. We had one before us just this week that I am not free to announce because it hasn't yet been finally approved by our board, but which would involve control of an important business by a group of black capitalists.

Mr. ULLMAN. Turning to your general investment policies, to what extent are your earnings derived from sale of growth stocks and to what extent from dividends?

Mr. BUNDY. The best way I can answer that I think is to say that our current budgeting calls for the use of all of our income from dividends and interest, something over \$150 million, and an expenditure beyond that of about \$70 to \$75 million, which would be drawn either from gains or simply be at a cost to the corpus depending on the situation in the market and the amounts of stocks realized in a given year.

Mr. ULLMAN. Let's put it another way. How heavy a turnover do you have?

Mr. BUNDY. A relatively low turnover currently in our diversified equity account and the reason for that is that the process of orderly sale of Ford Motor Co. stock, which I have been discussing with other members of the committee, does generate on the order of \$100 million a year. These funds are then available either for use in meeting program costs or reinvestment on the other side of our accounts.

Mr. ULLMAN. Most of that being reinvested?

Mr. BUNDY. It varies from year to year, but I think that is a fair statement. A very large part of it is reinvested.

Mr. ULLMAN. Now, turning to one other matter, to what extent are you conscious of the balance-of-payments problems?

Mr. BUNDY. Deeply conscious of the balance-of-payments problem as, indeed, anyone conducting activities and holding investments abroad must be. From the beginning of the balance-of-payments concern in 1962 and again more formally in 1965, we have endeavored to keep ourselves fully informed of Treasury guidelines and to see that we stay safely on the strong side of those guidelines in that our policy either matched the guidelines or was more severe than the guidelines.

In particular, we undertook a very substantial policy of disinvestment abroad and have reduced our overseas holdings in each of the last several years.

Mr. ULLMAN. I forget the exact figure, but the chairman of the Select Committee on Small Business when he was here quoted figures attributing some 920 overseas employees to the Ford Foundation.

Mr. BUNDY. Yes, and if you include all the sort of persons with attachments and relations who are involved in logistic support of our overseas enterprises, there would be even more than that, sir.

Mr. ULLMAN. Your employees then are in the largest part overseas?

Mr. BUNDY. The majority of our employees are overseas. The majority of our expenditures are not. The reason for that, if I may take a moment on it, is that in the developing countries we do require both kinds of support and services which we don't expect, and ordinarily Americans don't have at home. This is the general condition of Americans operating abroad. They need personnel in larger numbers and of course can employ them at a much lower cost than here in the United States. But in addition to that we have advisory relations and counseling relations and supporting programs, for example, in support of agricultural research and experimentation in India or in support of the strong population control program in Pakistan and some other countries so that the number of men per dollar of grant making overseas is higher than it is in the New York office.

Mr. ULLMAN. Do you run into the same problem as the Government does in administering its foreign aid program?

Mr. BUNDY. Our situation is different. We are enormously smaller than the Government. Our international budget, which is not the same as our overseas budget because much of our money for international budget is spent at home, is about one third of our budget, which would be on the order of \$70 million for last year and that compares with what is the much too small figure of our current federal AID program—\$1.8 billion.

Mr. ULLMAN. I am not going to take any further time except just to add that you are No. 1 in your business, by far the largest foundation. When you compare it with the U.S. Government it may be relatively small, but it is pretty big compared with the ordinary standards of the American citizens. You do have because of that a tremendous public responsibility, as you well know. You are in foreign affairs whether we like it or whether you like it or not. You are in the business of helping solve ghetto problems, social problems. You are in the business of education. I certainly would hope that you dovetail your operations at all levels with those of the Government so that we minimize the kind of conflicts such as we have occasionally run into.

I have no specific area of criticism here except to urge that you conduct your affairs in such a way that you don't create public rela-

tions problems for all of us, and that you fully live up to your high public obligation.

The CHAIRMAN. Mr. Morton.

Mr. MORTON. Mr. Bundy, I have some very short questions. How are the trustees of the foundation selected? What is the system for selection of the trustees?

Mr. BUNDY. The board of trustees—selects its own new members. The bylaws currently provide for up to 16 members and currently we have 14 because of the recent retirements of Mr. Black and Mr. Cowles. One of the most important responsibilities of the board of trustees in such a situation is of course the selection of additional members and a membership committee of the board of trustees under the chairmanship of Mr. J. Irwin Miller has that as its first order of business right now and we are considering what additional appointments if any we should make right now.

Mr. MORTON. Is there a specific term of office?

Mr. BUNDY. There had been up until this last year an appointment a year at a time with a tradition or reappointment unless a trustee was really not taking any active part or unless he took a major office in the Government.

At times in the past, members of our board of trustees have made that transition to a Cabinet office or other high office and then they have resigned from the board. The retirement age is 70. As far as I know that has never been modified, never been broken in favor of any one individual. Last year our board of trustees asked itself the question whether this procedure was wise, or would it not be better to have specific terms and then perhaps a presumption against a reappointment so that you would be constantly asking yourself the question, "Who else ought we perhaps find room for and what are we not getting in the way of advice and what particular kind of human being ought there be more or less of on the board of trustees?"

Thinking about that, the board reached the decision—and it now applies to future election of trustees and has already applied to one, Mr. McNamara, our most recent trustee—that a man is elected for a 6-year term and is eligible for another 6-year term, but not eligible for election at the end of the second term.

So we think this may also give us a sense of freedom in getting younger men. One of the difficulties of looking at a man of 35, is that if you appoint him, you are going to have 35 years of him. Therefore, you wait and say, "Let's get somebody who is more seasoned," or there is a tendency that way.

We are now working on the renewable 6-year term as the pattern for the future election, and we hope to make good choices. I think it is important.

Mr. MORTON. If at all, how are they compensated?

Mr. BUNDY. Yes. It has been for many years \$5,000 a year for members of the board, and I may say they earn it. Our board of trustees meets four times a year for an intense 2 day session, beginning ordinarily Wednesday in the late afternoon and adjourning Friday after lunch.

In addition, all members serve on special committees, and beyond that individual members with special skills are often asked to make

special inquiries into particular proposals or to join in consultations on large issues in policy.

Mr. MORTON. What about the use of investment people in the foundation as counsel to the trustees? Do the trustees avail themselves of the investment knowledge that the foundation must have to manage funds of this proportion?

Mr. BUNDY. The foundation's financial affairs are monitored by the finance committee of the foundation which has, of course, among its members those members of the board of trustees who themselves have some special knowledge and concern. The chairman of that committee, and a very strong chairman, was until his retirement, Mr. Eugene Black.

In our judgment with building up of an excellent staff under his guidance with a professional securities analyst as the treasurer, and with a special investment staff, has been the principal act of the committee. With the retirement of Mr. Black we reached the conclusion, not hard to reach, that there is only one Eugene Black, that his combination of knowledge and understanding and experience in this field made it really impractical for us to find anyone to carry quite that level of responsibility so that we are now reviewing the ways by which this very considerable capital sum is managed and a special committee of the trustees now has that review as a special assignment.

Mr. MORTON. I don't think you understood my question.

Mr. BUNDY. I am sorry.

Mr. MORTON. Do the trustees receive any fringe benefits, in addition to compensation, by reason of the fact that the Ford Company has certain analysts in its employ that would be available to the trustees to manage their affairs?

Mr. BUNDY. We have a very specific requirement against the personal use by any member of the trustees or by the staff of any information that comes from the work of our finance committee and the investment staff.

Mr. MORTON. Pursuing something that Mr. Byrnes brought out earlier, if the estate of the two Fords who created this foundation had been processed in the normal manner, and had been handed down from father to son or father to family, there would have been a tax liability of some 77 percent of the corpus of the estates at that time.

Would the activities of the Ford Foundation have been hampered if, for a time certain, or for a reasonable time, the Ford Foundation had paid, for example, 10 percent of its dividend income to the Government and 25 percent of its capital gain income to the Government as taxes, until that tax liability had been completely eliminated?

What I am driving at is that there should be, in my opinion, some way for the revenues on capital to continue to flow in to the Government so that the burden of taxation should not be entirely borne by the human energies of the taxpayer. I think there is an obligation of capital as well as of people to the Government.

If over a period of 10 years, the foundation had been obligated to pay up the 77 percent, would the Ford Foundation look much different than it does today?

Mr. BUNDY. Mr. Morton, I would have to look up the dollar impact of that process. I don't have a base figure and probably couldn't do the

rest of the work in my head if I did, so that I can only give you what I am afraid is not a very clearheaded answer which is that there would have been a financial impact. It would have meant that we had that much less to do our philanthropic work with; how much less it would have been and how much it would have hampered the work I can't answer.

Mr. Morton. If these foundations, when created, would incur a liability which over a period of time would be paid to the Government, then some of the unethical practices that are apparent in the management of foundations—and this is certainly no implication whatsoever as to the Ford Foundation—might be discouraged. At the same time, revenues to run the operations of the Government would be forthcoming—not quite as fast as under the estate tax system but nevertheless they would be forthcoming—and we could have a more equitable distribution of the tax burden. In that sense I will ask no more questions, but I would like your opinion on whether you feel there is a responsibility here for the foundations, in some way, to live up to this obligation.

Mr. Buxton. Well, I described a situation this morning, Mr. Morton, where I did think that our foundation acquired a responsibility to the city authorities because we were getting a particular kind of service in holding and occupying real property, and more broadly I must say I have a real sense of the difficulties that your committee faces in trying to balance these questions of when you do have a complex tax structure and a widespread sense that some people pay more than they should and others don't pay at all, most of this I believe directly through loopholes which benefit individuals and commercial organizations but certainly some question also about those who have the charitable exemption. That is why I have tried to look through this matter in preparing to talk here today and I am afraid I do still hold to what I said this morning. That is, that the question really has to be judged by whether the work we do is useful, constructive, and whether the fact that it is done independently by a private institution working in the public interest makes it useful in a rather special way, precisely that it is not the Government and that it is not of that size and not constrained and limited and indeed advantaged, too, the way the Government is.

The question is, does the record of what we have done to pioneer things that later became Headstart, to start on fields of public television that later became the matter of congressional enactment, to work in research in agriculture in a way which bids fair to revolutionize the productivity of Asia and so on and so on—does the record of the charitable foundation justify the fact that some of that money is not directly entering the tax structure? I believe it does.

I believe you have a duty to ask yourselves, of course, that question and to satisfy yourselves. I believe that for that reason accountability and disclosure should be the basis for the way foundations respond to your questioning, but my own judgment is that, on the record—and some institutions have a longer record on which we can be more detached—on the record of institutions which are publicly managed in the sense that they are accountable, that they have an independent board and are not under one man's thumb, the record of philanthropic

organizations like the Carnegie Corp. and the Rockefeller Foundation would make me feel very wary about a tax burden which puts any requirements upon them in the light of the achievement that they have recorded in the interests of the American people.

This is my position. I understand your concern.

Mr. Morton. I thank you very much. I think perhaps you think it's an "all or nothing" situation as far as foundations are concerned. I don't feel that anybody is trying to put the foundations out of business any more than we are trying to put out of business a corporation that is paying 52 percent of its profits in taxes.

I am skeptical about those institutions, eleemosynary ones that get the tax exemption and therefore put the burden on the middle class of America who are taxed too heavily on their income. I think it is time we did something about it, and I think the foundations have to share in the burden of developing the solution.

The CHAIRMAN. Have you concluded, Mr. Morton?

Mr. Morton. Yes, Mr. Chairman.

The CHAIRMAN. Mr. Fulton.

Mr. Fulton. Mr. Bundy, I would like to pursue the line of questioning that Mr. Vanik had with you just a few moments ago. How many years has the Ford Foundation and the Ford Motor Co. had this contract or understanding or agreement that they would dispose of this nonvoting stock on an annual basis?

Mr. Bundy. I think the year is 1965, but let me research and correct that if I have that wrong.

(The following letter and attachment was received by the committee:)

THE FORD FOUNDATION,
New York, N.Y., March 14, 1969.

JOHN M. MARTIN, Jr., Esq.,
Chief Counsel, Committee on Ways and Means,
House of Representatives,
Washington, D.C.

DEAR MR. MARTIN: During Mr. McGeorge Bundy's testimony before the Ways and Means Committee on February 20, 1969, several questions were asked by Congressmen Fulton and Vanik concerning Foundation agreements with the Ford Motor Company for the sale of Class A non-voting stock. The attached memorandum is in response to those questions.

Sincerely,

HOWARD R. DRESSNER,
Secretary.

FORD FOUNDATION AGREEMENTS WITH FORD MOTOR CO. FOR SALE OF FORD MOTOR CO. STOCK

Since 1950, The Ford Foundation has been engaged in a program of diversification of its investments. Until then substantially all of its assets consisted of shares of non-voting stock of Ford Motor Company, and it had been decided that it was wiser not to have such a concentrated investment in the non-voting shares of a single company. Beginning with its first offering in January 1950, it has made seven public offerings of an aggregate of 48,100,000 shares at public offering prices aggregating \$1,890,025,000. The last public offering was made in June 1965.

As part of its diversification program, the Foundation also sold some 1,045,000 shares from time to time for cash or other securities the value of which aggregated approximately \$183,000,000 and has used a total of some 2,150,000 shares in payment of grants (or portions of grants) to various universities and charitable organizations, including shares placed in trust for the benefit of certain symphony orchestras.

Having accomplished a very substantial reduction in its holdings of Ford through the seven public offerings, and while the Foundation still wished to carry on further diversification of investments through additional dispositions of Ford stock, it reached the conclusion that regular and continued public offerings of Ford stock in the very substantial amounts that had been used could have a depressive effect on the market price to the detriment of the Foundation and of all those persons who had bought stock from it on its previous public offerings, as well as to the Company. It accordingly announced in the prospectus for the June 1965 offering that barring unexpected developments, it did not contemplate any further public offerings of Ford stock, although it expected to dispose from time to time of shares of such stock by other means (referred to in the prospectus).

After deciding not to make further public offerings, the Foundation continued to carry out its diversification program through the private sales and grants referred to above and also entered into certain agreements with Ford Motor Company (or a Trustee for one of its employee plans) under which it has sold a substantial number of shares. The first of these agreements is a Purchase Agreement dated October 27, 1964, between the Foundation and the Trustee under the Company's Savings and Stock Investment Program, providing for the sale by the Foundation of shares of Class A stock to the Trustee in monthly installments at the average of the daily closing prices on the New York Stock Exchange during the preceding month, less 3% which is an amount smaller than the expenses and discount incurred by the Foundation in its public offerings. The Class A stock so purchased is exchanged by the Trustee with the Company for common stock for use in the program. This agreement may be terminated by either party on ninety days' notice or, under certain conditions stated in the agreement, on less notice.

The second agreement was a Purchase Agreement dated December 10, 1965, between the Foundation and Ford Motor Company, for the sale monthly by the Foundation to the Company of shares of Class A stock in amounts equal to the Company's requirements of common stock for its Supplemental Compensation Plan and for stock options issued under its Stock Option Plans. The terms of this Purchase Agreement with respect to price were the same as those in the first Purchase Agreement dated October 27, 1964, and it also contained similar provisions with respect to termination.

The third agreement was entered into between the Foundation and Ford Motor Company on July 26, 1968, and provided for the Foundation's selling to the Company an aggregate of up to \$69,400 shares of Class A stock in monthly installments on the basis of the average closing prices on the New York Stock Exchange for Ford common stock in the preceding month less 1%, being approximately the commission payable by a seller of a 100-share lot on the New York Stock Exchange at a price of \$50 per share.

These agreements have substantially furthered the Foundation's program of diversification. The total number of shares sold by the Foundation under the three contracts through the monthly closings held February 6, 1969 was 8,727,923 shares, and the aggregate purchase price received for such shares was \$433,453,330. In addition, the Foundation benefited, with respect to the substantial balance of its holdings of Ford stock, through avoiding the dilution of its investment which would have occurred if the Company had chosen to issue additional authorized but unissued shares to satisfy the requirements of its Savings and Stock Investment Program or its Supplemental Compensation or Option Plans, or to provide for the conversion into Ford common stock of convertible debentures issued by its wholly-owned subsidiaries. In addition, the sale in monthly installments provides funds available for use in making grants in excess of the Foundation's income without having to sell other investments.

Each of the agreements were made expressly subject to the Foundation's obtaining a favorable ruling from the Commissioner of Internal Revenue, and in each case an appropriate application was made on behalf of the Foundation, the matter was reviewed and a favorable ruling was issued.

Mr. FULTON. Is it a particular date of the year that this stock transaction occurs?

Mr. BENDY. There is, I am sure, a contract with a specific date attached to it, and we can supply that for the record. I don't have it at hand.

Mr. FULTON. If you could, I would like to have it supplied for the record.

Mr. BUNDY. Certainly. (See page 418.)

Mr. FULTON. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Corman.

Mr. CORMAN. Thank you, Mr. Chairman.

Mr. Bundy, does your foundation enter into matching fund agreements with any public institutions, and by public institutions I mean city governments and/or school districts, that are financed by public funds?

Mr. Bundy. Excuse me for coming at this question a little indirectly. Matching is what happens when we make a grant on the direct and implicit understanding that the institution itself will raise \$1, \$2, or \$3 or \$4 from other sources generally for its institutional support. We have done that with symphonic orchestras and with private colleges and universities.

We have not done that of thing with public bodies that I can recollect, but we have often said when a public body comes to us and says as a group of public authorities have done—and I think you heard testimony about activities in Cleveland from Mr. Norton—"The citizens of Cleveland want this or that in cooperation with the city of Cleveland, or the city wants that and that and why don't you pay for it, you fellows at the Ford Foundation," then, because we have very much heavier demands than resources—we have many more good applications than money to grant—we have to ask the question, "What have you all done? What is the city's contribution? What is anyone else doing about this problem?"

And in that sense we will be asking in most cases, "Who else is going to do what about this project or why are you bringing us this Cleveland problem and saying, 'Look, Ford Foundation, you handle it all'?"

We find that usually you get a better result if there is an engagement not only of local interest but of local resources, but matching in a normal sense of 10 cents of ours to get 90 cents of yours is not our practice with public authorities.

Mr. CORMAN. Under the law as it exists you can enter into these joint efforts with public bodies?

Mr. BUNDY. Yes; we can.

Mr. CORMAN. Don't you think there is a danger that private tax-exempt foundations may be exerting influence on local government bodies by that mechanism?

Mr. Bundy. Well, again, we never—

Mr. CORMAN. Wait a minute. I acknowledge that you have never done it, and that you only give money when people come to you with a good cause, but it seems to me that if the law permits that that you then put private foundations into the position of making decisions for elected bodies, city councils, and school districts, by virtue of the weapon they have with foundation funds. Is that a possibility?

Mr. Bundy. It seems to me, as a practical matter, that the relative weight of the whole philanthropic world as against the costs of government is such that it is a very unequal contest. More practically the public authority, which has found in the position of being influenced by private money that way would very soon find itself in trouble, and

public authorities must accept, and do accept, and in our experience are glad to accept the responsibility, and moreover, are generally proud to say that this good idea of their municipality or of their school board or of whatever authority may be involved has been so impressive to this outside group that they have a foundation grant for it.

The overwhelming weight of the real world is against the danger you are speaking of, I think.

Mr. CORMAN. Another point which the chairman has brought up again and again is that we are trying to balance equities. As I understand, you do a good bit of work in the scholarship field. If a young student gets a \$3,600 scholarship that is tax exempt as far as the beneficiary is concerned, is that right?

Mr. BUNDY. \$300 is a limit as I recall, \$300 a month.

Mr. CORMAN. \$3,600 a year?

Mr. BUNDY. Yes.

Mr. CORMAN. Now, the dilemma is that if a young fellow is working his way through college and earns \$3,600, the Federal Government takes \$510 of it. There are many more young people working their way through college than there are getting scholarships. Obviously we are not concerned just about getting that \$500 from the boy who gets the scholarship but I think that points up the problem. The question is not whether it is good for the boy to go to school, but it is the inequity of two young men living on \$300 a month and one gets it given to him by a tax-exempt foundation and the other earns it. Are we fair?

Mr. BUNDY. I think that is a very good question. I think it is part of the general question which I am sure will be before you of the relation between different kinds of funds and taxes among very low-income groups. This comes up with the welfare problem as against the person with a low-earned income, and I think there is a grave question about the tax policy problem which you have just cited. I would not be in a position to give you even an informal judgment as to whether the better way is to tax the fellowship holder the \$500 or forgive the tax on the working man or split the difference. But I think it is a fair question.

Mr. CORMAN. It is not a question but a comment. I would like to tell you that I don't find the League of Women Voters any more acceptable as a vehicle for voter registration drives than I do any other but I will be delighted when all those groups become "martini drinkers" and that problem passes from the scene.

The CHAIRMAN. Mr. Gibbons.

Mr. GIBBONS. Thank you, Mr. Chairman.

Mr. BUNDY, you certainly have been very patient. I feel for you out there. I know how long you have been sitting here today, and I want to say at the outset that I think you have made a great contribution to this Government and I welcome you back here for whatever you are going to do here today. I hope that you will understand that what we are, really, trying to do is try to find a solution to this problem. I know you have been in and out of Government, and you started out in Harvard and came with the Kennedy administration.

Will you tell me what ins and outs you have experienced?

Mr. BUNDY. Yes. I don't feel that this is cruel and unusual punishment at all. If anything, it is deferred taxation because in the years

in which I was down here under the rules which prevailed at the White House for a very long time I was not free to come up and talk to committees, and I am glad to be here, very glad.

My curriculum vitae is like this. I went to Yale College, graduated in 1940, went through the Second World War from about 1942 to about 1947; then went to Harvard to a graduate fellowship, a prize fellowship—I forget how taxable—and worked with Colonel Stimson on his memoirs. And, then, in 1949, I began teaching at Harvard and taught there until 1960.

In January of 1961 I went to work for President Kennedy and remained in the same job with President Johnson until the end of February of 1966. And, on the first of March, I joined the Ford Foundation as its president.

Mr. GIBBONS. I am interested in how the Ford Foundation actually works. You have a very distinguished group of trustees there, and I notice that they put in about 8 days a year at formal meetings in the trustee job and serve on different committees.

You have about up to 16 members. Do you have an executive committee?

Mr. BUNDY. We have an executive committee, which tends to meet once between regular meetings of the board. We had a meeting yesterday.

Mr. GIBBONS. How long do they usually meet?

Mr. BUNDY. The executive committee tends to have a meeting which begins at lunch and continues as long as necessary through the afternoon.

Mr. GIBBONS. They are putting in a minimum of 8 days and a maximum of 15 days a year on controlling this \$3 billion operation. My question is, doesn't the staff actually run the organization and really make all the policies? I know that is a tough question.

Mr. BUNDY. Let me come to that question, but let me make an initial comment first that one of the things we do in our work with our board of trustees is to provide them with—and it, really, has to be done if they are to discharge their responsibility—a great deal of homework so that for each of those 2-day meetings of the board there may be a couple of pieces of paper as thick as these which have to be worked through, upon which they may send questions ahead of time. We mail the supporting documents. We try to mail them about 2 weeks before the meeting, because there is that much work to do.

I raise that question about your maximum limits as to how much time they spend. Going on to your substantive point—does the staff run the foundation? Anyone who thinks that, hasn't worked with this board of trustees.

Mr. GIBBONS. I know they are all pretty smart, but the Ford Foundation spends today about as much as the State of Florida spent in its general revenue fund in 1953, when I first went to the Florida Legislature. You spend about as much money as we spent in the whole State of Florida, except for roadbuilding, I should say, and that was a State of 3½ to 4 million people. I can remember how many months of work it took to really manage and try to understand what the State was doing, so that I cannot see how anybody really can understand the expenditure of \$240 million with the amount of time that you say that they spend on this job.

Mr. BENDY. Well, I think this is a question. If you ask whether each of them could recite effectively to each of the 900-odd grants that we made in the past year, the answer would have to be no; not as to why that particular institution, that particular sum of money, what at that particular time; but if you ask why is the Ford Foundation in any one of its dozen major areas—

Mr. GIBBONS. No; what I am trying to observe is that you have been spending Federal tax money once removed, and it seems to me you are not subject to much supervision, even though you said your board of trustees was an independent body. You mentioned Mr. Miller. Is that Mr. R. J. Miller?

Mr. BENDY. No; it is Mr. J. Irwin Miller.

Mr. GIBBONS. Would you object to the imposition of a Federal income tax up to 20 percent on your gross income? Do you think that is reasonable or unjust? Do you think it is an unjust imposition?

Mr. BENDY. I think it would be unwise tax policy. If the Congress adopted such rule, of course, we would not only not object to it. We would conform to it. We would pay the bills, and we would conform to the tax policy thus established by the Federal Government, but I think it would be a shortsighted decision by the Congress of the United States.

Mr. GIBBONS. I notice that the Houston Chronicle, which I understand is a large newspaper down in Texas, owned entirely by foundations down there, apparently editorially supported the imposition of an income tax upon the private foundations.

Mr. Chairman, at this point in the record I would like to enter a copy of this editorial, which I think is most unusual and very like the Houston Chronicle, advocating a tax, the Houston Chronicle being entirely owned by a foundation.

I want to applaud that. The editor may not have a job after this.

The CHAIRMAN. Do you ask permission to insert this?

Mr. GIBBONS. Yes.

The CHAIRMAN. Without objection, it is so ordered.

(The document referred to follows:)

[From the Houston Chronicle, Jan. 19, 1969]

TAX RECODIFICATION URGENT

The new national administration of Richard M. Nixon takes office Monday. It is doubtful if any American president has ever taken office with as many critical problems facing him. Abroad, President Nixon must deal with Vietnam, which is costing thousands of American lives and draining billions from the treasury; with the delicate Middle East situation; with the global cold war perpetuated by Communist nations; with touchy problems in Europe, Africa and Latin America. At home, he must tackle two of the most dangerous issues in the nation's history: Rebellion against established law and order, with youth in the forefront; and a dire financial situation which is worse than most national leaders will admit publicly.

Financial solvency must be achieved. Other issues become secondary if the nation is bankrupt. Despite the 10 percent income tax surcharge which President Lyndon Johnson sought and got from Congress, inflation has continued upward at the rate of about 7 percent this year. The ever-increasing national debt stands at \$350 billion. Last January it was estimated that the fiscal 1968 deficit might run \$25 billion. At mid year this estimate was scaled down to \$8 billion and now is set at \$3 billion. President Johnson and Congress, through the tax increase and a \$6 billion cut in spending, reduced the deficit, but still could not balance the budget for the year.

President Nixon and Congress must take remedial action, and quickly. The preservation of the American way of life is at stake. In obtaining financial stability, the nation cannot stand still nor can it go backward. We must have progress within our means.

The nation needs urgently to re-appraise carefully both its taxing and spending programs. We need more revenues; we need balanced budgets. The additional revenues must come from new sources. The average taxpayer has about reached the limit of his ability to pay. His burden of ad valorem, income, sales and other taxes having spiraled in recent years.

Possibly the first major source of new income to be looked into is the vast and fast-growing accumulation of tax-exempt wealth. So little attention has been given to this factor that it is almost impossible to get accurate figures on how much tax-exempt wealth there is in the country today. Private foundations, and many other entities of wealth have tax exempt or tax advantage status. So much taxable wealth is going into tax exempt status that the normal growth factor in tax revenues is being offset.

The last report of U.S. Rep. Wright Patman's subcommittee on foundations showed that the 596 tax exempt foundations under study had gross income of \$1,079,627,732 in 1966 and assets of \$15.1 billion at the close of that year. Six years earlier these assets were only \$10.2 billion. There are more than \$150 billion in tax exempt properties in the United States.

Certainly many exemptions should be continued. But there is considerable tax exempt wealth on which the holders can and should pay a fair and equitable tax. Private foundations, for example, are an integral part of the American economy. They, as citizens, ought to share some part of the tax burden. A comprehensive study probably would show that some fair tax should be paid on billions of dollars of this and other tax-exempt properties, which now are paying no part of the cost of our government as private citizens are required to do.

The changes should not be superficially arrived at or harshly applied. The Ways and Means Committee of the U.S. House of Representatives, which controls federal taxation, should give top priority to a complete recodification of the tax structure, based on a fair and impartial study that penetrates every phase of the tax program.

The Chronicle believes that this actually is the most critical issue facing the new administration and the new Congress.

Mr. GIBBONS. Mr. Bundy, we talked a lot about who would regulate these foundations. Who do you think ought to regulate these foundations?

Mr. BUNDY. I thought about this some, perhaps not enough, because I think it is a very hard question, and I think the right answer may turn out to be dependent on detailed knowledge of the capacity of specific parts of the Government, their traditions, their way of behavior, which I don't feel that I could at this stage decide on with certainty.

I would say that I have some doubt about the notion that all this can be fully and effectively done through the States. I think it is good that some at least of the State attorneys general have been given wider authority and are exercising it.

This is certainly true in New York. In New York there are many of the important foundations, but by no means all of them. But history suggests, I think, that we should be careful of assuming that 50 attorneys general in all parts of the Union will be able to have the kind of staff and resources that would enable them to keep a lively eye upon institutions, many of which like our own are working nationally and internationally.

So I think you are forced to the question, what should the Federal Government do in the way of monitoring? And I suggested in my prepared statement that the form 990-A certainly does not exhaust the question, in our judgment, of effective reporting.

We have had discussion today from Mr. Burke and from others on the question as to whether our own reporting practice adequately covers questions which ought to be reported as thoroughly as possible precisely for the purpose of avoiding misunderstanding or suspicion. I think it is a sound point.

I would think that one promising area of inquiry is the question whether within the Treasury Department, which does have familiarity with examination of returns and with the monitoring function in other areas our society, there might be a unit which would have a capacity to make selective inquiry. I think there is a problem of burying any routine body under a mass of unexamined material which doesn't really produce the results, so you may want a livelier group of people, and it is a hard thing to get a livelier group of people for this kind of monitoring job in a Federal agency.

Mr. GIBBONS. I was wondering, because of your experience in government and because you are really spending tax money once removed or twice removed from the appropriation process, what would you think of the idea of perhaps expanding the Government Accounting Office and let them come in and do some spot checking here and there in foundations?

Mr. BUNDY. I don't really think it is an accounting problem.

Mr. GIBBONS. In a broad sense it is an accounting problem, isn't it, self-dealing and things of that sort.

Mr. BUNDY. I think if I were sitting where you are and were concerned with having people to whom I could turn and say, "Please get me a report on this or that subject. I need to understand about foundations. The committee is concerned with this problem. Can you find way of informing yourself on that," without any disrespect to any other agencies or passing judgment on anyone, I think if I had to make the decision today, I would look toward the Treasury.

Mr. GIBBONS. You talked about the foundations' deep interest in Japan. How many people do you all have in Japan now?

Mr. BUNDY. We don't have an on-the-spot staff in Japan at all. We had, I am sure, observers and staff people associated with this recent meeting, and we have consultants who pass in and out of Japan and may even have program advisers attached to particular projects in particular universities.

Mr. GIBBONS. I notice you had about 550 people in South and Southeast Asia, and I didn't see any in Japan, and I wondered.

Mr. BUNDY. We do have very large field offices—in India, for example. Probably our largest overseen enterprise is in India, mainly because India itself is so large and because right at the beginning our trustees reached a conclusion, which we have reviewed but never reversed.

Mr. GIBBONS. Do you have an office in Israel?

Mr. BUNDY. No, but we have a grant in Israel administered by an Israeli foundation called the Israeli Foundations Trustees.

Mr. GIBBONS. You also seem to have some in the Arab countries.

Mr. BUNDY. There is no discrimination in the sense of whether we make grants in these areas. The Israeli Foundation Trustees are a very small group.

I had occasion to review their work myself. I was in Israel last year. It is a very impressive program.

Mr. GIBBONS. I want to applaud you for your stand on Federal regulation, because I notice you have had some 930 people overseas in 1967 and I don't know how the States are going to regulate anything like that. I appreciate your forthrightness on that.

How many lawyers does it take to run an organization such as you have? I am talking about in-house counsel.

Mr. BUNDY. In the normally understood sense of the word, we don't have in-house counsel. It happens, and I think it is a very happy accident, that our Secretary currently is an attorney, so that we turn to him as grants come up through the administrative channels to keep a legal eye on them. But when the problem requires more sophisticated attention and more intense attention than one man, who has other duties as well, can give it, we turn to outside counsel and turn to the kind of counsel where if it is an investment and securities matter, we go to a firm which has extensive experience in that field; if it is a public-policy question or a question of our relation to the Government, to a firm which has the experience to advise us in that field.

Mr. GIBBONS. I was going to say that you apparently have a lot of outside trouble, because I notice in 1966 you had an attorney's fee bill of \$214,000. I hope you don't have that much trouble every year.

Mr. BUNDY. Let me say, Mr. Gibbons, about that that my own feeling about lawyers is like my feeling about doctors. When you need them, you need them very much, and it is important to get men who have the skill, integrity, and understanding to deal usefully with your problems. The foundation does not feel that it has been overcharged by its counsel.

Mr. GIBBONS. I am not saying that. You wouldn't pay your bill if you were overcharged. I was not worrying about that, but I was wondering what kind of work your Washington counsel does.

Mr. BUNDY. The largest single activity that we have been engaged in, the largest single one was the preparation and filing of statements which we were invited to make in the Federal Communications Commission hearings on satellites and their relation to public broadcasting, so that the problem became one of getting first-class assistance in what was a major statement of a policy issue, with which we were necessarily engaged as the largest single source of funds for public television in the country.

Mr. GIBBONS. Would that explain the fees paid to Ginsburg and Feldman in 1966-67?

Mr. BUNDY. Largely.

Mr. GIBBONS. I noted that you said you were not in the propaganda business and you did produce some motion pictures or purchased a lot of them from someone called Magnum Films. What was the purpose of that?

Mr. BUNDY. I am sorry. I don't really know the answer to that. I have to find out and let you know.

Mr. GIBBONS. That was for \$30,500 in 1966 or 1967.

Mr. BUNDY. It was a film that never got produced on the work of the Ford Foundation.

(The following letter was received by the committee:)

THE FORD FOUNDATION,
New York, N.Y., April 1, 1969.

JOHN M. MARTIN, Jr., Esq.,
Chief Counsel, Committee on Ways and Means,
U.S. House of Representatives,
Washington, D.C.

DEAR MR. MARTIN: During Mr. Lundy's testimony before the Ways and Means Committee on February 20, Congressman Gibbons asked the purpose of a motion picture film, for the production of which the Foundation had engaged the services of Magnum Films.

In September 1967, the Foundation entered into a contract with Magnum Films under which Magnum agreed to produce and deliver to the Foundation a 16 millimeter black and white motion picture. The purpose of the film was to document the architectural history of the Ford Foundation's new building on East 43rd Street in New York City. This building is a notable experiment in modern design.

After viewing parts of the proposed film at an intermediate stage in 1968, members of the Foundation staff reached a judgment that the film should not be completed. This decision was then communicated to Magnum Films. Though the film was not completed, the Foundation received for its own use a large number of photographs of the construction phases which were to be used in the film; many of them have been requested and used by various architectural magazines, and they will also be available to schools of architecture.

Sincerely,

HOWARD R. DRESSNER.

MR. GIBBONS. You question the necessity of the rule that Treasury has put forward to prohibit the Foundation from owning 20 percent or more of the corporation's stock and suggest instead that instead of divesting yourself of this stock, the Foundation should be permitted to keep the stock if it obtains an independent board of trustees. What really is your definition of "an independent board of trustees"?

MR. BUNDY. A board of trustees which makes its decisions from the point of view of the objectives of the charter and purposes of the foundation, and no other.

MR. GIBBONS. It looks to me as if you have a sort of self-perpetuating oligarchy here, because you nominate to fill your own vacancies. Let me say I served on and, in fact, have been a president of a foundation, which I hate to mention here because it is so insignificant, but I think I know how they work.

What really are independent trustees in this situation? Is it who knows whom that gets on there? Is that the way it works?

MR. BUNDY. I don't think so, Mr. Gibbons. I certainly don't think that is the right way of doing it.

Let me say that I think it is a hard problem to achieve an independent board of trustees. It depends on the character, and the integrity, of the individuals concerned. There are difficulties in any self-perpetuating body, including trustees. There are risks that it will be ingrown and will pick only people that individual members feel comfortable with.

MR. GIBBONS. What is Congress going to do to define an "independent board of trustees"? What kind of tests should we lay down?

MR. BUNDY. Could I perhaps finish, because I was coming to that point?

MR. GIBBONS. Yes.

MR. BUNDY. The only reason I think for the belief which exists in most colleges and institutions and most of the larger and genuinely

independent foundation—an independent board that is the best governing form—is that it is so very difficult to suggest a better one. Are you going to give to a public authority the business of nominating members to such a body and, if so, to what public authority? Are you going to say to given pressure groups that each of them shall elect a member of such a board, and would that produce a really independent group of men and women making their own best judgment?

“Independent” means, it seems to me, in the formal sense, independent of the donor, not under his personal control, and independent of the Government. And those two kinds of independence are the essence of the private association which works for a chartered purpose in this country. I grant you there are risks in any self-perpetuating body, but I don’t know a better way.

Mr. GIBBONS. It just brings me to the question of really how independent can a board of trustees be. I notice that in connection with the Treasury’s fourth recommendation you suggest that in lieu of postponing the deduction in the case of a gift of a minority interest in a business that the deduction be granted if the foundation has an independent board of trustees, and I wonder just how independent a board of trustees can be if the foundation is holding a minority interest of stock in a closely held corporation if the board of directors just won’t declare any dividends. How independent can you really be? That is one of the problems that we face.

Mr. BUNBY. Yes; that is a problem. I am not sure I am the best possible witness on it. The institution of which I am a member doesn’t have that problem.

Mr. GIBBONS. So what would really suit you, as large as you are and as independent as you are, really probably wouldn’t work with some of these other foundations?

Mr. BUNBY. I grant that it wouldn’t be wise to take the specific case of the Ford Foundation and say that it applies automatically to anyone else with a difference in size and difference in situation, but I couldn’t take the reverse view that it won’t work with the other. My own view is that of the two most important requirements, one is an independent board of trustees.

I grant you the difficulty of being independent, but I think that only underlines the importance of it. And the second is disclosure.

Mr. GIBBONS. How can we improve our disclosure other than just expanding that form that the Treasury now has you fill out, which really has no penalties involved even if you don’t fill it out? What practical suggestion do you have as to how to improve disclosure other than the printing of a brochure?

Mr. BUNBY. I think my practical suggestion is the development of some form of unit with powers to inquire and with a sufficient standing and skill to satisfy itself.

Mr. GIBBONS. Are you talking about a governmental agency?

Mr. BUNBY. Governmental, because I know of no other way of doing it. I am all in favor of voluntary activity by foundations, and I think very useful work is done by operations like the Foundation Center. But, in the main, the people who participate actively in those voluntary efforts will be those less needing the kind of policing you are concerned about. They will be people who are trying to do a re-

sponsible job of disclosure and explaining themselves and not the ones that I suspect you are driving toward. So I think a form of government activity is needed, and I think parts of it in some measure, at least, would have to be Federal, because I don't see how you can do it all in 50 States, and I think the place for it until a better one is demonstrated would probably be in the Treasury.

Beyond that, I will have to say that I don't think it is easy to do. The history of regulatory and inquiring agencies is one that we should look at warily, because they can start a lively way, but keeping them lively and alert and concerned with the public interest has been a hard job historically.

Mr. BURKE. (presiding). Thank you. I appreciate it.

Mr. GILBERT. Mr. Chairman.

Mr. BURKE. Mr. Gilbert.

Mr. GILBERT. Mr. Bundy, I am sorry I was late.

Mr. BUNDY. You all have to stay until you finish. I only have to stay until I finish.

Mr. GILBERT. I wondered what procedure does your foundation go through in order to arrive at a program that you are going to present. Is there any set procedure that you use?

Mr. BUNDY. Yes; for any given grant and also for the wider area. Let me take the question you specifically asked, for a program that we are going to get into.

Suppose we decide that we are going to go into—and we did, and I will take one fresh in my mind—the area of what we call program-related investments. We decided that it was time to begin to use part of our capital resources for investment guarantees or loans that have a social or programmatic value.

What tends to happen there is something like this. There will be informal discussion. There will often be parallel discussion also in the foundation as a whole.

Mr. GILBERT. When you say "informal," who holds these discussions?

Mr. BUNDY. The discussions might be within the board of trustees. They might be of a staff officer with consultants. They might be with others in the foundation field. They might be with people in and out of government who share this same concern.

My own direct involvement in this particular question developed, as it happened first, from a meeting that was called by the head of another foundation, who said: "Here is a problem that is increasingly difficult. There is a need for this kind of use of capital. It has not been traditional in most of our foundations. Is it something in which we ought to be interested, and what can we do about it?"

I thought the discussion was interesting and important. I took it back to my own offices and discussed it with two or three men there whom I thought would be most knowledgeable about it, and found they had already begun to think about it.

It has been thought of in connection with ghetto financing; it has also been thought of as a means of safeguarding land resources and conservation interests while Congress is considering the problem. These are examples.

Then, I had feelers also from universities. "Couldn't you lend us some money, which we will pay back to you, to make a decision that

our budgetary authorities aren't able to make fast enough, because otherwise we will lose this or that opportunity?"

The case I remember was several hundred acres of land for a planned expansion with no immediate way of getting it. We weren't able to act, and that one didn't happen.

So, there is a discussion of a possibility, and at that stage we will usually schedule the matter for a discussion, either with a committee of the board of trustees or with the board of trustees, so as to lay out the shape of the problem, the possible opportunity, ask for their advice and discussion as to whether this is an area that they would want the foundation to move into if question A, question B, question C, question D could be answered satisfactorily or whether their feeling is, "We wouldn't want to do it even if you answered all the questions right, because we have more important things to do and other things that we have already agreed to or are going to do next."

So, there would be a discussion with the board, and this is why I was trying to make the point that this is not a staff-run operation, rubber stamped by a board of trustees. Even before we get to the point of drafting a formal proposal, which then would come up for official consideration and for a decision to a committee or to the full board, in this case the preliminary discussion did consider the questions and uncertainties and revealed that we hadn't thought through one very important question, which is, how do you account for what you are really doing? To take a million dollars that isn't going to produce as much as the treasurer thinks he can get, and who pays the difference? Does the treasurer pay it, or is it a charge against your programs? We had not thought that through.

We went back and reviewed it, and came up with the conclusion that if people were going to make recommendations that they thought met the purposes of the program of their division, they must be prepared to budget for the differential cost of that development. The proposal as it went to our board had that extremely important and, I think, clarifying refinement in it.

It gave us a way of thinking through what we were doing, what was the real cost of it, and then we looked also at the categories where we proposed to begin, put a ceiling on the initial figure, did enough staff work to have a couple of proposed grants that would be examples of what this would be, and then were ready to go and ask the board of trustees whether they were prepared to authorize this program with these guidelines and with these examples of the sorts of things we were going to do. And, then, they voted.

That whole process took, I would think, about a year, and that was a relatively quick process of gestation for a large-scale programmatic decision involving more than \$10 million.

Now, a small grant can be made sometimes very quickly and may involve no more than my own judgment that the person recommending, or the applicant, or both, are people who are so bright and the field they want to work on is so good, that a swifter decision can be made.

Mr. GILBERT. Thank you.

For example, on the decision that foundation made to give grants or fellowships to the late Kennedy staff, what sort of a process did the organization go through to reach that conclusion?

Mr. BUNDY. Well, I described that at some length this morning, and I am not sure whether you were here or not. You would like me to state the process specifically in supplement to that statement rather than review it altogether?

Mr. GILBERT. Yes.

Mr. BUNDY. The initial idea, as I think I said this morning, that there might be an area in which we could take useful action really was mine, and I then discussed it with the Vice President in the area in which most of this study would take place, in which most of the work actually would be done by any of these individuals that might prove to be qualified for it and in the right situation for it, and he took on the job of inquiring, with the assistance of his professional colleagues into the question of whether this was in fact a practical opportunity and whether the quality of what they proposed to do, and so forth, met the regular standards of the foundation.

Now, in the meantime, as it happened, because of the schedules in that particular case—and we are now talking not about a very large amount of money but certainly about a sensitive question of judgment and principle as to whether this is or is not the right thing to do—there was a scheduled meeting of the board of trustees. This would have been the June meeting of the board, as I recollect it.

So, I reported the possibility and discussed the possibility—including the possibility, of course, that there would be some public question, because the spotlight had followed Senator Kennedy and his associates—and it was evident that there would be the rather special interest and questioning, which has been evidenced here.

The trustees considered the abstract question of whether the standards of travel and study awards would be met. They studied what was presented by the particular needs in the context that I described this morning. They gave their approval to the exploration, and gave us the right to make the specific decision in accordance with our usual standards on terms, conditions and amounts.

We went ahead and did that. It took a long time, because there was great uncertainty among many of these individuals and some question on our side as to particular proposals, and some were approved, and some, as I say, did not come to the point of a recommendation. It was, I think, early autumn before we were able to make the thing sufficiently final to make formal public announcement. Our own press releases is dated, I think, in November.

Mr. GILBERT. I have one final question.

When you make a determination to enter an area where there is great public concern or public institutions involved, for example, a voter registration drive, do you or members of your staff consult with the local board of elections or the people that would be involved in this type of activity prior to making your decision or determination?

Mr. BUNDY. I think in voter registration we consult widely, but not necessarily, with public authority as to the question of whether they want or don't want voter registration, because it seems to us that voter registration is clearly within the guidelines of a national decision that voting and registering to vote are a good thing. But where we are making a grant that is to be connected to a public authority, like a school system, we not only consult with it, but we almost invariably respond to an initiative of that public authority.

I may say specifically with respect to the New York school situation that the initial proposal that Ford grants be made for demonstration projects was in a letter to us from the superintendent of schools.

Mr. GILBERT. Thank you very much.

Mr. BURKE. Thank you very much, Mr. Bundy.

If there are no further questions, we appreciate your long stay. For your information, Mr. Bundy, the next witness will be the attorney general of New York. Since your foundation is located in New York, I thought maybe some of your people might be interested in staying.

Mr. CONABLE. Mr. Chairman, might I say something about the next witness?

Mr. BURKE. The reason we are putting the attorney general on at this time is because he has other prior commitments he has made. We are trying to cooperate with him and will ask the other people to wait.

Mr. BUNDY. Thank you, Mr. Chairman.

(The following letter was received for the record:)

MEDICAL RESEARCH ENGINEERING,
Great Notch-Little Falls, N.J., February 21, 1969.

CHAIRMAN, WAYS AND MEANS COMMITTEE,
House of Representatives,
Washington, D.C.

DEAR SIR: We have noted with interest the start of your hearings on the activities of foundations as related to their tax exemptions. We heartily endorse such a study. You may be interested in an editorial we wrote some time ago which has relevance to this subject. I am enclosing tear sheets of it.

I believe that your committee may be interested in a personal experience I have had with the Ford Foundation. Our local community is interested in keeping going, and expanding, a unique series of demonstration schools which exist to further the cause of excellence in education. As you know, the educational level has been dropping due to civil disturbances of the regular programs at some schools. I had occasion to call the Ford Foundation to ask whether they would be interested in considering the support of a study as to how such schools might be improved. I was given the curt reply by a member in charge of educational program that "the Ford Foundation no longer supports studies in education, it only supports action programs".

I am therefore led to the sad conclusion that the Foundation is more interested in promoting unrest disguised as social progress than in the improvement of education. I would be happy to amplify on the above should your Committee so desire.

Yours sincerely,

CARL BERKLEY.

Mr. CONABLE. Mr. Chairman, in the words of the last witness, the next witness has the intelligence, the integrity, and the understanding, to be a good lawyer. He is the best lawyer in New York and has been for many years, and he has more friends in New York than any six people I know.

I am very proud on behalf of Mr. Gilbert and myself to welcome Mr. Lefkowitz to the committee.

Mr. GILBERT. Mr. Chairman.

Mr. BURKE. Mr. Gilbert.

Mr. GILBERT. Mr. Chairman, I would personally like to welcome the distinguished attorney general from the State of New York here today. I know he is going to make a great contribution to our hearings.

Mr. BURKE. In view of the praise that you have received from both sides of the aisle, the committee welcomes you. We will appreciate it if you will identify yourself and the gentleman with you.

**STATEMENTS OF LOUIS J. LEFKOWITZ, ATTORNEY GENERAL.
AND JULIUS GREENFIELD, ASSISTANT ATTORNEY GENERAL IN
CHARGE OF CHARITABLE FOUNDATIONS DIVISION, STATE OF
NEW YORK**

Mr. LEFKOWITZ. My name is Louis J. Lefkowitz, attorney general of the State of New York, accompanied by Julius Greenfield, assistant attorney general in charge of the charitable foundations division of my office. May I proceed?

Mr. BURKE. You may proceed.

Mr. LEFKOWITZ. At the outset I would like to thank this committee for the opportunity to be heard with reference to the important subject of tax-exempt charitable foundations and trusts.

The investigations of my office reveal that self-dealing, improper, and speculative investment practices, inadequate distribution of income, and excessive administration expenses are recurrent and serious problems. In the course of the presentation, we will make recommendations for legislation to cope with these problems.

Traditionally and by statute, the attorney general of New York is charged with the responsibility of representing the interests of the beneficiaries of charitable dispositions. As a result of this duty, my office participates in numerous court proceedings involving charitable dispositions including estates, trusts, accountings, constructions, incorporations, and dissolutions of corporations. Lengthy studies made by my office revealed that there was a wide gap between this responsibility and effective supervision of the administration of funds devoted to charitable purposes. It was for that reason that I recommended to the New York State Legislature the enactment of a statute which provides for registration and financial reporting by foundations, trusts, and other charitable organizations. This statute became effective January 1, 1967, and in conjunction with existing statutes provides comprehensive supervision of charitable dispositions in whatever form they are administered.

A brief summary of this statute is in order. It defines as a trustee any individual, corporation or other entity holding or administering property for charitable purposes, whether pursuant to a will or other instrument, court appointment, or otherwise pursuant to law. Each trustee is required to register with the New York State Department of Law within 6 months after any property or the income therefrom is required to be applied to charitable purposes. Under the statute and regulations, trustees are required to submit annual reports within 6 months after the end of their fiscal year.

The first annual report encompasses financial data covering a period of 3 years of operations. This is unique in this State and its purpose is to get a broad picture of administration as well as to prevent the possibility of earlier improprieties being swept under the rug. My office is given broad investigative powers, including the power to subpoena trustees, agents, fiduciaries, beneficiaries, or other witnesses, to examine them under oath and to require them to produce relevant books and records. Filing of the reports does not absolve trustees from the responsibility for judicially accounting for the property held by them for charitable purposes. The failure of a trustee to comply with

the registration and reporting requirements renders him subject to judicial removal. This provision is supplemental to existing authority to compel judicial accountings and to obtain other relief, including the imposition of appropriate personal surcharge.

The statute also codifies existing case law to the effect that the attorney general must be given notice of court proceedings, relating to wills, trusts or other entities holding property for charitable purposes where instructions are sought as to administration, where construction of the governing instrument is in issue, where a question of the disposition or distribution of the property is raised and when the trustees seek a decree or judgment settling their accounts. Similar notice to the attorney general is also required when a will making a charitable disposition is the subject of a probate contest or a compromise agreement.

As of December 31, 1968, approximately 13,500 foundations, trusts, estates, and other charitable organizations had registered with my office. In the calendar year 1968, we received required financial reports from 10,955 of these organizations. The difference between the number of registrations and the number of financial reports filed is represented by suspensions of filing by very small organizations or by the fact that some of the first reports of new organizations are not due until sometime this year. One indication of the growth of foundations, trusts and other charities is the fact that new registrations in New York State in 1968 numbered 2,563.

At this point, I ask leave of the committee to hear Julius Greenfield, assistant attorney general in charge of the Charitable Foundations Division. He has been in charge of this Division since its inception and is familiar with the intimate details of the day-to-day operations of the Division. He, also, has personal knowledge of all pending and contemplated litigation which will be included in his discussion. He has personally conferred with representatives of charitable foundations and trusts and all such conferences have been under his supervision. He is thus in a position to give to this committee a detailed statement of the administration of the Division, the problems thus far encountered involving self-dealing, nonproductive assets, speculative investments, expenditure of net income and administrative expenses and the corrective action thus far taken by the Division.

The Federal and State governments are co-participants in underwriting charitable dispositions. For too long there has been an absence of cooperation in this field. The public interest in charitable dispositions is too important to permit the continuation of this condition. We have offered our assistance and cooperation in the past and we renew that offer now.

Thank you.

Mr. BURKE. Thank you very much.

Mr. Julius Greenfield, would you identify yourself, please?

STATEMENT OF JULIUS GREENFIELD

MR. GREENFIELD. I am Julius Greenfield, assistant attorney general of the State of New York, and I am in charge of the charitable foundations division of the attorney general's office.

At the outset before I go into my prepared remarks, I would like to make some reference to the discussion that has taken place here today with reference to the question of whether supervision should be in the hands of the Federal or State authority. I would respectfully suggest that this is not the real question. The question should be, it seems to me, whether or not there is a real possibility of cooperation between State and Federal authorities in their appropriate fields.

Most foundations and trusts and estates are established under State law. It is State law that applies to the administration of estates, corporations, foundations, and various other entities.

It would seem to use that in view of this fact this area of cooperation which has so long been unexploited should be considered very carefully and in the course of my discussion I would like to point out areas in which there can be a very considerable degree of cooperation which would be very effective for both purposes.

The Federal Government through its Internal Revenue Service and the Treasury Department is interested primarily in the tax aspects of the administration of foundations. Well, we are, too, but our primary purpose in the administration of our charitable foundations program is to see to it that property devoted to charitable purposes is effectively and efficiently devoted to those purposes.

In setting up our program and the reporting system, we relied initially on the form 990-A, which is the Federal Internal Revenue form for reports by exempt organizations. But in preparing our own form we discovered that there were certain areas which were not effectively covered by the 990-A. So using the 990-A as a basis for our form we required additional schedules and in addition we require a schedule which necessitates the submission to us of a securities statement which indicates among other things the securities held at the beginning of the period, all sales or acquisitions during the period, and I think that this is very important because many problems can be swept under the rug as the Attorney General mentioned in an interim period.

It is also required to show capital gains or capital losses, income, and various facts. One of the things that this kind of security statement has made available to us is a good deal of information with respect to the operations of closely held corporations in which stock is held by a foundation.

The typical problem with reference to closely held corporations, I think, is well known to this committee. I will refer to this problem later on again, but for present purposes this is one of the most difficult problems to deal with and the Treasury Department report does attempt to deal with this problem to a certain extent.

I would suggest, however, before going into a more detailed statement with respect to this, that any suggestion that divestiture of an interest in a closely held corporation is feasible is not very practical. Our problem with reference to holdings in closely held corporations has been this and it almost amounts to the foundation representatives in which stock is held literally thumbing their noses at us for the reason that if we say to them, "You must dispose of the holdings of a closely held corporation," they say, "To whom? You get us a customer. Who is going to buy a minority interest in a closely held corporation?"

And I would suggest to you that this is a field for very careful consideration.

Now to get back to my outline, since we had started a new program in 1967, dealing with foundations, trusts, estates, and other charities that had been in existence for a considerable period of time, we decided that the first report, if it consisted of only a year's report, would be practically worthless because if anybody had any reason to hide anything it would be easy to hide it in a report for 1 year. So we decided that the first report would have to consist of a report for 3 years, and this has been, I think, extremely useful in turning up improprieties.

We are checking every report that comes into the office. There is no spotchecking. This is a very difficult, time-consuming job, and it will take us some time to get to some of the foundations but we will get to them, every one of them. The extent of our activities perhaps may be best indicated by a case that I refer to on the first page of my statement indicating the necessity for State action in this field and it involved a situation where under the estate of a decedent having a value of about \$17,500,000 a portion of the residue was given to a charitable foundation which she had created.

The point I am trying to make with reference to that estate, and incidentally we have a large number of estates in which bequests are made to foundations which are either created or were under the control of the decedent, is that I would suggest that in this kind of situation the States are in a much better position than the Federal Government to police because we go back to initial probate, the final termination of the estate by means of State accounting and then into the foundation and the administration of the foundation.

So that in the estate I am talking about we had some very difficult problems. We had a situation where the surviving spouse of the decedent was given a marital deduction bequest and this fluctuated by reason of the provisions in the Internal Revenue Code authorizing the use of optional valuation dates for determining the adjusted gross estate.

We also had problems with reference to the disposition of a brokerage firm of which the decedent was practically the sole owner and we had numerous other problems dealing with questions such as tax apportionment.

We have in New York, as do many other States, statutes which deal with the apportionment of estates taxes and the question of their impact upon a charitable exempt organization. We are in this particular case in the last throes of the estates administration and just last week we got the final accounting of the executors, and we are, I might say, the sole representative of the charitable beneficiaries in that estate proceeding.

I don't want to take too much time. I think that I would hope that my statement would appear in the record, but I would like to refer to some fairly typical problems of administration.

In the first place I think it should be made clear that even whether I refer to typical problems or improprieties it is not our purpose to indicate that improprieties are the norm in the administration of foundations. That would be the furthest thing from the truth. But the simple fact is that they occur in sufficient quantity to make this a matter of serious concern. I will relate and I do relate in this outline 11 examples of the kind of improprieties that we have encountered.

For example, in one situation we had a report by a foundation which

indicated that it had an investment of about a million and a quarter dollars in oil production payments. We examined the contracts and we discovered after an audit that this contract involving about a million and a quarter dollars resulted in the foundation receiving something in the vicinity of about \$6,000 a year. This investment was made primarily for the benefit of other persons involved.

This incidentally was a practice that apparently has been continuing for a number of years. We have informed the foundation people that this is an improper and in our opinion an illegal investment for foundation representatives and that it should be discontinued and that we would hold them responsible for any loss.

Mr. GIBBONS. Explain that a little further. I don't know what you are driving at.

Mr. CONABLE. Aren't you saying that they invested \$1,230,000 and were getting back only \$6,000 each year?

Mr. GREENFIELD. They used the credit of the foundation for the purpose of engaging in investments in oil production payments. In other words, the credit of the foundation was used for that purpose. There was a guarantee of that loan by the persons who were involved in the oil production payment agreement. The foundation got a percentage on this loan which was, I might add, made by a bank on the credit of the foundation. Obviously the small return doesn't warrant any such risk and in the first place the credit of the foundation should not be available to any individual in the foundation or anybody interested in the foundation.

We have run across numerous cases of self-dealing and when you come down to that, any of the problems that we can speak about ultimately—

Mr. GIBBONS. Mr. Chairman, this man's statement is really good. I wish you would read your statement, if you will. I don't want to tell you how to testify, but you have some good material which we need to know.

Mr. GREENFIELD. All right, I will read it then.

The reports required to be submitted to the Attorney General parallel the Internal Revenue Service form 990A. However, we require additional supporting schedules, and in particular, a statement showing all security holdings at the beginning and at the end of the period, cost or acquisition value, all sales, purchases, other acquisitions and other dispositions, capital gains or losses and income derived. This has been extremely productive in turning up unproductive investments, churning of securities, investments in puts, calls and on margin and speculative investments.

We are proceeding on the theory that spot checking is inadequate for the purpose of State supervision. Accordingly, every report is being examined. In many cases we have followed foundation interests from probate of a will to ultimate receipt and administration by the foundation. For example in one case a will disposed of an estate of about \$17,500,000. The surviving spouse was given a marital deduction bequest and the foundation had a substantial percentage interest in the residue. There was a substantial identity of executors and foundation directors. The questions which arose and are still open for final determination related to the liquidation in the estate of a brokerage firm controlled by the decedent, the fluctuation of the marital bequest by

the use of optional valuation dates, the deduction of administration expenses for income instead of estate tax purposes, the related problems of valuations for distribution purposes and the apportionment of estate taxes among the residuary beneficiaries.

It is not our intention to give the impression that impropriety of foundation administration is the norm, but it is present in sufficient quantity to give serious concern. Many of these problems have been dealt with by conferences with foundation administrators and their representatives and appropriate administrative procedures. In some cases administrative procedures were ineffective and court action has been instituted. In some months we have had as many as 200 conferences. To illustrate:

1. A foundation's report revealed the use of its credit for investments in production payments aggregating \$1,250,000. This required detailed analysis of the agreements. These revealed that the return to the foundation was minimal. At a conference with the attorney for the foundation we advised him that these investments were inappropriate if not illegal for a foundation, that the foundation should discontinue this practice and that the foundation directors would be held personally responsible for any resultant loss.

2. Analysis of the report of a charitable trust showing assets in excess of \$500,000 showed self-dealing with its trustees, including an uncollectable note receivable and a loan secured by a mortgage on out of State real property. There is a serious question of the collectability of this loan and of the adequacy of the security. Court action to compel a judicial accounting and surcharge of the trustees is being developed.

3. The trustee of a charitable trust offered to buy the controlling interest of the trust in three business corporations. A court proceeding was brought to obtain court approval, on notice to the Attorney General. This necessitated the auditing of the books of these companies to determine valuations, including goodwill, contracts of employment, work orders and inventories. The result was that the sale was approved but at a price considerably in excess of that offered by the trustee.

4. Another foundation had over \$1 million in assets consisting primarily of notes receivable and mortgage loans. An audit revealed that there had been loans to the foundation's creator, second mortgage participations, purchase from the creator of securities not publicly traded and ownership of an unproductive minority interest in a closely held corporation controlled by the creator. We have informed the foundation representatives that self-dealing is not permissible and that they would be accountable for any loss resulting from improper investments.

5. Analysis of security schedules of several foundations showed short sales, purchases of securities on margin and interest expenses counterbalancing income. These foundations have agreed to discontinue these practices.

6. An audit revealed that mortgages held by a foundation amounting to about \$1,250,000 were not recorded. They have since been recorded. I might add, at our urging.

Mr. GIBBONS. Was that a careless mistake?

Mr. GREENFIELD. Carelessness.

7. A foundation had \$100,000 unproductively invested in which taxes were being paid. The foundation has agreed to dispose of this asset as providently and as quickly as possible.

8. A foundation's report showed a mortgage payable of \$105,000. Analysis showed that the creator of the foundation had sold the real property to the foundation for \$200,000. We are inquiring into the value of the property.

9. A foundation has assets of \$300,000 and about \$18,000 of annual income. The annual expenses consist of \$6,000 representing officers salaries, \$1,200 for investment advisory and custodial services, and \$1,500 for "miscellaneous expenses." Conferences with counsel for the foundation have resulted in substantial reduction of these expenses.

10. We discovered the existence of one foundation by reason of our participation in litigation in an estate. Shortly after this foundation came into existence, it had assets exceeding \$1 million. We have obtained the foundation records and an analysis of its chaotic records reveals the probability that its assets were used for the business purposes of one of its directors, who has since died. We have filed a claim against his estate for about \$3 million, representing the present value of the assets entrusted to him.

11. In another matter in which a foundation was the residuary legatee under a will disposing of an estate having a value for estate tax purposes in excess of \$20 million, we are presently litigating the question of the proper amount of the bequest to the foundation. In this case the executors are also directors of the foundation. They originally sought to close out the estate informally and on receipts and releases executed by the foundation. Among other things, it is our position that self-dealing receipts and releases do not absolve the executors or the foundation directors from responsibility.

The problems encountered and recommendations for their solution may be placed into broad categories:

I. Self-dealing: This is fairly persistent and takes various subtle forms. In one case it was not so subtle. There the foundation directors simply took the assets of the foundation and used them in their own business enterprise, without any return to the foundation. We have compelled the dissolution of the foundation and its assets have been paid out, with interest, to an educational institution. To a considerable extent, self-dealing is fostered by the "prohibited transactions" provisions of the Internal Revenue Code, 503(c) (1), (4), and (5), which in effect authorize loans and other transactions by exempt organizations to or with donors, creators, or members of their families.

This is in sharp contrast to the existing State law and general State law to the effect that self-dealing by fiduciaries is absolutely forbidden. I would suggest that these provisions are too difficult to administer, that self-dealing is not beneficial to the charitable interests, and that it should be forbidden except upon court authorization and upon notice to the State attorney general.

I would like to interpolate this remark at this point. There are circumstances where self-dealing is necessary in order to preserve an asset for charity. We had one case in which we finally, after 6 months of negotiations, arranged for the transfer of a closely held corporation from a foundation to a syndicate formed in part of the executors of an estate from which this closely held asset came, and the key personnel of the closely held corporation. It was otherwise unsalable.

I might add that this resulted in the preservation of an asset which ultimately turned out to be worth \$3 million, so that I would suggest

very strongly that, although self-dealing be absolutely prohibited, that there be the reservation that it be permissible in the situation where a court approves it upon notice to the appropriate State attorney general.

Moreover, the revocation of exemption and imposition of taxes by reason of prohibited transactions has a punitive effect upon the charitable beneficiaries and does not reach faithless administrators. This is an area which calls for joint Federal and State action. In this regard, I would suggest amendment of Internal Revenue Code sections 6033 and 6034 to provide for free interchange of information between the Internal Revenue Service and the States.

II. Nonproductive assets: These frequently take the form of donation of non-income-producing or underproductive stock in closely held business corporations. In some cases, a charitable benefit is derived from these donations, but for the most part the interest of charity lies in the distant future, with no guarantee that it will actually eventuate. This kind of transaction also has all of the overtones of self-dealing. The suggestion of the Treasury Department that tax deductions for unproductive asset be deferred until (a) the property is made productive, (b) disposed of, or (c) applied to charitable uses has considerable merit from a tax point of view but does not solve existing problems. Our position, simply stated, is that charitable administrators are under a duty to make holdings productive or to arrange for provident disposition. The transfer of assets of this nature to an operating charity simply transfers the difficulty. With regard to charitable holdings in closely held corporations, we have engaged in a number of conferences relating to the disposition of these interests, and we are presently participating in complicated examination and negotiations in regard to the disposition of extensive holdings of this nature by a foundation.

III. Speculative investments: These sometimes take exotic forms which are totally unexplainable from the charitable viewpoint. The Treasury Department's recommendations respecting financial transactions unrelated to charitable functions should be adopted. In addition, we would suggest that it be made clear that lending of charitable funds on the security of junior liens, even though the rate of return exceeds current interest rates, is prohibited.

IV. Expenditure of net income: The Treasury Department's recommendations as to the includability of short term capital gains in distributable income has considerable merit. If this recommendation is not adopted, we would suggest that as a minimum alternative a percentage of stock distributions received each year, representing 6 percent or less of the stock held by the foundation, be treated as income for distribution purposes. This, incidentally, is consistent with the statutes of quite a number of States which provide for exactly that in the case of trusts.

V. Administration expenses: What is a "reasonable allowance for salaries or other compensation for personal services actually rendered" (IRC 503(c)(2)) is a matter for judgment in each case. If there are any guidelines, they exist in the provisions of State law respecting the annual compensation of charitable trustees. In New York, with respect to such trusts created after April 1, 1948, if the annual income exceeds \$4,000, each trustee up to two is entitled to commis-

sions based upon 7 percent of the first \$2,000 of income and 5 percent of the balance of income. If there are more than two trustees they divide two full commissions. It would seem appropriate therefore that the compensation permissible to trustees would be the outer limit of compensation for foundation directors and officers. This is not to say that compensation determined by this method of computation should be allowable as a matter of right to corporate foundation directors or officers. That compensation should still be subject to justification.

VI. The suggestion has been made frequently that administrative guidelines are unavailable. There is some truth to this contention. Moreover, our experience has shown that this complaint is raised by those most in need of guidance. We would suggest that a committee consisting of representatives of the Treasury Department, Internal Revenue Service, and the State attorneys general be constituted to prepare standards of administration. It is a difficult burden, but one which would yield rich dividends to the charitable beneficiaries in whose interest we all meet today.

Thank you.

The CHAIRMAN. Thank you, Mr. Greenfield, for your statement as well as that of Mr. Lefkowitz.

Are there any questions of these gentlemen?

Mr. Gilbert.

Mr. GILBERT. I would merely like to compliment the attorney general and Mr. Greenfield for a clear and concise presentation here today in bringing to the attention of the committee and the country the administration of a law in the State of New York and how perhaps some of the abuses can be remedied.

I would like to know about how many foundations are there in the State of New York?

Mr. LEFKOWITZ. I can only tell those that have registered thus far. I don't think there is any accurate way of knowing, but it might interest you to know that in the month of January alone one hundred additional foundations and trusts were registered. I gave you the figure for the entire year as of December 31, 1968, but we had in the month of January as much as one hundred filed.

Mr. GILBERT. How many?

Mr. LEFKOWITZ. One hundred new filings in January. If you ask for the total amount, I don't think there is anyone who could accurately give you the number of foundations existing in the State. We go after them as we learn through court proceedings, through applications made on judicial proceedings, but there is no central place. The Federal Government has helped us out with some names and we have gone after them. We are constantly on the lookout to learn about foundations and compel them to make first the registration and then file the report.

Mr. GREENFIELD. We have approximately 13,500 organizations registered with us. We haven't tried to break this down in statistical form because we simply have not had time to do it. I would hazard a guess that of that number about 7,000 are foundations or trusts which would fall within the general category of foundations.

Mr. GILBERT. On how many of these that have filed with your office have you had an opportunity to examine the books and records and the operation of the activities?

Mr. GREENFIELD. We have examined approximately 5,000 reports.

Mr. GILBERT. Over what period of time was that?

Mr. GREENFIELD. Within a year and a half. The first reports were not due to be filed until 6 months after the effective date of this statute and the statute went into effect on January 1 of 1967. Of course, I should mention that we have been in this field for many years as the attorney general pointed out, and we have had considerable experience in the field of estates, trusts, foundations, and charitable corporations generally, but we did not have this statute which gave us the year-to-year financial data with respect to the operations of foundations or other charitable organizations.

Mr. LEFKOWITZ. We never had a requirement for registration and filing of income reports. That is the new part of the statute since January 1, 1967.

Mr. GILBERT. Since they have been filing with you, have you had an opportunity to go out and really examine the records?

Mr. GREENFIELD. We have them brought in, sir. During the course of the statement, which I skipped over a bit, I pointed out that we have conferences that have ranged from the vicinity of 200 a month at our office at which the books and records of the foundations are brought in. We have attempted to deal with the problems primarily by means of administrative procedures for the reason that to resort to court applications would bog us down at this stage.

Mr. GILBERT. Of the foundations that you have examined you have enumerated a number of abuses. Are these the large or smaller type foundations?

Mr. GREENFIELD. They run the gamut. We have examined very large foundations and I think the committee should know that by far the greater number of foundations are very small. They range in the area of \$50,000 or less.

Mr. GILBERT. Is that the area where you find a great deal of self-dealing on some of the abuses?

Mr. GREENFIELD. Well, in the smaller foundations you have a situation where the abuse for the most part is the result of ignorance. The area in which we find most of the abuses are the foundations in the area of \$100,000 and upward.

Mr. GILBERT. For example, would you find self-dealing in large foundations such as the Ford or Rockefeller or Carnegie Foundations?

Mr. GREENFIELD. I should say that we are in the process of examining those reports right now, but I would guess that you would not run into that kind of problem as you would in the others. The area of self-dealing is one which occurs in situations involving, as I have said before, closely held corporations. This is the predominant area of self dealing but we have a great many of them in which there have been self dealing loans or purchases and this occurs and I am thinking of one right now in a foundation that has assets of about \$5 million.

Mr. GILBERT. During the course of your statement you seemed to lay stress upon the fact that legislation in this area should be basically preserved to the States.

Mr. GREENFIELD. I didn't mean to imply that. What I did mean to say was that there is an appropriate area for both the Federal Government and the States. One of our difficulties has been this: We

have offered our cooperation to the Internal Revenue Service. They feel that they are bound with respect to their audits and investigations by provisions of the Internal Revenue Code which make certain information confidential. We don't see what logic impels that that information be kept confidential from the States which are performing similar functions. It is true that there is a provision in the Internal Revenue Code which authorizes the Federal Internal Revenue Service to give the States information with respect to the income tax returns of individuals where the Governor of the State requests it.

We are suggesting here that the Internal Revenue Code be amended to make it possible for the Federal Government to give us the results of their investigations as we are willing to give the results of ours.

Mr. GILBERT. Thank you very much.

Mr. LEFKOWITZ. We have in fact given the Government on its request our audits and investigations. We have done that all along.

The CHAIRMAN. Mr. Conable.

Mr. CONABLE. Do you recommend any jurisdictional division here if there is going to be regulation? I can see where it might be quite burdensome for a large foundation like the Rockefeller Foundation to be examined by the attorneys-general of all the States in which they operate. I assume your jurisdiction is limited to those foundations which are subject to mandate in the State courts; yet you do have beneficiaries of foundations activities in your State who are benefiting from out-of-state foundations.

Mr. GREENFIELD. There is I think in our statute a builtin separation. We provide in our statute that organizations which are formed in the State of New York, incorporated in the State of New York, are subject to our statute and also corporations formed in other States which conduct their activities in the State of New York.

An organization like the Ford Foundation is subject to our act and has registered and reported. The primary operations of an organization like the Ford Foundation being in the State of New York it should report to the State of New York. If your question is: Is it responsible for reporting to, let us say, the State of California which has a somewhat similar statute, I am not at all sure that they have any activities which would render them subject to the reporting and registration provisions of the California statute, but the primary responsibility would be to the State of New York by reason of their primary operation in the State of New York.

Mr. CONABLE. Do you have any suggestions as to what the law should be?

Mr. GREENFIELD. Do you mean the Federal law, sir?

Mr. CONABLE. How far should the State have to go in reviewing the operations of foundations that may not have their primary place of business in New York State, but may have beneficiaries there?

Mr. GREENFIELD. Well, the mere receipt of grants in the State of New York would not render a foundation subject to our statute.

Mr. CONABLE. You think that is as it should be?

Mr. GREENFIELD. Well, I think it is for one important reason. That is that we would have to deal with every foundation in the United States.

Mr. CONABLE. Then, that is the jurisdictional limit?

Mr. GREENFIELD. Yes.

Mr. CONABLE. Thank you.

The CHAIRMAN. Mr. Corman.

Mr. CORMAN. Mr. Attorney General, are you familiar with the purposes of H.R. 18464 introduced in the 90th Congress?

Mr. LEFKOWITZ. No, I am not.

Mr. CORMAN. The provisions are to give the Treasury Department some discretion in recovering taxes when there has been a violation of the trust but the funds have been recouped by State action. This bill would give the Treasury Department discretion to relieve the recovered funds of the tax liability. Are you familiar with that?

Mr. GREENFIELD. Yes.

Mr. CORMAN. Do you support the purposes of that?

Mr. GREENFIELD. Yes, we do. I might mention the fact that Attorney General Lefkowitz was at a meeting of the Association of Attorneys General at which a resolution was adopted by the Association approving that proposed legislation. That is one for the purpose of the record which deals again with a question of interchange of information between the Internal Revenue Service and the State and provides for an opportunity on the part of the States to see to it that the administration of a foundation is so conducted that it does not lose its tax exempt status.

Mr. CORMAN. Do you have any information as to whether foundations may have moved their place of operation from New York after your imposition of these more rigorous reporting statutes?

Mr. GREENFIELD. There has been some of that. At the very earliest days of our operation we did receive a number of postcards from some foundations that they had moved their operations to the State of New Jersey. We informed those foundations that they were too late, that they were subject to the statute.

Mr. CORMAN. Do you think we might be well advised then to at a minimum require the same kind of disclosures throughout the United States that you require in the State of New York?

Mr. GREENFIELD. I think that a suggestion has been made before that to me makes a great deal of sense. That is if you are concerned, as you are, with the question of tax exemption, tax deductions and the like, the natural consequence of that concern should be that the Congress, I would suggest, should adopt legislation which has been proposed by somebody other than myself which would be to the following effect:

That no tax deduction or no exemption be allowed to a charitable foundation unless it exists in a State which has a supervisory statute similar to ours.

Mr. CORMAN. Thank you, sir. You have been very helpful.

The CHAIRMAN. We will keep the experience you have had under your statute in mind.

Mr. LEFKOWITZ. We hope you can keep it in mind. We are rather proud of it.

The CHAIRMAN. Thank you so much, both of you, for coming to the committee and for being patient with us for so long.

Mr. LEFKOWITZ. Thank you very much.

The CHAIRMAN. Our next witnesses are Mr. Walter Degnan and Dr. Gladstone.

**STATEMENT OF WALTER J. DEGNAN, PRESIDENT, COUNCIL OF
SUPERVISORY ASSOCIATIONS; ACCOMPANIED BY DR. AARON
M. SLOTKIN, DIRECTOR OF PUBLIC RELATIONS**

SUMMARY

MAJOR POINTS

1. Congress has restricted the political activity of tax-exempt organizations.
2. Ford Foundation grants to community action groups circumvent the restrictions placed on the political activity of tax-exempt organizations.
3. Ford Foundation grants have raised questions of conflict of interest.
4. The Ford Foundation grant to the Ocean Hill-Brownsville demonstration school district contributed to the onset of the New York City school crisis last spring.
5. The Ford Foundation's financing of the election of the Ocean Hill-Brownsville school governing board had a potent political effect.
6. The Ford Foundation has failed to exercise effective control and supervision of its social action grants and has permitted its funds to be used irresponsibly.
7. The potential intervention by foundations in the area of politics raises significant issues.

RECOMMENDATIONS

1. The restrictions on political activity by tax-exempt organizations should be extended to prohibit grants to groups engaged in social action programs.
2. Tax-exempt foundations that fail to supervise their grants so that their funds are disbursed responsibly within the confines of the law should be liable to the loss of their tax-exempt status.

Mr. DEGNAN. Mr. Chairman, this is Dr. Slotkin, who is substituting for Dr. Gladstone.

The CHAIRMAN. Would you identify yourself for the record and we will be glad to recognize you.

Mr. DEGNAN. May I say we appreciate the opportunity to present these brief comments to you.

The CHAIRMAN. We are glad to have you.

Mr. DEGNAN. My name is Walter Degnan and I am president of the Council of Supervisory Associations. We have about 3,200 members and we represent the supervisors in the New York City school system.

Tax-exempt organizations siphon off very considerable revenues that would ordinarily be available to the Government. The justification for their exemption, therefore, is that they responsibly fulfill a public purpose—charitable, religious, scientific, literary, educational.

As conditions for tax exemption, Congress, under the provisions of the Internal Revenue Code of 1954, section 501(c)(3), has placed certain restrictions on organizations claiming this privilege. Besides eschewing private gain, their participation in the political process is drastically limited: they may not devote a substantial part of their activities to carrying on propaganda or otherwise attempting to influence legislation and they may not participate in political campaigns.

**FORD FOUNDATION GRANTS CIRCUMVENT RESTRICTIONS ON POLITICAL
ACTIVITY**

Our experience with the Ford Foundation in New York City indicates that the intent of Congress to circumscribe the political influence of tax-exempt organizations has been circumvented by the device

of grants to community action groups. The Ford Foundation has, in effect, legislated with its money and shaped social policy. It has functioned like an invisible government without any check by the voters or review by any public agency. Moreover, because of its reluctance to police its grants, some funds have been irresponsibly used for anti-social ends.

Because of its immense resources (1968 net worth \$3.1 billion; gift commitments \$203.2 million), the Ford Foundation has exercised a pervasive influence on education in New York City and elsewhere. It has made a wide variety of highly laudable grants, amounting to several million dollars, to educational projects in New York City—including development of programmed instruction, the school volunteer program, a work-study program to prevent school drop-outs, experiments in preschool education, language, and other educational opportunity programs for Spanish-speaking pupils, and teacher training by public and private colleges and universities in the city.

Other Ford Foundation grants, however, have raised questions of conflict of interest and intervention in the political process. Four members of the New York City Board of Education and one member of the New York State Board of Regents are involved in projects funded by the Ford Foundation.

CONFLICT-OF INTEREST QUESTIONS

It is surprising to hear a man as sophisticated and experienced in public life as Ford Foundation President McGeorge Bundy insist that the grantees do not take guidance from the foundation and denounce criticism of the grants as an offense to the integrity and independence of those who have received them. No one impugns their honesty and character. And neither does Congress impugn the integrity of Cabinet members and other government officials when it requires them to divest themselves of securities or to make other financial arrangements that would remove any suggestion of a conflict of interest. The President recently lost a consultant on consumer affairs growing out of conflict-of-interest charges based on the issue of serving two masters. No one questioned her integrity—only her commitment.

The point simply is that the Ford Foundation is committed to a specific policy of community control of schools, that the board of education shapes school policy and, therefore that Ford Foundation grants to board members raise questions of their independence.

FORD FOUNDATION GRANT CONTRIBUTED TO NEW YORK CITY SCHOOL CRISIS

In the controversial Ocean Hill-Brownsville demonstration school district in Brooklyn, the Ford Foundation bypassed the constituted educational authorities, financed the election of a local governing board, and helped create a de facto situation that greatly contributed to the development of the New York City school crisis last spring.

Last October, the Appellate Division of the New York State Supreme Court denied the Ocean Hill Brownsville governing board's appeal to compel the board of education to lift its suspension. In its

decision, the appellate division pointed out that when the board of education created the Ocean Hill-Brownsville demonstration district the law:

Did not at that time give the power to the board of education to provide for an election of a local school board. Nevertheless, and despite the fact that it does not appear that the board of education directed an election, the Ford Foundation supplied funds to assist in the conduct of an election on August 3, 1967 to select members of the experimental decentralized governing school board in the Ocean Hill-Brownsville area. This election was not held pursuant to any of the provisions of the Election Law. It was conceded on the argument that the election was not supervised by the board of education and was not conducted under guidelines laid down by the board of education.

Whether, in view of the facts stated *supra* with respect to the lack of statutory authority for their election, or the manner of their "election," this Governing Board may be deemed to be a duly elected body is subject to serious doubt.

POLITICAL EFFECT OF FORD FOUNDATION FINANCING

The Ford Foundation's financing the election of a local school governing board dedicated to absolute community control had a far greater political impact than any legally prohibited efforts to influence legislation or participate in an election. The issue of the reorganization of the New York City schools will shortly be before the New York State Legislature. Any non-tax-exempt organization that lobbies for a particular point of view will be only one of many contending forces. In the election of the Ocean Hill-Brownsville governing board, however, Ford Foundation money played the key role.

IRRESPONSIBLE USE OF FORD FOUNDATION FUNDS

Moreover, the Ford Foundation permitted its funds to be used irresponsibly, so that a project ostensibly designed to increase parent participation in school affairs became a travesty of the democratic process. The election in Ocean Hill-Brownsville was conducted by a staff which was paid with Ford Foundation funds. As an article in the January 1969 issue of *Commentary* (Maurice J. Goldbloom, "The New York School Crisis") points out:

Interestingly, those paid to get out the vote were also candidates for the Governing Board. Not surprisingly, they turned out to be the successful candidates. No formal procedures for the election or qualifications for candidates were set by the Planning Board, which also took charge of counting the vote. One result was that the "parent representatives" elected to the Governing Board from two of the schools in the district neither had children in them or lived in the district. This did not prevent them from participating with the other "parent representatives" in the choice of "community representatives" to sit on the Board.

There was never any public announcement that parent representatives on the local governing board were being paid. As Martin Mayer declared in his story of Ocean Hill in the *New York Times* magazine of February 2, 1969:

If poor people are to serve on school boards they should certainly be paid for their time as part of a published budget. But "community control" is not an intelligent description of a situation in which the community representatives are on a fluctuating and secret payroll controlled by the very staff that they are supposed to be controlling.

ISSUES RAISED BY FOUNDATION INTERVENTION IN POLITICAL SPHERE

A story in *The New York Times* of October 17, 1968, indicates another Ford Foundation intervention in the political sphere which is probably not barred by current legislation. It quotes a district leader in Ocean Hill as saying that "Ford muscle" was influential in getting State approval for the selection of new principals for the Ocean Hill-Brownsville district who were chosen outside of normal civil service channels.

On November 1, 1968, J.H.S. 271 in the Ocean Hill-Brownsville district was the scene of a partisan political rally held in the assembly during the regular schoolday at which the children were a captive audience. As shown on WCBS-TV in New York City, Dick Gregory, candidate for President of the Freedom and Peace Party, was escorted by Rhody McCoy, the unit administrator, into the auditorium where he was introduced as our candidate for President. No representatives from other political parties were present.

There is no information that Ford funds financed any election activities in the Ocean Hill district. It is, however thoroughly conceivable from the examples cited in this statement that an inadequately policed foundation grant to a community action group could be employed in a political campaign against congressional or local candidates to whom the community group was hostile.

FORD FOUNDATION FAILURE TO SUPERVISE GRANTS

Last fall the Council of Supervisory Associations called to the attention of the Ford Foundation the misuse of funds it was providing for a program being administered by the vice president of the board of education, the Rev. Milton Galamison. The grant, ostensibly to improve school-community cooperation, was being used to finance a bulletin that promoted turmoil and vigilante actions in the schools by urging communities to screen teachers, supervisors, and custodians when the strike was over to decide those to be transferred or put on probation.

We pointed out that these proposals were a violation of existing regulations and the education law and could only foster chaos, not school-community cooperation. The Council of Supervisory Associations therefore urged the Ford Foundation to check on the use made of its money and to withdraw funds when the recipient abused the conditions of the grant.

In its reply, the Ford Foundation evaded the issue raised and said that the Rev. Galamison had explained that the articles in question had been submitted by two groups outside his organization. Our response made the following points:

1. If neither the Ford Foundation nor the grantee takes responsibility for material published under a foundation grant, this is an irresponsible use of Ford Foundation funds.

2. Reluctance by the Ford Foundation to insist on observance of the conditions of a grant can only result in the irresponsible use of foundation funds and a warranted criticism of the foundation's role in the activities it subsidizes.

I would draw your attention to the fact that we have appended a copy of one of the issues of the Scope Bulletin and with it the copies of the correspondence with Mr. Bundy and Mr. Fantini, and I believe Mr. Meade, who are officials of the Ford Foundation. I think the correspondence speaks for itself.

RECOMMENDATIONS FOR LEGISLATION

Limitations of time prevent a more extensive examination of the ramifications of the Ford Foundation's grants to community action groups. It is clear, however, that the current definition of proscribed political activity on the part of tax-exempt organizations is inadequate. Since it is the apparent intent of Congress to bar political activity by tax-exempt foundations, the definition of political activity should be expanded to ban grants to groups engaged in social action programs that tax-exempt organizations could not undertake; tax-exempt organizations should not be permitted to do indirectly what the law forbids them to do on their own. Moreover, tax-exempt foundations that fail to exercise effective control and supervision of their grants so that their funds are disbursed responsibly within the confines of the law should be liable to the loss of their tax-exempt status.

May I request that the tax correspondence be entered in the record.
(The correspondence referred to follows:)

CORRESPONDENCE BETWEEN THE COUNCIL OF SUPERVISORY ASSOCIATIONS AND THE FORD FOUNDATION REGARDING THE POLICING OF FOUNDATION GRANTS

COUNCIL OF SUPERVISORY ASSOCIATIONS,
OF THE PUBLIC SCHOOLS OF NEW YORK CITY,
Brooklyn, N. Y., November 20, 1968.

Mr. McGEORGE BUNDY,
President, Ford Foundation,
320 East 43d Street, New York, N.Y.

DEAR MR. BUNDY: During the recent school crisis you criticized as "irresponsible" charges that the Ford Foundation has had too much influence on the city school system. You added that "charges that the Ford Foundation is in any way preventing reopening of the schools are shamefully false and we reject them."

The enclosed excerpt from the October issue of the Rev. Milton Galamison's SCOPE Bulletin contradicts your assertions. Moreover, unfortunately we are now experiencing types of actions urged in the SCOPE Bulletin—actions that are impeding a return to the normal functioning of the schools.

The Ford Foundation has provided funds for the Rev. Galamison's SCOPE program ostensibly to improve school-community cooperation. SCOPE, however, used this money to promote turmoil and vigilante actions in the schools by urging communities to screen teachers, supervisors, and custodians when the strike was over to decide those to be transferred or put on probation.

Such mischievous proposals, sanctioned by the Vice-President of the Board of Education, are a violation of existing regulations and the education law and can only foster chaos, not school-community cooperation.

While the Ford Foundation obviously cannot dictate the contents of publications it underwrites, a total indifference to the ways in which its grants are expended would be sheer irresponsibility.

In the interests of a lasting school peace, therefore, we urge you to check on the use made of Ford Foundation money and to withdraw funds when the recipient abuses the conditions of the grant.

Very truly yours,

IRVING A. GLADSTONE,
Executive Director.

SCOPE BULLETIN, SERVING ALL WHO FIGHT FOR COMMUNITY CONTROL OF THE
COMMUNITY'S SCHOOLS

WHAT TO DO WHEN THE STRIKE IS OVER
(SUGGESTIONS, COURTESY UNITED BRONX PARENTS)

1. If the price of settlement is military occupancy of Ocean Hill-Brownsville, make certain the Mayor, and the UFT know that huge quantities of police will be needed in every Black and Puerto Rican section of the city before community control can be suppressed.
2. Set up personnel screening committees in your area. You will probably want to review the qualifications of supervisors, custodians and teachers who walked out on the community. Decide which ones should be transferred and which one should be put on probation.
3. Set up your own community district lines and begin to schedule your local elections so that you can choose your own governing board.
4. Secure precise information from your district office on how much money is being spent on each child in each school (it is available there now). Do not permit appointed local school boards to make decisions which will bind the governing boards the communities will elect.
5. Review the qualifications of the custodians in your local schools. Their current contract expires in December. Insist that your community be represented in the negotiating which is now going on with the Custodial Union (Local 891, International Union of Operating Engineers). Get a copy of the current contract from your district office or call United Bronx Parents, 842-6666 for a copy.

THE FORD FOUNDATION,
DIVISION OF EDUCATION AND RESEARCH, PUBLIC EDUCATION,
New York, N.Y., December 17, 1968.

DR. IRVING A. GLADSTONE,
Executive Director, Council of Supervisory Associations,
186 Jeralemon Street, Brooklyn, N.Y.

DEAR DR. GLADSTONE: This is in reply to your letter of November 20 addressed to Mr. McGeorge Bundy.

We appreciate your calling certain articles in the October issue of the SCOPE bulletin to our attention. As you state in your letter, the Foundation cannot and does not dictate to any grantee the contents of publications it publishes under a grant. Still, the questions you raise are of concern to us.

We talked with Mr. Galamison, the director of SCOPE, about the articles in question. In the instance of the SCOPE bulletin you enclosed with your letter, Mr. Galamison pointed out that SCOPE had published statements submitted to them as they had been prepared by two groups, namely, the New York Association of Black Supervisors and Administrators and the United Bronx Parents. He gave us to understand that SCOPE would be pleased to publish a rebuttal from your organization to the articles in question in a future edition of the SCOPE bulletin.

With regard to the point you raise concerning the use of Foundation funds, if in our judgment a grantee does not observe the conditions of a grant it is our policy and practice to withdraw or disallow a grant or any portion thereof misused. We have concluded there is no reason to take such action in this instance.

Sincerely,

MARIO D. FANTINI,
Program Officer.

COUNCIL OF SUPERVISORY ASSOCIATIONS
OF THE PUBLIC SCHOOLS OF NEW YORK CITY,
Brooklyn, N.Y., January 6, 1968.

MR. MARIO D. FANTINI,
Program Officer, The Ford Foundation,
320 East 53d Street, New York, N.Y.

DEAR MR. FANTINI: I am responding to your letter of December 17th regarding items in the SCOPE bulletin, published by the Rev. Milton Galamison under a Ford Foundation grant.

The Rev. Galamison's explanation that the objectionable items had been submitted by the New York Association of Black Supervisors and Administrators and the United Bronx Parents is an evasion of the issue. If neither the Ford Foundation nor the grantee takes responsibility for material published under a Foundation grant, this is an irresponsible use of Ford Foundation Funds.

Moreover, since the grant was designed to improve school-community cooperation and the items published have encouraged vigilante actions and community turmoil, it is difficult for us to see how you can conclude that the conditions of the grant have not been abused.

We are, in fact, astonished that you should suggest that a rebuttal by us in the SCOPE bulletin would rectify the situation. Were we to do so we would be sanctioning the inclusion of material inimical to the purpose of the Ford Foundation grant.

Reluctance by the Ford Foundation to insist on observance of the conditions of a grant can only result in the irresponsible use of Foundation funds and a warranted criticism of the Foundation's role in the activities it subsidizes.

Very truly yours,

IRVING A. GLADSTONE,
Executive Director.

THE FORD FOUNDATION,
DIVISION OF EDUCATION AND RESEARCH,
PUBLIC EDUCATION,
New York, N.Y., January 24, 1969.

MR. IRVING A. GLADSTONE,
Executive Director, Council of Supervisory Associations,
186 Joralemon Street, Brooklyn, N.Y.

DEAR MR. GLADSTONE: This will acknowledge receipt of your letter of January 6, which Mr. Fantini has referred to me.

You are certainly entitled to reject the opportunity to submit a rebuttal for inclusion in the SCOPE bulletin. Obviously we are not in a position to advise you on this, but we can understand your position.

Sincerely,

EDWARD J. MEADE, JR.,
Program Officer in Charge.

MR. DEGNAN. May I say after listening to the evidence presented during the day that it seems to me that we need some form of, oh, perhaps third party to which an appellant might refer an instance such as the one or two that I have described because it is evident to me through the correspondence that we have had that either Ford Foundation does not intend to involve itself in seeing that grantees meet their responsibilities for whatever reason perhaps they are not able to, but I think there should be a third party to whom an appellant might direct some of the difficulties that we have experienced, and I believe that if we had such an opportunity last May that the tragic school strike in New York City last fall might possibly have been avoided.

I think there is a very good chance that it could have been avoided because it was the involvement of Ford Foundation money and the behavior of the governing board that precipitated this strike.

The strike was not over money. It was over a matter of principle. It was over whether or not due process should be part of our American way or whether people might suddenly decide they were going to discharge people for some whim or fancy or whatever. This was the essence of the problem that we had.

The CHAIRMAN. Mr. Utt.

MR. UTT. I wanted to ask if this violation was of the type which should have been supervised by Attorney General Lefkowitz?

Mr. DEGNAN. I think not. It did not involve money, in a sense. It involved the question of whether or not the grantee was acting as a grantee should or whether Ford money was being used badly by the grantee.

Now, apparently, in our correspondence in this instance that I speak of they did not seem to see the seriousness of the problem. I think if a government agency had been involved in this in some form that a decision might have been made and perhaps the grant might have been removed or certainly the grantee might have been told that this is the kind of bulletin that is inflammatory, that does not meet the purpose of your grant, and I think we might have avoided trouble. Maybe there are other ways of doing this, but I have the feeling that we need some impartial agent who can make a decision about whether or not the grantee is handling the funds given to them by the Ford Foundation properly.

The CHAIRMAN. I imagine one of the problems in this type of situation perhaps would be the inability of the foundation to always know that the moneys, once turned over to the individual to carry out a project, would be spent exactly in accordance with the project.

Do you know whether this money was given all in one amount?

Mr. DEGNAN. I believe the grant was a sizable one. There were two. One was given to Ocean Hill-Brownsville district and the other was SCOPE, which was Mr. Galamison's organization for improving schools.

The CHAIRMAN. If it was \$10,000, was it given in the amount of \$10,000?

Mr. DEGNAN. \$160,000 for SCOPE.

The CHAIRMAN. I mean was it all in one grant?

Mr. DEGNAN. I believe not.

The CHAIRMAN. You mean it was paid over a continuing period of time?

Mr. DEGNAN. I believe it was a continuing grant.

The CHAIRMAN. My question was whether you could supervise to determine whether subsequent amounts would be made available?

Dr. SLOTKIN. Mr. Chairman, if I might comment.

The CHAIRMAN. Yes.

Dr. SLOTKIN. I think there was a lump sum grant, the \$160,000 made available at one time.

The CHAIRMAN. Then my question would apply to this situation. Are there any further questions?

Mr. GIBBONS. Mr. Chairman.

The CHAIRMAN. Mr. Gibbons.

Mr. GIBBONS. Would you clarify exactly what is the Council of Supervisory Associations?

Mr. DEGNAN. It consists of principals, assistant principals, all the supervisors in the city. We have something like 60,000 teachers and 3,200 supervisors.

The CHAIRMAN. And in your organizations are there 3,200 supervisors?

Mr. DEGNAN. Yes.

The CHAIRMAN. You have made a rather serious charge here.

Mr. DEGNAN. Well, we had a very serious situation.

The CHAIRMAN. I understand that you did. I cannot understand why this kind of situation can't be investigated by the Internal Revenue Service. Did you take this up with the Internal Revenue Service at any time?

Mr. DEGNAN. No. Some of the problems we have taken up with the district attorney, and he presently has some cases before him.

The CHAIRMAN. But the law says specifically that a foundation cannot engage in political activity. That is also the decision of the Internal Revenue Service. If the Service so concludes, the foundation's tax-exempt status is removed. The law does not provide that a foundation engage in political activity with 50 percent of its money, with 10 percent of its money, or with 100 percent of its money. It can be any amount of its money, any small part and the foundation's exempt status is removed. This was written on the floor of the Senate by a very distinguished Senator some years ago because at that time some of the foundations had actually begun to engage in what unquestionably was political activity. It was agreed to in conference. This was before I came to Congress, as I remember.

It was a matter of great concern to the Congress that this not happen and you say without any doubt in your mind that these grants were used for political purposes.

Dr. SLOTKIN. Mr. Chairman, may I make one comment on that? It is our feeling that the law as presently drawn does not encompass all of the potential types of political activity.

The CHAIRMAN. That is what I am afraid of.

Dr. SLOTKIN. And that, for example, it bars an organization from devoting a substantial part of its activities to legislation and it bans them from participating in political campaigns, but our feeling is that in this case the grant of funds to a local community group or a social action group was, in effect, a form of shaping social policy which was as effective as, if not more effective than, shaping legislation, that the political process involves much more than simply lobbying or participating in a political campaign, that it is broader, and that attention needs to be drawn to that fact in any legislation that this committee considers in that area.

Mr. DEGNAN. I have a conviction that I would like to pass along. I have the feeling that in the case of the Ford Foundation it is just too big to properly police the many activities it becomes involved in. You raised the question earlier in the day as to how big a foundation should be, should there be a governmental restriction, and it seems to me that one of the problems here is that they get involved in so many different activities that you can handle none of them really well.

I think that a smaller organization could police its grantees and supervise the funding in a much more effective way.

The CHAIRMAN. I can understand the possibility of a grant to a group to encourage people to register so long as it is done in a manner that does not include telling how those people should vote later. When moneys are used in a school election or in a fight over schools, however, it is about as hot an election as you can get into. Has that been your experience?

Mr. DEGNAN. It has been.

The CHAIRMAN. An election for a school board position that we used to have in many States didn't pay much but it created a lot of interest. I would think anybody getting into that is getting into politics.

Dr. SLOTRIN. The Appellate Division of the New York Supreme Court said in its decision that the board of education had not directed an election and they were not permitted to do so by law at that time and despite that fact Ford Foundation supplied funds for such an election and the election was not conducted under any law.

The CHAIRMAN. All contrary to court decision?

Dr. SLOTRIN. Yes.

Mr. GIBBONS. Mr. Chairman, may I get into this because this is the kind of thing that the community action programs have been doing around the country.

The CHAIRMAN. It is. I have been for it.

Mr. GIBBONS. I haven't been for it.

The CHAIRMAN. Not this kind of activity. I said I have been for the community action.

Mr. GIBBONS. They have been sponsoring elections under the poverty program.

The CHAIRMAN. That is not tax-exempt money. That is the money that has been already taxed and appropriated.

Mr. GIBBONS. It is the same kind of thing and I think it is something that has disturbed me. They called it an election. It did result in the control of the expenditure of public funds and this is apparently what the Ford Foundation did here. This is a sort of rump election or policy that was made but the election was not supervised by any State or public agency, was it?

Mr. DEGNAN. No. It was sort of a gathering in the street that the people were invited to participate in. And the people employed operated it.

Dr. SLOTRIN. The machinery, as the court points out here, was in control of those who subsequently became candidates for the school board. As indicated here, and I think this is the following paragraph, it says:

Those paid to get out the vote were also candidates for the governing board. Not surprisingly, they turned out to be the successful candidates. No formal procedures for the election or qualifications for candidates were set by the planning board, which also took charge of counting the vote.

I doubt that the Congress would set such regulations for the election of its own Members.

Mr. GIBBONS. These people, in effect, ran the public schools, is that right?

Mr. DEGNAN. They ran the schools in that district.

The CHAIRMAN. Let me get this straight if you will yield to me. This was not a legal election. The court said they had no right to have it. It was a rump election. Why did you keep referring to it as an election? If it was a rump election, it may not have been political activity.

Dr. SLOTRIN. What happened was this, Mr. Chairman. The local governing board was elected with and it was financed by Ford Foundation funds before any guidelines were laid down by the board of education. Then the board of education accepted that as a de facto situation later on and dealt with this local governing board.

The CHAIRMAN. As though it were a legal election.

Mr. DEGNAN. Well, they were there and they accepted this.

Dr. SLOTKIN. I might say that this local governing board is currently in suspension and was suspended last October by the central authority.

Dr. DEGNAN. The tragedy was that this precipitated the whole situation.

The CHAIRMAN. As I say, they should have been very careful with it.

Mr. CORMAN. I didn't quite follow you. The election that was financed by the foundation was to elect some kind of board of local people. Was there any type of statutory authority? They had no standing as a public body under the State laws of New York or the laws of the school district?

Mr. DEGNAN. No. That is exactly the point. They did not authorize an election which had the approval of the central board, but having led the election so-called, the central board then turn around and decided, "Well, I guess we had better accept this because it has been done."

Mr. CORMAN. They did not accept them just as advisers?

Mr. DEGNAN. They gave them the power and proceeded to abuse the power.

Mr. CORMAN. Did the elected school board delegate authority to this rump-elected nonstatutory private board?

Mr. DEGNAN. After it was de facto, yes, they did.

Mr. SLOTKIN. This is a somewhat complex situation. If we can simplify it, it runs somewhat as follows. There was an authorization and the board of education did agree, as Mr. Bundy stated this morning, for the establishment of experimentally decentralized school districts. This was one of the three districts, but the board of education had not yet agreed on guidelines for that district nor had it authorized an election, so that what, in effect, the Ford Foundation did and what the local governing board did was to jump the gun and they held an election before it was authorized and the election was financed by Ford Foundation funds.

Once that de facto situation was created, the central board of education recognized the Ocean Hill-Brownsville local board. It did not have full autonomy because it could not have at that time under the law and it had only limited advisory powers.

Mr. CORMAN. Were Ford Foundation funds used to conduct the original study that led to the decentralization plan?

Mr. DEGNAN. I think Dr. Bundy indicated this morning he received a request for funding from the board of education originally.

Mr. CORMAN. Who funded the original studies?

Mr. DEGNAN. That was done presumably by the board of education

Mr. CORMAN. With public funds?

Mr. DEGNAN. Yes, this grew out of the confrontations they have had over a period of time, community group leaders presumably asking for this and creating kind of chaotic meetings that you probably read about. They were interested in experimenting and in giving people the opportunity to control their district.

However, the point I think of the whole matter is that once they got the control, once the board recognized them, they then proceeded to abuse it.

Mr. CORMAN. The Bundy report which got substantial notice, was that report financed by public funds coming from the school district or the State of New York or was it financed by private foundation funds?

Mr. DEGNAN. The Bundy report on school decentralization is different from the experimental unit we are speaking about. The Bundy report was requested by the mayor of the city. Now what arrangements were made, financial arrangements, I don't know, but it was made at the request of the mayor.

Mr. CORMAN. Who financed the work that led to the Bundy report?

Mr. SLOTKIN. There was staff provided. I don't know who was responsible for the finances.

The CHAIRMAN. Are there any further questions?

Mr. BURKE. As I understand it, this was a community group.

Mr. DEGNAN. Yes.

Mr. BURKE. The charter of the city of New York is granted by the State legislature.

Mr. SLOTKIN. Yes.

Mr. BURKE. Did the city government or city council and the school committee authorize this?

Mr. DEGNAN. No; I think it was within the power of the board of education to establish an experimental school district. They have that power.

As I said, they did this and then apparently communicated with the Ford Foundation to find out whether they would assist. The difficulty here is that the Ford Foundation apparently said yes and then turned over some other money to the local group and then the whole thing was just simply mismanaged from the very beginning.

So the Ford Foundation was guilty just as much as the local group, perhaps even more so, that proceeded with this election, so-called. It was illegal. It did not represent the people.

But the whole thing then became a thoroughly impossible situation. The people on the governing board thought they could do as they liked. They began to disregard the central board and that was the situation.

Mr. BURKE. In establishing this local community board, they organized the elections, supervised the elections, and counted the ballots in which they counted themselves as having received the highest vote? Is that what you are telling us?

Mr. DEGNAN. Yes.

Mr. BURKE. Was every voter in the district notified of that?

Mr. DEGNAN. No; there was quite a controversy in that district and there still is. There is quite a group of people who feel this governing board usurped power and it was not done democratically. It was done under the aegis of the Ford Foundation and they are just as disturbed with the Ford Foundation as we are for their actions.

Mr. BURKE. Did every voter there receive a notice from the election department or from some official body which stated that an election would be held and which notified them of the location and the time of the election?

Mr. DEGNAN. The judge who heard this case decided it was wrong all the way. I don't know all of the details, but he indicated that it was completely illegal, beyond any interpretation of election law, and that it was just improper.

Mr. SLOTKIN. Mr. Burke, I think the fundamental point here is the canvassing of potential candidates was done by the candidates.

Mr. BURKE. I can see that it would be a fair election if everyone were properly notified. But you say only that 30, 40, 50, or 60 percent of the region was notified, and 40 percent of the voters failed to receive notice or had no knowledge that this election was taking place.

I can see where those people were deprived of their rights.

Mr. SLOTKIN. I think the figures will show 22 percent of the eligible voters in that area voted in that election.

Mr. GIBBONS. I have been through these things before. May I interrupt?

Mr. BURKE. That does not mean much, because some of our elections here are not too well run, either. The question is whether all of the voters in this region elected their board and whether they were properly notified or had sufficient notice that would give them an opportunity to vote if they so desired.

Mr. SLOTKIN. It is pretty difficult to answer that question because the canvassers were the ones running the elections and they were not answerable to anyone else. Apparently they had carte blanche the arrangements made.

Mr. BURKE. Did they use city ballot boxes? Did they have any supervisors?

Mr. DEGNAN. No; this is all in the court decision where the court indicated this was completely illegal.

Mr. GIBBONS. The holding of the election and the candidates were financed from funds from the Ford Foundation. The election was not called by a governmental agency; was it?

Mr. SLOTKIN. No.

Mr. GIBBONS. It was not conducted by a governmental agency?

Mr. SLOTKIN. That is correct.

Mr. GIBBONS. But the winners of this election took over a governmental responsibility and ran the school system.

Mr. SLOTKIN. We have to be accurate here. They had limited powers at that time.

Mr. GIBBONS. But they had some powers.

Mr. DEGNAN. They usurped powers. They said to a group of teachers and supervisors, in effect, we don't want you here. This was last May and we spent 2 months trying to get this settled.

Mr. GIBBONS. That is not political activity in the normal sense, as we think of it, Mr. Chairman, but it is more in the realm of an anarchistic realm. I think certainly we are not trying to promote political activities by tax benefits, but we certainly aren't trying to promote anarchistic activities by a tax supplement.

Mr. DEGNAN. Reverend Galamison is quoted as saying he does not care what the State legislature decides to do about decentralization. We are going to have community control and the community is going to make the decisions.

He has said that publicly. That is very close to anarchy.

Mr. GIBBONS. I agree with you. I may be sympathetic toward the principle of community control of the school, but I am not sympathetic toward any uprising such as was apparently financed here.

I am afraid the Federal Government has conducted a few of them in other parts of the country.

These, in effect, transcend all of the politically responsible lines to establish new forms of government. I think we can go back to the legislative process to establish those, but there are apparently other people who do not agree with me.

Mr. CORMAN. May I inquire whether you are familiar with the articles by Martin Mayer, published in the New York Times on February 2?

Mr. SLOTKIN. Yes, sir; we quoted in the statement, Mr. Corman.

Mr. CORMAN. Is it your view that it is an accurate statement?

Mr. DEGNAN. Yes, sir; I might add I have great respect for the accuracy of the man.

Mr. SLOTKIN. Mr. Degnan was involved in some of these activities, so he is well aware of what went on.

Mr. DEGNAN. Mr. Mayer is a very thorough reporter. He spent many, many weeks and months preparing the article. I think he has expanded it into a book that will soon be published, but he is a very fine and thorough-going reporter.

Mr. CORMAN. Thank you very much.

Mr. SLOTKIN. Just briefly, Mr. Corman, I don't know whether Mr. Degnan specifically requested it, but may we ask that correspondence regarding the policing of foundation grants that we had with the Ford Foundation be entered as part of the record.

Mr. CORMAN (presiding). Without objection, they will be made a part of the record. (See p. 448.)

The next witness is Mr. Dan Sanders, assistant to the president, United Federation of Teachers.

STATEMENT OF DAN SANDERS, ASSISTANT TO THE PRESIDENT, UNITED FEDERATION OF TEACHERS

Mr. SANDERS. In a Ford Foundation report, entitled "Alternatives for Urban School Reform," Mario Fantini, program officer for the foundation, states simply:

In 1967 the foundation provided funds for the planning of three experiments in greater community participation in the education process, under the New York City Board of Education's early decentralization policy. The projects consist of partially self-governing clusters of from five to eight schools. While mainly dependent on the overall school system for approval on a number of policies and operations, the experimental sub-systems do have the authority to appoint their chief administrator. The foundation has now granted a total of about \$1.1 million for technical assistance to the experiments and for citywide activities to prepare for further decentralization and to enhance parent-teacher collaboration.

But I am here today representing the United Federation of Teachers, AFL-CIO, and its 70,000 teachers and other educational employees, to tell you of the chaos, bitterness, conflict and confrontation created by that simple statement of policy and fact.

From the time Mayor John V. Lindsay in 1967 asked McGeorge Bundy of the Ford Foundation to develop a decentralization plan for

New York City's schools until today, we have had an intensification of confrontation politics supported by Ford Foundation funds.

The foundation's charter and bylaws indicate that "no part of the activities of this corporation shall be the carrying on of propaganda or otherwise attempting to influence legislation." The purpose of the foundation is "to receive and administer funds for scientific, education, and charitable purposes, all for the public welfare, and for no other purposes." Yet our experience with the Ford Foundation has been that it has played and continues to play a major role in the political life of New York City, especially with regard to the school system.

Let me give you some of the facts about the heavy involvement of the Ford Foundation touching off a major confrontation over the schools in the city of New York—unleashing bitter racial and religious tensions that have as yet not subsided. New confrontations are brewing and the Ford Foundation continues its involvement in them.

The foundation has for several years granted, through various funneling agencies, literally hundreds of thousands of dollars to the Ocean Hill-Brownsville District, despite the fact that the governing board of that district was never legally constituted. The appellate division of the State supreme court on October 24, 1968, sustaining the suspension of the Ocean Hill-Brownsville governing board, said in a unanimous opinion:

• • • Nevertheless, and despite the fact that it does not appear that the Board of Education directed an election, the Ford Foundation supplied funds to assist in the conduct of an election on August 3, 1967 to select members of the experimental decentralized governing school board in the Ocean Hill-Brownsville area. This election was not held pursuant to any of the provisions of the Election Law. It was conceded on the argument that the election was not supervised by the Board of Education and was not conducted under guidelines laid down by the Board of Education. Of the present 18 members of the Governing Board, only seven were "elected".

We can add also that the Ford Foundation arranged this election which was never authorized by the board of education and that Ford Foundation funds were used to pay as election consultants, 17 individuals in the district, from \$39 to \$100 a week. Seven of these consultants got themselves elected as governing board members and continued to receive payments.

As Martin Mayer, in his New York Times report, states:

Community control is not an intelligent description of a situation in which the community representatives are on a fluctuating and secret payroll controlled by the very staff that they are supposed to be controlling.

Mr. Mayer continues:

• • • The Ford Foundation • • • released a pending grant for the benefit of Ocean Hill-Brownsville at the end of May (and moneys from that grant were paid continuously to the governing board and some of its members as individuals through all the suspensions imposed by the Board of Education and the Commissioner).

Everyone is aware of the Ocean Hill-Brownsville governing board's defiance of the central board of education. Its refusal to abide by the rules and regulations of the city school system, and its refusal to accept the decisions of Judge Francis Rivers, Mayor John V. Lindsay, and State Commissioner Allen (all of whom stated that the governing

board did not have the power to discharge or to transfer the teachers in question) precipitated the teachers' strike this fall.

The previous center of serious conflict in the city schools had been the IS 201 complex, whose activities were also financed by the Ford Foundation. That confrontation involved an attempt to remove a principal forcibly purely on the basis of race. The demonstrations there temporarily subsided until this year, when a new eruption took place at PS 39 Manhattan, one of the IS 201 feeder schools. This situation, also involving street demonstrations and threats to the safety of teachers, may be escalated by activities in that area at this very moment.

Ever since McGeorge Bundy and Mayor Lindsay collaborated on their own type of school decentralization plan, the Ford Foundation started to invest heavily in every influential organization or institution connected with the field of education, with the exception, of course, of the United Federation of Teachers, whose own decentralization plan was based on a completely different framework.

WCBS-TV, in its 6 p.m. news report on Monday, November 11, during the fall's school crisis, stated the matter clearly:

On Friday we reported the controversy surrounding the Ford Foundation and its relationship with several key figures in the school dispute.

It was noted, for example, that Dr. Kenneth Clark, a member of the influential Board of Regents of New York State, also heads a research center which has received a half-million dollar grant from Ford.

It was noted that School Board President Doar and Board members Galamison and Vazquez head projects outside the school system that have also received substantial Ford grants.

Also, that still another Board member is seeking a Ford grant, for a project not related to the school dispute.

Private organizations such as the Public Education Association and the United Parents Association which have taken stands on decentralization have also received Ford money.

The Foundation has repeatedly branded as "preposterous" any implication that those involved were—in any way—influenced by Ford in their conduct of the strike negotiations.

There is this basic question: Is there a conflict of interest when a school board member, for example, heads an outside organization that gets Ford money at the same time he plays a key role in the battle over Ford-supported decentralization?

Ford President, McGeorge Bundy says: Anyone who knows the gentlemen in question knows they are of independent mind.

It should be pointed out that Mayor Lindsay—not the Ford Foundation—appointed these men to the school board.

Presumably, Mr. Lindsay knew of their relationship—direct or indirect—with the Foundation.

Since all of them were already deeply committed to decentralization, the argument is that there was no need to exert influence—and that under no circumstances would influence have been exerted anyway.

What seems clear is that the influence of the Ford Foundation played a key role in getting decentralization off the ground. Mr. Bundy, as a private citizen, drew up the decentralization plan that the Mayor—with some revisions—accepted. Then, as a Foundation executive, he helped implement the Foundation's financial support to the project—a support which dramatically helped to speed up the decentralized process.

Today, Mr. Bundy admits that the "process" went too fast in Ocean Hill-Brownsville.

The intense interest of the Foundation in the decentralization experiment, plus its relationship with public officials implementing the experiment has spurred questions of conflict-of-interest.

Whether such a conflict exists or not, it appears that the appointments insured that the Ford Foundation point of view on strong decentralization which the Mayor also favors—would triumph.

The question hangs over the entire school dispute: Should so many parties to the dispute—so many school board members and appointees of the Mayor—be the recipients of funds from a private foundation operating outside the city government, at the same time that they are charged with finding a solution to the most critical educational crisis the city has ever faced?

The Ford Foundation's grant to Rev. Milton Galamison deserves special mention here today. Reverend Galamison's—a vice president of the current school board—operation was supposed to foster parent-teacher cooperation. But the grant did anything but that. In the October issue, the SCOPE Bulletin published by Galamison's organization, stated on page 1:

If the price of settlement is military occupancy of Ocean Hill-Brownsville, make certain the Mayor and the UFT know that huge quantities of police will be needed in every Black and Puerto Rican section of city before community control can be suppressed.

Also on page 1 is a call to all local families to set up rump school boards:

Set up your own community district lines and begin to schedule your local elections so that you can choose your own governing board.

That same issue also urges activists to decide which teachers, custodians, and supervisors should be "transferred" out of the school district * * * (not exactly designed to build bridges between teachers and parents!)—and this is all from the Ford Foundation funds.

On November 4, SCOPE put up a picket line in front of UFT headquarters. In preparation for that demonstration, the organization set out a mailing urging attendance at the picketing. The envelope has the return address of SCOPE, 260 Jefferson Avenue, Brooklyn, N.Y., and a 6-cent stamp postmarked November 1, 1968. Obviously, Ford Foundation funds were used by Reverend Galamison to engage in antiunion activity and political propagandizing. Further, a SCOPE staff member, Anne Stein, today has an office at board of education headquarters and attends key meetings representing Reverend Galamison on board of education matters.

At the present time, on the West Side of New York, the Ford Foundation is financing another "experiment." My understanding is that \$30,000 has already been invested in the campaign to have a rump local board recognized in the Joan of Arc complex area, against the opposition of many parents.

Wherever the Ford Foundation enters the arena of community-school relations, instead of sensible proposals for change based upon the needs of the children, we seem to be faced with confrontations—people standing at the school door and barring the way to school employees. Instead of suggestions for meaningful change based upon teacher-parent-university cooperation and research, we get little "revolutions" by extremists who are more interested in political power than in educating children.

We feel that the Ford Foundation, like other great tax-exempt foundations, has an important role to play in providing funds for many worthwhile activities and philanthropies, but we believe that Federal guidelines must be set so that tax exemptions will be granted only to those foundations that do not operate in the political arena.

"Revolutions" may or may not be desirable in given instances, but we tend to doubt whether they should be federally funded.

The CHAIRMAN. Does that complete your statement?

Mr. SANDERS. Yes, sir.

The CHAIRMAN. We thank you, sir, for coming to the committee and bringing us this expression of your views.

Mr. GIBBONS. The witness has an interesting statement here. I wish the Ford Foundation people were here to answer it.

The CHAIRMAN. Mr. Burke, while he was in the chair, asked that these witnesses remain.

Mr. GIBBONS. I wish we could get them back. I think something has been leveled at them which I have been worried about for a long time, and that is the financing of this anarchy not only in New York, not always by the Ford Foundation, but sometimes under Federal Government participation.

I think certainly no tax-exempt organization should get involved in political operations, but they certainly should not get involved in this kind of operation.

The CHAIRMAN. We will get that information in executive session. We will find out much about who was financed by whom.

Mr. SCHNEEBELI. On page 3 you say the Ford Foundation started to invest heavily in every influential organization, et cetera. What would you approximate they spent?

Mr. SANDERS. I don't know. I think I recall that the United Parents Association and the PEA both received grants. I am not sure of the exact total.

I think one relatively small, in the neighborhood of \$20,000, but I think the other one was over \$100,000 but I don't know the exact amount. I have this information in my files.

Mr. SCHNEEBELI. Could you compile that information for us?

Mr. SANDERS. Yes, I certainly could.

(The following was received by the committee:)

WHERE FORD FUNDS GO IN OCEAN HILL

(By Timothy Lee)

The Ford Foundation is granting the Ocean Hill-Brownsville school district \$193,519 this year for a variety of programs ranging from work experience for teenagers to reading projects for children, a survey by the New York Post revealed today.

Most of the money—\$175,519—comes out of a \$905,000 foundation grant to the Institute for Community Studies at Queens College. The institute received the foundation grant to funnel money to the three decentralization projects in the city—the two others are Two Bridges and IS 201 in Manhattan—and to evaluate the decentralization programs here and in the rest of the country.

A separate project worth some \$18,000 was funded by the foundation through the Board of Education's industrial arts program and involved supervised teenagers in renovating a city-owned building in Brownsville to gala work experience.

The central board and not the foundation pays the \$30,000 salary of Rhody McCoy, the district's unit administrator, the salaries of his staff and the rent for his offices in the Atlantic Plaza Towers, a high-rise apartment complex at 249 Hopkinson Ave.

The district received \$39,405 to conduct a nine-week reading program for children that also trained licensed teachers in the latest methods of reading education. The program was directed by three supervisors from the Behavioral Research Laboratories of Palo Alto, Cal., who selected the staff.

WHERE MONEY WENT

The program included a week of preliminary testing and placement for 180 community youngsters ranging from kindergarten to the eighth grade. When they were placed in classes at their reading level, regardless of their age, the children were taught for eight weeks by 16 teachers from the district, assisted by 12 "para-professionals"—parents from the community working as teacher aides, some of whom were bilingual to help the Spanish-speaking students.

The teachers received \$9.15 an hour for a three-hour day, or \$137.25 a week, for eight weeks. The teacher aides received \$2.50 an hour, or \$37.50 each a week for nine weeks. A secretary was paid \$4.85 an hour during the length of the program for a total of \$654.75. Other costs included student supplies of \$3500, staff supplies of \$1000 and a special material for the experimental program worth \$7000.

Some of the students showed no progress, but others advanced from no reading skills at the kindergarten level to second-grade reading ability, according to Eduardo Braithwaite, the district's assistant administrative director for curriculum. The Board of Education now plans to use the project in other districts.

STAFF SALARIES

Through the Queens College Institute, the district also received \$20,002 for a seven-week program to teach 160 children between 5 and 12 years old to read, write and speak Spanish. The children were from families where the parents know Spanish as their first language but fail to emphasize it with their children, according to Luis Fuentes, the project director, who is also principal at PS 155 in the district.

Fuentes says he is "happy with the results but still not ready to make conclusions" about the project.

The district's 10-month school-year projects include a \$92,612 training program for school community workers. The project, funded quarterly at \$23,153, pays 16 trainees \$30 a week for a 30-hour week to refer the parents of the district's school children to government services they are eligible to receive, such as medicaid, medicare, welfare and Social Security.

UNION PARTICIPATION

The trainees, chosen by the district's governing board and school principals, divide themselves into teams of two for each of the eight schools in the district and "explain to the children's parents the importance of their involvement and participation in community control and their relationship to the schools through their children," according to Walter Lynch, the district's community liaison director.

Other costs in the program include a training coordinator at \$300 a month, a secretary at \$100 a week, accounting and legal fees at \$2,200 a year, and supplies at \$770 a year.

Lynch is paid \$10,500 a year by the city Human Resources Administration for running a community center at JHS 271 in the district from 2 p.m. to 10 p.m. daily. He says he has been serving as the district's community liaison director without salary since last November, but hopes to be appointed to the same position by the central board at a salary of \$12,000 a year.

A spokesman for the central board said Lynch is not included in the district's payroll. He added that a recent resignation from the administrative staff at Ocean Hill-Brownsville leaves an opening that Lynch may fill. Lynch says if he is appointed by the central board he will take a leave of absence from his HRA job.

TRAIN THE BOARD

The district is also receiving \$15,800, funded quarterly at \$3950, for a continuing program to train governing board members. The quarterly cost includes \$290 for a consultant, \$150 for a part-time secretary, \$750 for legal and accounting fees and \$30 monthly travel expenses for the 19 members totaling \$2850.

The district's quarterly newsletter put out under the supervision of the governing board, is funded at \$4700 a year, or \$1175 quarterly. The quarterly costs include \$400 for a coordinator, \$200 for a secretary-typist, \$500 for paper and supplies and \$75 for rental and duplicating equipment.

The district can receive perhaps \$100,000 more from the \$905,000 fund, according to Dr. Marilyn Gittell, director of the Queens College Institute, depending

on whether additional budgeted project proposals are submitted. The institute keeps one of its program experts in the district to help prepare budget proposals.

The \$18,000 work experience project was a summer program funded last July and administered by the central board's industrial arts center. The 22 youths were paid \$1.50 an hour while they worked under the supervision of two licensed shop teachers and eight experienced workmen from the community.

A central board official who was close to the project said "most of the money spent went toward material and equipment," but declined to comment further until School Supt. Donovan reads and approves the project report. He said the superintendent "just hasn't had time to do that" because of the controversy over the district. The official added, however, that not all of the money was spent and said some \$6000 would be returned to the Ford Foundation when the report is approved.

NEWS FROM THE FORD FOUNDATION

FOR RELEASE 6 A.M. SATURDAY, MAY 18, 1968

(For further information: Richard Magat, home phone: (914) MO 4-7078)

NEW YORK, MAY 18.—The Ford Foundation today announced five grants totaling \$406,000 for programs in New York City to advance parent-teacher collaboration and to increase public understanding of issues in the New York City public schools and for efforts nationally to overcome tensions in urban and suburban schools. They are:

Siloam Presbyterian Church in Brooklyn, \$160,000 for its SCOPE (School and Community Organized for Partnership in Education) project, which deals with a range of activities from tutoring and student government to the use of VISTA volunteers. (Details on page 3.)

United Parents' Associations, a 400,000-member New York City group, \$101,100 for its field work to increase parent involvement, both in low-income and middle-class neighborhoods. (Details on page 3.)

University of Michigan, \$157,500, for pilot efforts by its Center for Research on Utilization of Scientific knowledge in seven conflict-ridden high schools to test approaches to overcoming tensions and advancing student-school-community understanding.

Program for Action by Citizens in Education (PACE), Cleveland, \$41,000 for an expanded human-relations project in Greater Cleveland area school districts. (Details on page 5.)

Public Education Association (New York), \$7,000 for communications efforts to improve public understanding of issues and developing programs in the New York City schools. (Details on page 4.)

"The concept of public participation in public education is deeply imbedded in the American tradition, but it has been only dimly realized in modern urban education," McGeorge Bundy, president of the Foundation, said in announcing the grants.

"Now in many parts of the country efforts to restore this tradition and apply it to today's urban school problems are now under way. New York City, because of the Board of Education's efforts toward decentralization and because of legislative proposals to increase parental awareness and participation in the education process, is in the forefront. New York City parents are likely sooner or later to have a greater say in the affairs of the public schools.

"Parents and teachers will learn to live together, but what is quite as important is that they learn how to work together—to overcome alienation, prevent misunderstanding, and to transform the schools into true community institutions that are constructive centers of hope. What matters far more than one another's portion of responsibility and control is what they do in tandem to improve the education of the school children. In this task, good will is indispensable, but not ever, thing. The hard tasks of organizing for effective education, of stimulating parent awareness of the need for participation and responsibility in the education of their children, of preparing both professionals and parents to combine their energies—all this requires special training, joint planning, consultation, and technical resources, and these grants are intended to facilitate that process."

The **Siloam Presbyterian Church**, whose minister is the civil rights leader Rev. Milton Galamison, will use its grant to support Project SCOPE for a one-year period. The project seeks to enhance communication and cooperation among

teachers, parents, and other community residents and organizations. It will conduct workshops in up to ten ghetto neighborhoods on such subjects as school discipline, suspensions, tutoring and testing. The workshops will also engage students in discussions of such matters as vocational and career opportunities and student government. The project is seeking to enlist universities and VISTA volunteers in the effort to draw parents and school professionals closer together. Rev. Galamison, who will direct the project, also is a consultant on urban education and civil rights at Yeshiva University. The project has an advisory board of specialists in education and community affairs.*

The *United Parents Association* grant will enable the group to expand its field staff into some twelve offices around the city. Together with UPA headquarters, field workers will help parents at the individual-school level, through parent education, leadership development, and work with school principals and teachers to initiate or strengthen interaction between parents and professionals. The effort will include study groups, training in discussion and negotiation skills, and programs and materials to help parents better to deal with curriculum development, standards, testing methods, budget analysis, legislation, and selection of textbooks and personnel.

UPA's prior experience in operating special programs includes its Community Action Self-Help program in disadvantaged areas, for which it received Office of Economic Opportunity funds.

The *Public Education Association* grant will support three to four months of planning for activities designed to acquaint a variety of agencies outside the city's ghettos—including business, labor, and civic organizations—with such issues as school-community relations, the roles of professional educators and laymen under a system of increased parental participation, and the needs and opportunities for resources to assist school improvement programs. The program will include weekly seminars and field trips for citizens whose knowledge of ghetto neighborhoods is limited, conferences, and workshops. The Public Education Association is a citizens group that has conducted programs and studies of such issues as school integration, vocational education, decentralization, school financing, school volunteers, and all-day neighborhood schools.

The grants for the Cleveland program and for pilot programs throughout the country by University of Michigan scholars are directed to exploring ways of improving student-school relations. The projects are seeking means of influencing personal attitudes of teachers, students, administrators, and community residents—particularly in urban Negro neighborhoods but also in suburban school systems where school-student hostility or conflict also exists.

Problems range from open conflict and alienation from learning to mistrust between students and educators. The causes, educators and other observers believe, arise not only from differences between adolescents and adults but from local and national events and issues. Other causes are said to lie in a neglect of human relations in school problems, rigid educational procedure, weak counseling, and the use of force in school crises. Among the results are alienation, withdrawal, disruption of school activities, and a disbelief in education as a means of alleviating personal and social problems.

While the most dramatic instances of conflict in the secondary schools occur in interracial urban situations tensions have arisen in several suburban school systems as well.

PACE, a private Cleveland group, will use its grant to expand a human relations project it began last year in Cleveland high schools. The program has developed instructional films and other materials on such subjects as self-examination, and tolerance, poverty, race, and other current social problems. PACE will conduct a summer training program for public and parochial school teachers in Cleveland and surrounding school districts. The program may become part of the regular teaching training at Cleveland State University, where it has been conducted. It will also establish a resource center of appropriate books, films, and other teaching materials.

*Mrs. Annie Stein, staff research associate for the Center for Urban Education; Dr. Max Wolff, senior staff sociologist for the Center for Urban Education; Mrs. Rae Hendrix, field coordinator of Metropolitan Urban Services Training; Dr. Preston Wilcox, staff associate and educational affiliate for the Bedford Stuyvesant Development and Services Corporation; Dr. J. Oscar Lee, director of education for the National Conference of Christians and Jews; and Chester Fulmer, chapter chairman for the United Federation of Teachers and English Department teacher at James Madison High School.

The Michigan center group, which includes specialists in public education, adolescence, and race relations, will test a number of approaches in some seven conflict-ridden high schools in various parts of the country. The aim is to help the schools reach a more positive perspective on their problems.

The approaches will include intensive training in problem-solving with teams of teachers, students, and administrators; new forms for decision-making within schools to include faculty, students and administrators; the enlistment of police, religious, business, and ethnic leaders in improving school-community relations; curriculum units on interracial and intergenerational conflicts in high schools, and conferences among parents, faculty, administration, and students. The program will include training of faculty teams during vacation periods, and the Center will also make its resources available to other school systems in which trouble breaks out.

THE FORD FOUNDATION AND THE NEW YORK CITY SCHOOLS

1. The Ford Foundation has had a major interest in improving public education ever since the Foundation became a national institution in 1950. The record of the Foundation in contributing to a wide array of improvements, innovations, and experiments throughout the country is long and well established.

The Foundation's interest has included grants related to the New York City public schools—both before and since the decentralization experiments began. Before decentralization, for example, the Foundation had granted the Board of Education and colleges and universities in the city a total of \$4.2 million for such activities as development of a new curriculum for comprehensive high schools, testing and development of programmed instruction, the school-volunteer program, a work-study program to prevent school dropouts, and experiments in pre-school education. In addition, some 200 college scholarships have been awarded to New York City high-school students through the National Merit Scholarship Corporation.

Since and apart from its support of the experiments in community participation, the Foundation has granted additional funds for such programs as coordinated curricula for secondary schools and strengthened training of teachers, principals, and other administrators in New York City.

In recent years the Foundation's concern with education has focused largely, though not entirely on educational opportunity for disadvantaged youth, especially in low-income Negro sections of the cities. The latest, and one of the most promising, approaches to improving the education of such youngsters, is a movement toward greater parent participation in the education process. This movement seeks a closer partnership between the parties closest to the child—the parent and the teacher—designed to improve pupil motivation, to relate the school program more closely to the needs and environment of the children, and generally to strengthen community awareness of its stake in the school system and its responsibility in supporting and complementing professional efforts. In a sense, it represents a revitalization of a concept traditional in American society—governance of public education by the immediate community.

2. The experimental projects the Foundation has assisted in the Ocean Hill-Brownsville area of Brooklyn and in two other communities in the city—East Harlem and the Lower East Side—are being conducted under a Board of Education policy approved in May, 1967, for the establishment of experimental projects designed to "... improve the instructional programs for the children in the schools concerned by bringing the parents and community into a more meaningful participation with the schools."

Preliminary to Foundation grants for the three demonstration projects, full discussions were held among Foundation staff members, the Superintendent of Schools, members of the Board of Education, and community groups. The pilot projects were approved in principle by the Board of Education prior to the Foundation's first grants.

3. The Foundation's grants directly to the experimental districts began in the summer of 1967. It is important to note that the grants were initially to enable the experimental school clusters to prepare plans for submission to the Board of Education. Supplemental grants were for technical assistance and for costs in conducting elections of the governing boards of the experimental districts.

The teachers and administrators in Ocean Hill and the other districts are appointed and paid by the Board of Education, not the Ford Foundation.

The community groups engaged in the experiment used the grants for such purposes as consultants, community education, and training institutes for parents, teachers, and school-community workers. The districts' plans were prepared, submitted to the Board of Education, and approved. The grants, totaling \$181,000 (\$59,000 for the Ocean Hill project) have now been completed and all funds spent.

Regarding its grants to the experimental school districts in New York City, the Foundation believes that all conditions have been met by the grantees. The recipients have filed the required reports and financial accounts, and the Foundation's judgment is that the recipients have worked conscientiously to fulfill the terms of the grant.

4. Since the grants to the demonstration districts were concluded, the Foundation has continued to underwrite efforts to combine the energies of parents and teachers in New York City toward school improvement. The largest of several grants it has made went to the Queens College Institute of Community Studies for technical assistance to the three districts and to future decentralization experiments in the New York City public schools. Any funds Queens College may give to the experimental school clusters are for particular projects, and not for regular teacher and administrator salaries or operating expenses; as noted earlier these are paid by the Board of Education. Projects for which Queens College has to date given funds to the Ocean Hill-Brownsville experiment are a bilingual summer school, training and employment of school-community workers, training of teachers and teacher-assistants as teams in a special reading project, a newsletter, training of governing board members, and a community summer day camp.

The other subsequent grants have gone to Project Scope (School and Community Organized for Partnership in Education), which deals with a range of activities from tutoring and student government to the use of VISTA volunteers; to the 400,000-member United Parents' Association, for field work to increase parental involvement, both in low-income and middle-class neighborhoods; and to the Public Education Association, for communications efforts to improve public understanding of school issues and community participation programs, including conferences, workshops, and weekly seminars and field trips for citizens whose knowledge of ghetto neighborhoods is limited.

5. In common with many scholars and students of educational trends, the Foundation believes that growing community participation is a promising development in American education. It hopes the pilot projects in New York City succeed, and it is encouraged by many developments—by the Legislature's action in permitting grants of authority to community boards of education, by the innovative efforts already undertaken in the projects, by the strengthened morale of parents, pupils, and many teachers in the districts; by the districts' ability to attract highly-trained and motivated young teachers, and by other evidence of constructive developments that bid fair to advance the basic purpose of these experiments—improvement in the educational achievement of the pupils.

The controversy and conflict that have attended the development of decentralization are unfortunate. On the other hand, it must be recognized that attempts to advance from the status quo are more likely than not to produce some friction; that is in the nature of change and experimentation. Conflicts arose earlier both in the East Harlem and Lower East Side districts and were resolved. Differences may occur again in these or other parts of the school system, but it is worth remembering that the New York City schools were beset by serious conflicts even before the decentralization experiments. In fact, there is strong reason to believe that decentralization and greater community participation will have the net effect of reducing tensions and strengthening school-community and parent-teacher collaboration.

6. With regard to the present controversy over the Ocean Hill-Brownsville experiment, the Foundation believes that the dispute must be settled among the principal parties: the union, the Board of Education, and the community governing Board, and that full attention is being given the situation by constituted authorities, including the Mayor, the State Commissioner of Education, and the courts. Only because there have been implications to the contrary does the Foundation feel compelled to state again that all concerned—including both the union and the authorities of Ocean Hill-Brownsville—make their decisions independently of the Foundation.

7. As to racism, which has been raised as an issue in disputes over school decentralization in New York City, the Foundation's position and actions are clear and on the open record. In his Annual Report for 1967, the president of the Foundation drew a careful distinction between legitimate militancy and the few, black and white, who intend to live by hate and fanaticism.

When racism was raised as an issue earlier this year in another of the pilot projects, it declared, "The Foundation is unalterably opposed to racism in any form and in any forum."

And over the years, the Foundation has granted substantial funds to combat prejudice and discrimination, promote intergroup and interracial understanding and cooperation, through support for such organizations as the National Council of Churches, the National Committee Against Discrimination in Housing, the National Conference of Christians and Jews, the American Jewish Congress, the National Catholic Interracial Council, the American Council for Nationalities Service, the Chicago Conference on Race and Religion, and the United Church of Christ.

Mr. CORMAN. Are you familiar with Martin Mayer's article?

Mr. SANDERS. Yes, I am.

Mr. CORMAN. Are they accurate?

Mr. SANDERS. Aside from a few minor details, yes.

Mr. CORMAN. How does the New York Board of Education come into existence—is that an elected body or appointed?

Mr. SANDERS. It is appointed by the mayor.

Mr. CORMAN. This is headed by John Doar?

Mr. SANDERS. That's right.

Mr. CORMAN. They are the board of education for the entire city, and they, under State law, can authorize decentralization?

Mr. SANDERS. This was some time afterwards.

Mr. CORMAN. The primary thrust was before—

Mr. SANDERS. Authorization by the board of education. The same thing has happened in the Joan of Arc complex just mentioned. In the Joan of Arc complex an election was held also under the auspices of a Ford Foundation funneling agency, which now has another rump board which is seeking recognition from the board of education.

The CHAIRMAN. Does that mean there is liable to be another strike?

Mr. SANDERS. This is a question of structure and the UFT would not strike over what type of structure is adopted. What we are interested in basically and what we were presented with was a problem of people just being thrown out of jobs without hearings. That was our concern in that instance.

The CHAIRMAN. I am sorry I did not get to hear all of your statement, but I will read it.

Did you share the viewpoint of the previous witness that Ford Foundation money involved in this so-called election and this effort in that area precipitated the strike that occurred?

Mr. SANDERS. The money certainly helped because the election created a board and allowed the board to operate without the proper sanctions. I think also the board of education let it happen and there was widespread responsibility on the part of many officials, who just didn't want to step in and do anything when it came time to act.

So there were a whole variety of factors.

Mr. CORMAN. Do you know who financed the work that went into the original Bundy Report on School Decentralization?

Mr. SANDERS. No, sir, but I understand that Ford Foundation personnel were the ones who wrote the report.

The CHAIRMAN. Mr. Burke?

Mr. BURKE. How many schooldays did the children lose in the strike?

Mr. SANDERS. I think approximately 35.

Mr. BURKE. How are they going to make that up?

Mr. SANDERS. We have scheduled with the Board of Education for a series of makeup days. In addition to that, the students and teachers are staying an extra 45 minutes for several months in order to make up the time. Those are the two ways.

Mr. BURKE. What is the required number of days?

Mr. SANDERS. I think approximately 8 or 9 extra days and several months of extra 45-minute periods.

Mr. BURKE. I mean the total amount of days that the school is supposed to be open in New York City.

Mr. SANDERS. The State regulation is 180. The school year in New York City is a little longer than the rest of the State normally.

Mr. BURKE. That is all, Mr. Chairman.

Mr. CONABLE. You are objecting to the way the teachers were dismissed. You are not opposed to decentralization, as such, under all circumstances?

Mr. SANDERS. No. We are not. We have a decentralization plan of our own. We were concerned not with whether you have decentralization. In this particular instance what we are concerned with is the use of tax-exempt funds to further a political operation, whether we agree or disagree with it.

The reason for the action that we were forced to take was the fact that people were thrown out of jobs and what we asked for was a hearing. We said, "Let's have a hearing, if the teachers are guilty of anything, then you have a perfect right to punish them. If they are innocent, then they return to their jobs."

Finally a hearing was held. That was in, I believe, May—the end of May or early June. Judge Francis Rivers, a retired city judge who was the trial examiner, ruled that each of the 10 teachers were innocent, that there were no substantial charges against any of them and that they just didn't stand up, but the local governing board refused to accept them back. They didn't accept the decision of the judge.

Mr. CONABLE. That is all.

The CHAIRMAN. Are there any further questions?

We thank you again, Mr. Sanders.

Mr. McKean, will you identify yourself for the record. We will be glad to recognize you, sir.

STATEMENT OF JOHN F. McKEAN, NEW YORK, N.Y.

Mr. McKEAN. Mr. Chairman, gentlemen, my name is John F. McKean. I am from New York City and represent 1,420 people who have signed petitions asking for an investigation of the tax exemption of foundations. I am also chairman of the committee to relocate the U.N. development, which represents 8,000 residents of the area near the United Nations in mid-Manhattan.

THE FOUNDATIONS IN POLITICS

Briefly my position is that tax-free foundations in the United States with billions of dollars at their disposal, are gradually, but with ominous acceleration, usurping some of the functions of elected officials of the city, State and Federal Governments.

FORD FOUNDATION ACTION

In my own neighborhood, the Ford Foundation is seeking, without the consent of the voters, to reshape an area which now houses middle-income citizens.

Let me present the case history. Two years ago Ford Foundation and the Rockefeller Brothers Fund granted \$100,000 to an organization set up by them called the "Fund for Area Planning and Development" to plan for the growing space needs of the United Nations. This fund proceeded to draw up plans for an area across the street from the U.N. Meanwhile, the Ford Foundation, starting on September 30, 1966, and continuing at least until April 30, 1968, quietly purchased nine parcels of real estate in the area costing \$5.7 million.

Last June (nearly 2 years after Ford Foundation started to buy the property) the New York State Legislature passed a bill authorizing the project.

Last month the UN Development Corporation was formed with power to secure private financing through a bond issue, and to acquire further property through condemnation.

All of this is for a project consisting of two 14 story towers of luxury hotel apartment space, some offices, a shopping concourse, and a bus terminal for UN visitors. In short, a major real estate deal, using the UN to make it look community minded and hands across the sea.

A POLITICAL DECISION

The important point is this. Who made the political decision? Was it the Ford Foundation or the New York State Legislature? Who decided whether the residents will continue to live there or whether a project was to be built? I submit that this was a political decision made by the Ford Foundation.

It may be, too, that your committee will wish to look at the use of foundation money to influence decisions abroad. I urge this particularly because the March 26, 1968, report of Representative Wright Patman, chairman, Subcommittee No. 1 of the Select Committee on Small Business, deserves to be followed up. In his letter of transmittal, Congressman Patman reveals that the Ford Foundation "made direct grants in U.S. dollars to at least 25 foreign governments during the period January 1, 1965, to September 30, 1967."

FOREIGN GRANTS

What did the Secretary of State or the President have to say about these grants? Were they in line with the foreign policy of the Nation? We don't know. All we know is that the grants were made by a small group of men on East 42d Street in New York City, and that these men are today headed by Mr. McGeorge Bundy, a gentleman whose advice and judgment on foreign affairs might be questioned.

The granting of money to foreign nations by decision of a foundation was political. It was political because at the very least it helped keep incumbents in these countries in office. I do not say that they were good or that they were bad. I merely suggest that for a foundation to send them money was a political act and, therefore, improper.

INFLUENCE ON ELECTIONS

I am sure you are familiar with the report of Congressman Rooney of New York (as printed in the Congressional Record of July 1, 1968) of the use of foundation money to attempt to unseat him. Congressman Rooney reports that a wealthy man, deciding to enter politics, set up a tax-exempt foundation. Then with the help of his friends, he loaded the foundation with money, deducting contributions as charity.

Then, Congressman Rooney reports, the candidate spread this money around to well-established charities in the district, and hired a staff of campaign workers, paid with the foundation's money.

And, I submit it is not only by direct spending on campaigns that large sums of money can influence election results. For example, money spent to encourage voter registration is undeniably constructive. However, an informed person, by selecting the exact location where money is spent for voter registration, may very well influence election results, either to the left or to the right.

You are probably familiar with a grant by the Ford Foundation in 1967 in Cleveland for voter registration, and for other things. It was referred to recently in the New York Times on December 23, 1968.

That this can now be done by tax-exempt foundations is a menacing precedent.

FOUNDATION AIMS

The foundations tell us in their own words what their aims are. In the annual report of the Carnegie Corp. for 1968, the president, Alan Pifer, states that the foundations should include:

The encouragement and support of aggressive new community organizations which have sprung up as the result of social dissatisfaction, and which the comfortable stratum of American life would consider disturbing and perhaps even dangerous.

That, I submit, is political activity.

Describing the nature of the foundation, Mr. Pifer writes:

Unlike a business enterprise, it is not subject to the discipline of the marketplace nor, like public agencies, of the ballot box.

I could quote Mr. Pifer at length, but his report is available to the public. However, I would like to cite just one more of his sentences. "In short," he says, "it (the foundation) enjoys less constraint by the usual forms of accountability to society than does, perhaps, any other type of institution."

A GROWING PRECEDENT

It seems to me that your committee will wish to consider carefully whether institutions so free of public accountability should make

decisions affecting social change. I do not say past activities of foundations have on the whole been good or bad. What I do say is that you are faced here with a dangerous and growing precedent. Should these vastly wealthy independent bodies be permitted to continue affecting the lives of millions of citizens without ever having to face the voters or their elected representatives.

I have already referred to what Ford Foundation is doing in my own neighborhood by seeking to build an "International Quarter."

Promises have been made and repeated that no additional ground will be taken beyond the announced two city blocks, but we all know that such promises have the permanence of the cherry blossoms when incumbents go out of office, or conditions can be described as changed.

LEGISLATION REQUESTED

We have no objection to U.N. expansion. Indeed, we support all proper facilities for them, but in a location where people would not be displaced, and there are such locations available.

I believe your problem here is a serious one, and that you are the only effective body of appeal for those of us who still wish to live by the consent of the governed. I suggest that under present laws tax-free foundations are free to make political decisions, and that your committee may wish to consider tax legislation that will add to the Nation's revenue and keep the foundations out of politics.

The CHAIRMAN. We thank you for your statement, Mr. McKean. Are there any questions of Mr. McKean?

Mr. Gibbons?

Mr. GIBBONS. Do you know the real estate agents who got the property together?

Mr. McKEAN. No, sir; that has been a very carefully guarded secret.

Mr. GIBBONS. Was it George Comfort Co., Inc. to whom they pay \$12,000 or Murray J. Landmann and Associates, to whom they pay \$12,000, or the James Davies, Inc., to whom they paid \$12,000 for retainers?

Mr. McKEAN. They started buying in 1966 and the purchases go through 1968. I would be very much interested in that myself, but I have never been able to get the information.

Mr. GIBBONS. Apparently they list \$36,000 worth of retainers paid to real estate agents in connection with real estate deals and I just wondered what they were.

Mr. CORMAN. Do you know whether there are rights of condemnation to build hotels? Is this part of the state's authority?

Mr. McKEAN. It is only by special act of the legislature. They set up an entity which amounts to a Tunnel Authority. It is a city within a city with condemnation powers.

The CHAIRMAN. Are there any further questions?

If not, we thank you very much.

That concludes our list of witnesses for today. Without objection, the committee will adjourn until 10 o'clock in the morning.

(Whereupon, at 5:55 p.m. the committee adjourned, to reconvene at 10 a.m., the following day, Friday, February 21, 1969.)