

IMPROPER PAYMENTS BY PRIVATE FOUNDATIONS TO GOVERNMENT OFFICIALS

1947-3

HEARING BEFORE THE COMMITTEE ON FINANCE UNITED STATES SENATE NINETY-FIRST CONGRESS

FIRST SESSION

ON

S. 2075

TO DENY TAX EXEMPT STATUS TO PRIVATE FOUNDATIONS AND ORGANIZATIONS ENGAGING IN IMPROPER TRANSACTIONS WITH CERTAIN GOVERNMENT OFFICIALS, AND TO IMPOSE AN INCOME TAX OF 100 PERCENT ON INCOME RECEIVED BY SUCH OFFICIALS AND FORMER OFFICIALS FROM SUCH FOUNDATIONS AND ORGANIZATIONS

JUNE 4, 1969

Printed for the use of the Committee on Finance



U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1969

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IMPROPER PAYMENTS BY PRIVATE FOUNDATIONS TO GOVERNMENT OFFICIALS

WEDNESDAY, JUNE 4, 1969

U.S. SENATE,
COMMITTEE ON FINANCE,
Washington, D.C.

The committee met, pursuant to notice, at 10:05 a.m., in room 2221, New Senate Office Building, Senator Herman E. Talmadge presiding. Present: Senators Long (chairman), Gore, Talmadge, Hartke, Byrd of Virginia, Williams of Delaware, Bennett, Curtis, and Fannin.

Senator TALMADGE. The committee will come to order.

This hearing has been called to enable the Treasury Department and private foundations to advise the committee with respect to the tax policy and the practical effect of S. 2075. This bill, introduced by the Honorable John J. Williams, the distinguished Senior Senator from Delaware and the ranking minority member of the Committee on Finance, would deny tax exempt status to a private foundation which engages in certain improper transactions with a public official or which offers employment to a public official. The bill would also tax any amount a public official accepts from a private foundation at a rate of 100 percent.

At this point, let me insert for the record an explanation of S. 2075, a copy of S. 2075, and the committee press release announcing this hearing.

(The material referred to follows:)

(1)

SUMMARY OF S. 2075—IMPROPER PAYMENTS BY PRIVATE FOUNDATIONS TO GOVERNMENT OFFICIALS—PREPARED BY THE STAFF OF THE COMMITTEE ON FINANCE

General Purpose

The general purpose of this bill is twofold. First, to deny a tax exemption to any private foundation which takes part in an improper transaction (as described more fully in the following paragraphs) with a government official; and second, to tax amounts received by the government official from such transactions at the rate of 100 percent, whether payment is in cash or in the form of other assets.

Denial of Exemption to Private Foundations

The bill would deny tax-exempt status under Section 501(a) of the Internal Revenue Code to any private foundation which *directly or indirectly*—

(1) makes, or offers to make, any payment of money to a Government official or a member of his family in any form whatsoever, for any reason whatsoever;

(2) makes, or offers to make, any gift or contribution to or for the use of a government official or a member of his family in any form whatsoever, or makes, or offers to make, services or facilities available to a government official or a member of his family (unless such facilities are made available to the general public on the same basis as to government officials and members of their families);

(3) transfers or leases, or offers to transfer or lease, any property to a government official or a member of his family, or purchases or leases, or offers to purchase or lease, any property from a government official or a member of his family; or

(4) employs, or offers to employ, a government official or a member of his family, or retains, or offers to retain, the personal services of a government official or a member of his family (unless such employment or personal services are performed without payment of any compensation or fee whatsoever).

Tax-exempt status would be denied the foundation if it took part in an improper transaction while the government official was employed by the government or within two years of his departure from government service.

Tax on Government Officials

The bill provides that a tax equal to 100 percent of the net taxable income accepted by the government official from a private tax-exempt foundation, directly or indirectly, personally or through his family, would be imposed on the government official.

Definitions

The bill defines a private foundation as one granted an exemption under Section 501(c)(3) of the Internal Revenue Code that does not receive a substantial part of its support from the United States or local governments or the general public, the charitable contribution to which is limited to 20 percent of adjusted gross income.

A government official is defined as an individual who at the time of the improper transaction holds, or who has held in the preceding two-year period, a position as an (1) elected officer of the Federal, State or local government; (2) official in either the Executive, Legislative or Judicial branches, appointed by the President, and (3) official in any branch of the State or local governments who is appointed by the State Governor or is elected by the State legislature.

The bill defines a member of a government official's family as his spouse and his minor children.

Other Provisions—Effective Date

The private foundation would lose its exemption beginning with the taxable year in which it is notified by the Secretary that it has engaged in the improper transaction with the government official. It could not regain tax-exempt status thereafter in any other tax-exempt category covered by Section 501(a) of the Internal Revenue Code.

The tax on the government official becomes effective as of the date of enactment of the bill but only as to payments received after such date.

S. 2075

IN THE SENATE OF THE UNITED STATES

MAY 8, 1969

Mr. WILLIAMS of Delaware introduced the following bill; which was read twice
and referred to the Committee on Finance

A BILL

To deny tax-exempt status to private foundations and organizations engaging in improper transactions with certain Government officials and former Government officials, and to impose an income tax of 100 percent on income received by such officials and former officials from such foundations and organizations.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 That (a) part I of subchapter F of chapter 1 of the Internal
- 4 Revenue Code of 1954 (relating to exempt organizations)
- 5 is amended by adding at the end thereof the following new
- 6 section:

II

1 **"SEC. 505. IMPROPER TRANSACTIONS BY PRIVATE FOUN-**
2 **DATIONS WITH GOVERNMENT OFFICIALS**
3 **AND FORMER GOVERNMENT OFFICIALS.**

4 " (a) DENIAL OF EXEMPTION.—A private foundation
5 or organization shall not be exempt from taxation under sec-
6 tion 501 (a) if such foundation or organization, directly or
7 indirectly—

8 " (1) makes, or offers to make, any payment of
9 money to a Government official or a member of his family
10 in any form whatsoever, for any reason whatsoever.

11 " (2) makes, or offers to make, any gift or con-
12 tribution to or for the use of a government official or
13 a member of his family in any form whatsoever, or
14 makes, or offers to make, services or facilities available
15 to a government official or a member of his family (un-
16 less such facilities are made available to the general
17 public on the same basis as to government officials and
18 members of their families),

19 " (3) transfers or leases, or offers to transfer or
20 lease, any property to a government official or a mem-
21 ber of his family, or purchases or leases, or offers to
22 purchase or lease, any property from a government
23 official or a member of his family, or

24 " (4) employs, or offers to employ, a government
25 official or a member of his family, or retains, or offers

1 to retain, the personal services of a government official
 2 or a member of his family (unless such employment or
 3 personal services are performed without payment of any
 4 compensation or fee whatsoever).

5 “(b) PRIVATE FOUNDATION OR ORGANIZATION.—For
 6 purposes of this section, the term ‘private foundation or
 7 organization’ means any organization described in section
 8 501 (c) (3) which does not normally receive a substantial
 9 part of its support (exclusive of income received in the ex-
 10 ercise or performance by such organization of its charitable,
 11 educational, or other purpose or function which constitutes,
 12 or would constitute, the basis for its exemption under section
 13 501 (a)) from either—

14 “(1) the United States, a State, or possession of
 15 the United States or any political subdivision of a State
 16 or possession, or the District of Columbia, or

17 “(2) direct or indirect contributions from the gen-
 18 eral public.

19 “(c) GOVERNMENT OFFICIAL.—For purposes of this
 20 section, the term ‘government official’ means, with respect
 21 to a transaction described in subsection (a), an individual
 22 who, at the time of such transaction, holds any of the follow-
 23 ing offices, or who has held any such office at any time in
 24 the preceding 2-year period:

25 “(1) an elective public office in the executive or

1 legislative branch of the Government of the United
2 States,

3 “(2) an office in the executive, legislative, or ju-
4 dicial branch of the Government of the United States,
5 appointment to which was made by the President,

6 “(3) an elective public office in the executive,
7 legislative, or judicial branch of the government of a
8 State, or any political subdivision thereof, or of the
9 District of Columbia, and

10 “(4) an office in the executive, legislative, or ju-
11 dicial branch of the government of a State, or political
12 subdivision thereof, or of the District of Columbia, ap-
13 pointment to which (or election to which) was made
14 by the Governor or legislature of the State, or by the
15 Commissioner of the District of Columbia.

16 “(d) MEMBERS OF FAMILY.—For purposes of this
17 section, the members of the family of an individual are—

18 “(1) his spouse (other than a spouse who is legally
19 separated from the individual under a decree of divorce
20 or separate maintenance), and

21 “(2) the children (including legally adopted chil-
22 dren and stepchildren) of such individual who have not
23 attained the age of 21.

24 “(e) TAXABLE YEARS AFFECTED.—A private founda-

1 tion or organization shall be denied exemption from taxa-
2 tion under section 501 (a) by reason of subsection (a) for
3 all taxable years beginning with the taxable year during
4 which it is notified by the Secretary or his delegate that it
5 has engaged in a transaction described in subsection (a).

6 “(f) **DISALLOWANCE OF CHARITABLE DEDUCTIONS.**—
7 No gift, contribution, bequest, devise, legacy, or transfer,
8 otherwise allowable as a deduction under section 170, 642
9 (c), 545 (b) (2), 2055, 2106 (a) (2), or 2522, shall be
10 allowed as a deduction if made to a private foundation or
11 organization after the date on which the Secretary or his
12 delegate publishes notice that he has notified such founda-
13 tion or organization that it has engaged in a transaction
14 described in subsection (a).”

15 (b) The table of sections for such part I is amended
16 by adding at the end thereof the following new item:

“Sec. 505. Improper transactions by private foundations
with government officials and former govern-
ment officials.”

17 (c) The amendments made by this section shall apply
18 to taxable years ending after the date of the enactment of
19 this Act, but only with respect to transactions occurring
20 after such date.

21 **SEC. 2.** (a) Part I of subchapter A of chapter 1 of

1 the Internal Revenue Code of 1954 (relating to tax on
2 individuals) is amended by renumbering section 5 as 6,
3 and by inserting after section 4 the following new section:

4 **"SEC. 5. SPECIAL TAX ON INCOME RECEIVED BY GOVERN-**
5 **MENT OFFICIALS AND FORMER GOVERNMENT**
6 **OFFICIALS FROM TAX-EXEMPT PRIVATE FOUN-**
7 **DATIONS.**

8 " (a) IMPOSITION OF TAX.—In the case of a govern-
9 ment official, there is hereby imposed a tax equal to 100
10 per centum of the taxable income received by him or a
11 member of his family from a private foundation or orga-
12 nization which (at the time of receipt of such income)
13 is exempt from taxation under section 501 (a).

14 " (b) TAXABLE INCOME DEFINED.—For purposes of
15 subsection (a), the taxable income received from a private
16 foundation or organization is the sum of—

17 " (1) all income (including the value of services
18 or facilities, but not including income to which para-
19 graph (3) applies) received, directly or indirectly,
20 from a private foundation or organization, reduced by
21 the deductions otherwise allowable under this chapter
22 which are attributable to such income,

23 " (2) all contributions or gifts of money, property,
24 services, or facilities received, directly or indirectly,
25 from a private foundation or organization, and

1 “(3) all gain derived from the sale or exchange
2 of property, directly or indirectly, to a private founda-
3 tion or organization.

4 Paragraphs (1) and (2) shall not apply to services or
5 facilities furnished to a government official or a member of
6 his family if such services or facilities are furnished to the
7 general public on the same basis as to such government offi-
8 cial or such member.

9 “(c) PRIVATE FOUNDATION OR ORGANIZATION.—For
10 purposes of this section, the term ‘private foundation or
11 organization’ means any organization described in section
12 501 (c) (3) which does not normally receive a substantial
13 part of its support (exclusive of income received in the
14 exercise or performance by such organization of its chari-
15 table, educational, or other purpose or function which con-
16 stitutes the basis for its exemption under section 501 (a))
17 from either—

18 “(1) the United States, a State or possession of
19 the United States or any political subdivision of a State
20 or possession, or the District of Columbia, or

21 “(2) direct or indirect contributions from the gen-
22 eral public.

23 “(d) GOVERNMENT OFFICIAL.—For purposes of this
24 section, the term ‘government official’ means, with respect
25 to income described in subsection (b), an individual who,

1 at the time of receipt of such income, holds any of the fol-
 2 lowing offices, or who has held any such office at any time
 3 in the preceding 2-year period:

4 “(1) an elective public office in the executive or
 5 legislative branch of the Government of the United
 6 States,

7 “(2) an office in the executive, legislative, or ju-
 8 dicial branch of the Government of the United States,
 9 appointment to which was made by the President,

10 “(3) an elective public office in the executive, legis-
 11 lative, or judicial branch of the government of a State, or
 12 any political subdivision thereof, or of the District of
 13 Columbia, and

14 “(4) an office in the executive, legislative, or judi-
 15 cial branch of the government of a State, or political sub-
 16 division thereof, or of the District of Columbia, appoint-
 17 ment to which (or election to which) was made by the
 18 Governor or legislature of the State, or by the Commis-
 19 sioner of the District of Columbia.

20 “(e) MEMBERS OF FAMILY.—For purposes of this sec-
 21 tion, the members of the family of an individual are—

22 “(1) his spouse (other than a spouse who is legally
 23 separated from the individual under a decree of divorce
 24 or separate maintenance), and

25 “(2) the children (including legally adopted chil-

1 dren and stepchildren) of such individual who have not
2 attained the age of 21.

3 “(f) COORDINATION WITH OTHER TAXES IMPOSED BY
4 THIS CHAPTER.—

5 “(1) REGULAR INCOME TAX.—For purposes of the
6 tax imposed by section 1 or 1201 (b), income and de-
7 ductions described in subsection (b) (1) and sales and
8 exchanges described in subsection (b) (3) shall not be
9 taken into account.

10 “(2) TAX SURCHARGE.—For purposes of the tax
11 imposed by section 51, the tax imposed by this section
12 shall not be taken into account.

13 “(g) REGULATIONS.—The Secretary or his delegate
14 shall prescribe such regulations as may be necessary to carry
15 out the purposes of this section.”

16 (b) The table of sections for such part I is amended by
17 striking out the last item and inserting in lieu thereof the
18 following:

 “Sec. 5. Special tax on income received by Government of-
 ficials and former Government officials from tax-
 exempt private foundations.

 “Sec. 6. Cross references relating to tax on individuals.”

19 (c) The amendments made by this section shall apply
20 to taxable years ending after the date of the enactment of this
21 Act, but only with respect to income received after such date.

[Press Release]

For immediate release, June 3, 1969

FINANCE COMMITTEE HEARING ON PAYMENTS BY PRIVATE FOUNDATIONS TO PUBLIC OFFICIALS

The Honorable Russell B. Long (D., La.), Chairman of the Committee on Finance, announced today that the Committee would conduct a hearing beginning at 10:00 A.M. on Wednesday, June 4, 1969, on S. 2075, introduced on Thursday, May 8, 1969, by the Honorable John J. Williams (R., Del.), the ranking minority member of the Committee.

This bill would deny tax exemption to any private foundation (described generally as a religious, charitable, or educational organization which does not receive a substantial part of its support in the form of contributions from the general public) which makes a payment of any sort—or offers to make a payment—to a public official, his spouse, or minor children. For purposes of the bill, the term "public official" is defined to mean, (1) all elected officers of the Federal, State, and local governments; (2) all officials of the Federal Government, whether in the Executive, Legislative, or Judicial Branch, who are appointed by the President; and (3) all individuals in corresponding branches of State and local governments who are appointed by the Governor of the State or by election of the State legislature.

In addition to denying the tax exemption of the private foundation, S. 2075 would impose a tax on the individual who accepts payment from a private foundation equal to 100 percent of the amount accepted.

The Chairman advised that the hearing would be held in Room 2221, New Senate Office Building, and that a spokesman for the Treasury Department would be the lead-off witness. He indicated that spokesmen for a number of private foundations and associations of foundations would also testify at the hearing. Because of the shortage of time, however, a complete witness list would not be available before the hearing commences.

Chairman Long noted that in addition to receiving oral testimony, the Committee would be pleased to receive written reports from interested persons regarding S. 2075. Persons desiring to submit a statement for the record of the hearing should direct them to Tom Vail, Chief Counsel, Committee on Finance, no later than Friday, June 13, 1969.

Senator TALMADGE. We have a long list of witnesses who want to be heard today and I urge them to keep their statements short so that all who desire to testify will have an opportunity to do so.

The chairman was detained this morning because he is a witness at another committee hearing, and our first witness is the Honorable Edwin S. Cohen, Assistant Secretary of the Treasury for Tax Policy.

Mr. Cohen, you may proceed in any manner you see fit, sir.

STATEMENT OF HON. EDWIN S. COHEN, ASSISTANT SECRETARY OF THE TREASURY

Mr. COHEN. Thank you, Senator Talmadge.

It is a pleasure to have the opportunity to testify before the committee in my new position for the first time, and to present some thoughts with reference to S. 2075, as you have described it.

The statements that I will make and the points that I will refer to are my own, and have not yet been cleared with other branches of the administration. In view of the time interval since the announcement of the hearings, I have not yet been able to get clearance on a statement for the committee this morning.

However, to assist the committee in its consideration of the bill, I would like to indicate some of the questions that are raised by the bill and some of the possible solutions that might be offered.

Part-Time State and Local Officials

One point that should be carefully considered relates to the operation of the provision with respect to officials, particularly of State and local governments, who are not full-time officials and whose duties are not intended to be, and are not generally considered to be, those requiring full time attention. For example, some of the State legislatures, such as that in the State of Virginia, meet only for limited periods of time. Under the present Virginia constitution, except for special sessions, the legislature meets once every 2 years and the members of the legislature elected by the people are paid, as I understand it, \$35 a day for a maximum of 60 days, or \$2,100 spread over 2 years. There is naturally an assumption that, while these men devote their full time and attention to the affairs of the legislature during that 60-day period and are required to attend meetings of various committees in the interval, they may be lawyers, doctors, or businessmen and may have incomes quite obviously from other sources.

Now, I think you would want to consider the fact that under this bill, as presently drafted, it appears that no member of the State legislature who is a lawyer could receive a legal fee for any services rendered during the remainder of the year to a private foundation nor could he receive any reimbursement of travel expense. In addition, a doctor who is a member of the legislature apparently could not be the recipient of any grant from a private foundation, nor could his minor child be the recipient of a scholarship even though it might be won by the minor child in a statewide or nationwide competition. Moreover, the wife or husband of a member of the legislature could not receive any compensation or payment of any kind from a private foundation.

In many respects one can see why it might be desirable, if a private foundation has a matter pending before such an official, to prohibit his receipt of payments from the private foundation that might possibly be construed as having an influence upon his judgment.

On the other hand, in some of the instances that I referred to, the contact between the member of the legislature and a private foundation would be remote, and in some cases would not even be known to exist.

In addition to members of State legislatures there are a number of other public officials, particularly in State and local governments, who serve either part time or for such low compensation that it is generally expected that they should seek compensation from other sources. I think that, particularly in smaller, rural communities, the district attorneys or prosecuting attorneys are understood to be employed part time in their official position and can carry on a private law practice as well. Indeed, I believe this was even true of U.S. attorneys until about 10 years ago. Justices of the peace are another example.

In smaller communities, there are mayors who devote their time and attention to community affairs on evenings and weekends and have full-time employment by day.

Members of school boards are elected officials who, I think, would be covered by the bill, even though they are considered generally to earn their livelihood in other areas.

Some might feel that under some circumstances these people should not receive compensation from a private foundation. On the other hand, in many communities, and I have lived in one or two such communities, persons who are affiliated with private foundations are distinguished citizens in the community. Their advice and counsel is much sought after by the members of the community, and as a result they often serve on school boards or in other part-time governmental capacities. I think that it might be an unfortunate result if these men were barred from holding public office in their communities under this bill, and I would think that some exception ought to be allowed for such cases.

I am concerned that the word "office" as used in the bill might apply to someone in a temporary or consulting position. We have in the Treasury, for example, a very long list of consultants who we call upon from time to time for advice on difficult economic and legal tax problems. We bring them in for meetings from time to time, pay them a per diem compensation and pay their travel expenses. I am confident, although I have not examined the list, that some of our consultants might also be connected with private foundations or might be the recipients of grants from private foundations. I would trust that we would not be barred from consulting with these persons by virtue of this bill.

Senator WILLIAMS. Mr. Cohen, could I interrupt you at that moment?

Mr. COHEN. Yes, sir.

Officials Covered Under the Bill

Senator WILLIAMS. What section of the law covers these consultants? I mean what language in here covers these consultants?

Mr. COHEN. I am concerned, Senator, that consultants occupying a position on a commission appointed by the President, for example, might be included in the definition of "Government official" which appears on page 3, line 19 of the bill. Although I have not been the recipient of a grant and don't recall having had a travel expense paid by a private foundation, I have served on a Presidential Task Force in the past. I would assume that a person who is serving on a task force by appointment of the President or who is serving on a commission is not intended to be covered by the term "governmental official." I would trust that the term "Government official" would mean someone who is in a position with the Government on a full-time and long-term basis and not one who is a member of a commission.

Senator WILLIAMS. During the committee hearings in executive session the other day at which you were present—

Mr. COHEN. Yes, sir.

Senator WILLIAMS. You know some of these questions were raised, and a suggestion was made that, and we agreed we would strike out the words "or any political subdivision thereof" which would eliminate all of these mayors and school boards for which you were concerned. As I understand it you suggested also that we include language to list these as those who would be under schedule C, and appointments by the President would be covered, and we had agreed to that. So, with those changes do I understand you are for the rest of it? We have agreed

that we didn't want this to cover the school boards and such appointments as that.

Now, we didn't eliminate States' attorneys and the attorneys general, and personally I am not going to eliminate them. I can conceive of a great disadvantage if we did. For example, suppose a foundation is created by—and they could get permission under the Treasury—the members of the underworld. What better purpose could they direct their money than to put on their payroll the various attorneys general of the States or U.S. attorneys? We don't want that and we can see a great danger so I can say they will not be eliminated by any bill that I support.

Now, so far as the other persons you are talking about, the mayors and school board and all of these minor offices, even State legislators. I would have no objections personally if you want to exempt them.

We redefine the positions covered by the President to include those schedule C appointments, and, of course, the bill covers the Governors' appointments too, which would be in many cases State judges. I don't think you are suggesting that we eliminate those, are you?

Mr. COHEN. Senator, I remember the discussion in executive session regarding the school board members but I did not recall that there had been a decision made to delete references to political subdivisions. If that decision is made, then would the bill be limited to employee of the Federal or State Governments?

Senator WILLIAMS. That is correct.

Mr. COHEN. Then the questions I have raised would relate only to the members of the legislature. With respect to the question concerning justices of the peace or others, the answer would depend upon whether they had a State appointment or whether they were officers of local governments or political subdivisions.

Senator WILLIAMS. In our own State we have a lot of problems with the justice of the peace system. They were on the fee system, and just a few years ago we enacted legislation making them full-time employees of the State appointed by the Governor, and they serve a fairly respectable term of office. Certainly there is no reason why one of those should be on the payroll of any foundation. Why would they? Maybe I misunderstood the purpose of a foundation. I thought that the tax exempt status was given to foundations to enable them to assist and work in charitable ventures, is that not correct?

Mr. COHEN. The purposes also include educational ventures, which may not necessarily be charitable.

Senator WILLIAMS. That is correct.

Mr. COHEN. And it covers —

Senator WILLIAMS. What I was wondering if a member, if a U.S. attorney or a States attorney or a justice of the peace needs educating maybe we should educate him before we put him in office. We certainly don't want them to be objects of charity.

Mr. COHEN. I have no doubt of that, Senator.

Senator WILLIAMS. That is the reason that I wonder why you raised those as examples.

Mr. COHEN. I raised them as examples because of the broad impact of the bill. It applies not only to the official, but also to his family.

And the bill applies to the official not only while he is in office but for 2 years thereafter.

Senator WILLIAMS. And it should.

Mr. COHEN. Well, this will deny, to private foundations, access to services or the assistance of any of these public officials for 2 years after they are employed. It will prevent private foundations from paying travel expenses of officials to conferences at which their views may be desired, along with others. It would prevent the awarding of a scholarship, even though it is a competitive scholarship, to such persons regardless of their income.

Senator WILLIAMS. On this scholarship point, we, in discussing it in the committee, said where they were purely competitive contests, national, open to the sons and daughters of every American citizen on a competitive-basis, I am not trying to cover that. I am perfectly willing if the bill does cover it to amend that. There is no point on that because that has not been the problem.

Former Government Employees

But the official himself should be covered, or at least that is my own feeling. As far as the 2-year employment there was a precedent. Prior to World War II we had a law that prevented the employment of any public official by private industry or anyone where they could represent that industry before the agency with which they had been connected, and the separation period was 2 years.

For example, if that were in effect now neither you nor I would be able to testify before this committee for a period of 2 years for somebody nor would you be able to represent someone before the Treasury Department. Now, that was suspended during World War II on a temporary basis, and, of course, it is still temporarily suspended, supposedly. We haven't been able to reinstate it. But there is a precedent for that 2-year period.

Mr. COHEN. I realize there is some precedent for it, Senator, in some circumstances. I understand that at one time two narrowly written statutory provisions prohibited former Government employees, for 2 years after the termination of their employment, from prosecuting any claim against the United States which was pending in the employee's department or which involved any subject matter with which he was directly connected. However, Congress repealed both statutes in 1962 and enacted 18 United States Code section 207, which prohibits an employee, after his Government service ceases, from knowingly acting as agent or attorney for a private party in connection with any matter in which the United States is a party and in which the employee had personally and substantially participated while in Government. The statute also prohibits a former employee, within 1 year after his employment has ceased, from appearing before any court, department, or agency of the Government concerning a matter which was under his official responsibility within a period of 1 year prior to the termination of his responsibility.

In seeking to go beyond these statutes, the only question I am exploring here is whether the nature of the risk seen by the committee is such that we ought to rule out entirely the benefits to be gained by allowing ex-government officials to serve on private foundations. In addition,

you should consider whether this bill will have the effect of denying to the Federal Government the services of many people who have much to contribute to Government.

I have in the past few months been trying to enlist the services in the Government of many men who, I think, are quite able. If the law were to provide that they could have no affiliation with a private foundation, nor obtain any reimbursements for travel expenses, nor participate in any grants of a private foundation within 2 years after their service with the Federal Government, I think this would add to the already considerable burdens of hiring qualified persons into the Government.

Senator WILLIAMS. This bill—definitely you are correct, would handicap any individual who is entering the Government on an interim basis with the hope, expectations, or plans that after he leaves the Government—he has an opening with a private foundation. This would stop it and it is so intended.

Mr. COHEN. I understand that.

Senator WILLIAMS. After all if that is his intention when he comes into Government maybe we don't need him.

Mr. COHEN. Well, that is a matter that we have to judge.

Senator WILLIAMS. You know, I mean I think that is the point there. For example, just take the Treasury. In this Congress, and this covers Members of Congress, we are going to be considering here in this committee and in the Congress some very important legislation that will affect these foundations as to the extent, if any, that we impose a tax on them. That is very important to every foundation. It is going to be a major decision.

Now, why should any member of the Treasury Department, or any Member of the Congress who is voting on that, have it in the back of his mind that maybe he wants to be employed by the foundation in 2 years. Aren't we opening ourselves to suspicion, and why should we? Why can't we make a living somewhere else. We just don't go with them for 2 years, that is all.

Mr. COHEN. Senator, the question is whether that prohibition is necessary to accomplish the bill's objectives. All of us in the Government are faced with a constant series of inconsistent positions which we must weigh in the balance. For example, each one of us who works on problems relating to taxes is dealing with provisions that might affect his own income tax return. There are some potential conflicts that simply cannot be eliminated by law. Also, I was going to suggest to the committee that if there is to be a prohibition imposed upon employment or grants from private foundations for 2 years after cessation of government service, we have to consider whether the same prohibition should not apply with respect to employment with any business corporation afterward. Or, indeed, whether the prohibition should not apply in the case of lawyers to any membership in a law firm, because they will be representing clients within 2 years afterward who are seriously affected by the decisions that the Congress and other agencies made.

Senator WILLIAMS. Well, frankly when you get to that point, why shouldn't we have that same 2 year extension we had prior to the war? I have advocated it and introduced it many times.

Now, I respect your views here, and I gather that you primarily object to the point that we, as public officials, can't be employed immediately by one of these foundations. Now, I don't see where you handicap the foundations unless you proceed on the premise that they can't get enough brains out of non-Government officials to run their organization and you raise the question of why this shouldn't apply equally to corporations? All that this bill does is state that if they want to hire government officials—and they can hire them under this bill—all they do if they hire them they start paying taxes as every other American corporation does.

So they can, if they want to be treated as corporations. This bill is a wonderful vehicle, all they have got to do is pass it and then hire a government official while he is still working for the government, put him on their payroll or put him on the payroll within a 2-year period after and then they are getting a 100-percent treatment as corporations do with all of the American privileges of paying taxes.

Senator CURTIS. Would the Senator yield?

Senator WILLIAMS. Yes.

Senator CURTIS. I can't conceive of a single case of an individual where he would turn down government employment on the grounds of a prohibition that he could not become a paid employee and receive compensation from a foundation for 2 years after. I think that is rather far-fetched. I think that the number would just be nil.

The second thing that I would like to point out, and why I feel that the distinguished Senator from Delaware is right in his contention is this: For any entity to have total tax exemption is quite a privilege, it is quite a concession that, by law, we say here is an entity that even though they handle millions of dollars, meet certain requirements that they are totally exempt from taxation. To apply restrictions that relate to them, I do not think, fall in the category of restrictions which would apply to ordinary employment.

I hope that the Treasury reconsiders this. I think that the position taken by the Senator from Delaware is very reasonable.

Mr. COHEN. Senator, I would like to repeat what I said at the outset before you entered the room, I believe, that the questions that I have raised here represent my personal thoughts and not an ultimate view of the Treasury Department. I specifically said that I had not yet, in the time between the announcement of the hearings and today, obtained the approval of the Bureau of the Budget or other Government agencies.

We are at the moment considering the problem of the 2-year prohibition and the possibility of certain amendments to correct problems with respect to scholarship payments to minor children and problems involving payments to wives of public officials who may be employed as secretaries or receptionists or otherwise. At the moment I am not advocating a firm position but am merely outlining some of the problems for the committee's consideration.

Senator WILLIAMS. May I clarify one point? I said that I had no objections to including the language, if it is necessary, where sons or daughters of these, if they are entering into a nationwide contest and it is open, available to every son and daughter of every man in America. I would have no objection to that. I am not talking about it. I did not exempt the officials, and I want to make it clear, I did not

exempt the right to pay their wives. They would still be included so that this is just speaking of the minor children who are entering into a competitive examination for some scholarship that is being handed out. Because I see no problem there. But I am not modifying this where they can put my wife on the payroll instead of me.

Mr. COHEN. I understand, Senator.

The witnesses who will appear after me, who are from foundations, would know far better than I the extent of the scholarships and fellowships that are awarded. There well might be other cases that you would consider to be in the same category even if the competition were not nationwide, for example. I am sure that there are categories that one could work out in that regard.

Taxing Investment Income of Private Foundations

I would like, if I might, to refer to some other points. As I know you are aware, the Ways and Means Committee has held public hearings on a number of topics involving changes in the tax laws, one of which relates to private foundations and other exempt organizations. The committee has been in executive session now for more than a month, and it issued a press release last week indicating some tentative decisions, particularly in regard to private foundations. One of those tentative decisions announced was to impose a tax on private foundations so—

Senator WILLIAMS. It would not be taxable, all of it.

Senator CURTIS. We would still have many totally exempt foundations.

Senator WILLIAMS. And you wouldn't tax them at corporate rates either?

Mr. COHEN. There would still be many tax-exempt organizations, but it was my recollection that the tax would have applied to private foundations.

Senator WILLIAMS. Regular corporate rate?

Senator TALMADGE. Only on their investment income; is that not the decision?

Mr. COHEN. Pardon me?

Senator TALMADGE. Only on their investment income.

Mr. COHEN. There is a tax now on their so-called unrelated business income and that is going to be continued. But the type of income that is exempt from tax now is their investment income, which will be taxed under the committee's tentative decision.

Senator TALMADGE. Did it also put a tax on their passive income, even though it didn't come from investments?

Mr. COHEN. Investment income is what we refer to as "passive income."

Senator TALMADGE. What I am talking about is if there was a dormant account and earned no interest at all or no dividends, would it also tax that?

Mr. COHEN. There would not be income then. As this would be an income tax, the tax would be applied to dividends, interest, royalties, and rents.

The CHAIRMAN. (presiding). Well now, since that came up, might I just pursue that same question, Mr. Cohen, and incidentally, I think

you are doing a good job down where you are. I have no complaint about the way you are handling the job nor any complaint about your testimony. But let me just ask you this as a matter of equity and fairness, why should some man who would owe this Government, let's say a 70 percent tax on \$10 million, be permitted to put that into a foundation so that the foundation holds all that stock, and all that money, and his children can have it and run it and control it and pay no taxes. They don't declare a dividend and they do not give a penny of it to charity, just declare charity as an ultimate purpose.

Now, why should they be permitted to get away with that?

Treasury Recommendations for Taxation of Private Foundations

Mr. COHEN. We have recommended to the Ways and Means Committee, Mr. Chairman, and I am confident we will recommend it to this committee when we appear here, that the private foundations be required to pay out for public charitable use or to accomplish their exempt purposes at least 5 percent of the value of their assets.

The CHAIRMAN. What about the other 95 percent? They escape tax on 70 percent.

Mr. COHEN. Excuse me, Senator. They are required now to use all of their income, whatever their income may be for charitable purposes. The problem that has existed up to now has been that often the assets of the foundation do not earn as much as 5 percent, and if you have vacant real estate or stocks that do not pay dividends, then there is no income or very little income and there is no current benefit to charity. What we have recommended is that in such a case at least 5 percent of their assets, even if that amount is in excess of the income, will have to be devoted to charitable use. If the income is above 5 percent, all of the income would have to be devoted to charitable use.

The CHAIRMAN. It sounds to me as though you have been mighty generous. Why should they be permitted to get away with only 5 percent for beneficial use? Why not make them use the other 95 percent?

Mr. COHEN. If the entire principal were invested, Senator, you would assume under general conditions that 5 percent would be a reasonable return. Today you might think it should be 7 percent or higher. We were simply trying—

Senator CURTIS. Mr. Chairman, excuse me, go ahead.

Mr. COHEN. We were simply trying to hit a figure which over a period of time might be considered to be the normal return, and I think this would effectively prevent the schemes you speak of in which assets are used for tax deductions by the donor but are not employed in any way for the immediate benefit of charity.

Senator WILLIAMS. Well, Mr. Cohen, they will be taxed at a 5 percent rate.

Mr. COHEN. No, sir.

There are two rules that have been announced in the tentative decisions of the Ways and Means Committee, one of which we recommended, and the other which the committee has superimposed. The one that we recommended, and the committee has announced it tenta-

tively agrees with, is the requirement that all of the income must be devoted to current charitable use, and if the income does not equal 5 percent of the value of the assets, at least 5 percent of the value of the assets has to be devoted to current charitable use.

Now, in addition——

Senator WILLIAMS. Included in the charity would be the payments they decide to make to public officials. That is one of their expenses and that would be a deductible item before taxes.

The CHAIRMAN. Would that be included? Would that 5 percent include what they pay to public officials?

Mr. COHEN. Well, I would suppose, Senator, it would depend upon the nature of the payment.

The CHAIRMAN. Well, you pay a public official to make a speech or to advise you what to do.

Differentiating Between Grants and Reimbursement for Travel Expenses

Mr. COHEN. The distinction that I am pondering is the difference between a grant and a reimbursement of travel expense for attending a conference or a payment of fees to a director or a trustee for attending meetings. I can see that a grant might be different from the payment of travel expenses.

Senator WILLIAMS. Mr. Cohen, haven't there been some grants that included worldwide tours for travel expenses?

Mr. COHEN. Yes; I think the travel expense problem is a very serious and difficult one.

Senator WILLIAMS. It sure is.

Mr. COHEN. And I might add I think it is a difficult problem not only with respect to Government officials but with respect to others as well. We have been trying to formulate a means to distinguish between the legitimate payment of travel expenses for attending a conference or a travel grant for a young man just out of college, on the one hand, and the abusive situations we have discussed, on the other hand.

Senator WILLIAMS. Well, now, Mr. Cohen, just take, for example, Joe Doakes, a young man who has never had any employment in government and he get a Rhoades scholarship, now where does this bill touch him?

Mr. COHEN. No, I did not say that this bill does, Senator.

Senator WILLIAMS. All right, let's keep going along with the bill.

Mr. COHEN. I was asked what we had recommended to the Ways and Means Committee and I was trying to explain——

Senator WILLIAMS. You are back on the Ways and Means bill now. I just want to get straight, this bill does not touch that problem.

Mr. COHEN. No.

The CHAIRMAN. Well now, this latter part about this 5 percent tax that was not your recommendation, I take it, but they added that and you do not disagree with it.

Mr. COHEN. I am not prepared to state that as a position of the Treasury Department. It has not been a recommendation of the Treas-

ury Department. Our recommendation was the forcing out of at least 5 percent of the assets so that a charity could not be inert and so that the public would derive a benefit that is reasonably commensurate with that received from an active charity. Also, Senator, we have not normally required public charities to expend their entire endowment funds. We have allowed them to invest money in reasonable investments, and we feel that this principle ought to be applied to a private foundation.

Now, there has been some consideration given to requiring private foundations to terminate their existence within 5, 10, 20, or 25 years. There have been statements of concern that the foundations have grown in size simply because of the increasing value of their assets, and these are matters that this committee will want to consider, if and when, a bill is before this committee.

Publicizing Grants Made to Individuals

Another point is that there is a cross-cutting relationship between this bill and the matters that the Ways and Means Committee has under consideration, particularly in the area of private grants—that is, grants by private foundations to individuals. We considered this in the Treasury at some length, and we recommended the cure of publicity. We thought that rather than prohibit a private foundation from making any grants to any individuals, it would be sufficient to shine the light of publicity on the grant, requiring the foundation to make public the name of the recipient, the dollar amount, the terms of the grant, what the grantee was expected to study, and the grantee's report.

The Ways and Means Committee however, has announced a tentative decision to forbid private grants by private foundations.

The Chairman. I believe at this point it would be well to insert in the record a copy of so much of the Ways and Means announcement as relates to private foundations.

(The excerpt from the Committee on Ways and Means press release of May 27, 1969, referred to follows:)

A. TAX TREATMENT OF PRIVATE FOUNDATIONS

(1) *Prohibitions on Self-Dealing.*—The Committee tentatively agreed to prohibit self-dealing between a donor (or related parties) and the donor's private foundation. This prohibits loans to, borrowing from, payments of compensation (other than reasonable compensation for personal services) to, offers of services on a preferential basis to, purchases of property from, sales of property to, leases of property from, and leases of property to such parties. Exceptions would be made where a donor makes interest-free loans to the foundation or leases property to the private foundation rent free for charitable purposes. With respect to the self-dealing transactions referred to above the Committee tentatively adopted the sanctions set forth below:

(a) For failure to comply with the above rules an excise tax on self-dealing, generally equal to 5 percent of the value of the property or funds involved in the wrongful transaction would be imposed on the self-dealer. An additional tax of one-half of this amount to be imposed on the foundation manager if he knowingly violated the self-dealing rules (maximum tax in this latter case of

\$10,000). If this tax were imposed the taxpayer could take an appeal to the courts within 90 days after notice of proposed assessment. This sanction would be doubled in the case of repeated or willful and grievous violations.

(b) A second level of sanctions would be imposed where the transaction is not undone (or where a transaction cannot be undone, adequate payment is not made) within 90 days after notice. A sanction equal to twice the amount involved in the transaction would be payable to the Government by the self-dealer. A tax of one-half of this amount would be imposed on the foundation manager if he refused to agree to the undoing of the transaction (this latter tax could not exceed \$10,000). This level of sanctions could be waived by the Commissioner of Internal Revenue if he finds the State attorney general is taking appropriate action to correct the improper transactions.

(c) Where there have been repeated and grievous willful violations of the self-dealing provisions, the foundation could be required to make the same payments to the Government which it would were the foundation to voluntarily withdraw from 501(c)(3) tax status (this sanction could be avoided by voluntarily distributing all of its assets to other charitable organizations eligible for the 30 percent deduction).

(d) Existing private foundations must amend their charters or trust instruments (if they can do so) and all new private foundations must provide in their charter or trust instrument that it will not engage in self-dealing.

(2) *Distributions of Income.*—The Committee tentatively agreed to generally require private foundations to distribute all of their income by the end of the year following the year in which the income is earned or, if greater, an amount equal to 5 percent of the fair market value of its investment assets (the 5 percent rate of return would vary in future periods according to variations in interest and dividend rates). The following rules were provided with respect to the distribution requirements referred to above:

(a) Qualifying distributions would include contributions to charities eligible for the 30 percent deduction and to private operating foundations. They would also include direct expenditures by the private foundation for charity and purchases of assets used by it for charity.

(b) Exceptions to the distribution requirements would be available for specific charitable purposes (approved of by advance ruling) for the amount it spent within 5 years and for accumulations to allow private foundations to recoup amounts spent in excess of income in the prior 5-year period.

(c) The failure to comply with the above distribution requirements would result in a tax of 15 percent per year of the amount required to be distributed to the extent not distributed. Appeal could be taken to the courts as in the manner set forth in (1)(a). This sanction could be doubled in the case of repeated violations.

(d) If the income is not distributed to charity within 90 days after notice, or longer period of time where permitted by the Commissioner (but not more than 1 year), a sanction equal to 100 percent of the amount not so distributed would be imposed and payable to the Government. This sanction could be waived where the State attorney general takes appropriate action.

(e) Where there have been repeated or grievous willful violations of this provision the foundation could be required to make the same payments to the Government which it would were it to voluntarily withdraw from section 501(c)(3) status. This sanction could be avoided by voluntarily distributing all of its assets to charitable organizations eligible for the 30 percent deduction.

(f) Private foundation charters or trust instruments (if they can do so) must be amended to prohibit the accumulation of income.

(3) *Stock Ownership Limitation.*—The Committee tentatively decided to limit the combined ownership of the voting stock of a corporation which may be held by a foundation and any substantial donor (or related parties) to 20 percent. The 20 percent level can be exceeded if it is established that some other person has

control but in no event can the combined ownership of the voting stock of the foundation and any substantial donor (and related parties) except 35 percent. If the interest of the private foundation is less than 2 percent no divestiture will be required under this provision. The following rules would apply with respect to this provision:

(a) Where an interest in a business exceeding the specified amount is given to a private foundation it would have 5 years to dispose of the excess holdings. An additional 5 years would be allowed if a showing of hardship is made to a Commissioner. The full 10-year period for disposition would be available in the case of holdings of stock on the date of enactment of this provision which are in excess of the specified amount. Where the 10-year period is available at least one-third (but not less than sufficient stock to bring its holdings below 50 percent) would be required to be disposed of during the first 5 years.

(b) Rules similar to those set forth above will apply to an unincorporated business interest.

(c) The requirements as to dispositions will not apply in the case of a private operating foundation where the business involved is related in a functional sense to the private foundation (as where the business is of a service-type needed for persons visiting the operating foundations).

(d) Requirements as to dispositions of business interest are not to apply to those held on April 22, 1969, where the sole beneficiary is an exempt college or school.

(e) Multiple foundations will be aggregated for purposes of this provision.

(f) The excess business holdings of a private foundation held past the permitted time are subject to a tax of 5 percent of the value of these excess holdings. After the elapse of a 90-day period (or longer period up to 1 year if agreed to by the Commissioner) an additional tax equal to 200 percent of the excess business holdings is imposed. Where there are grievous and continuing offenses the foundation can be required to make the same payments to the Government it would were it to voluntarily withdraw from section 501(c) (3) status.

(4) *Limitation on Use of Assets.*—Assets of a private foundation cannot be used to any degree for purposes or functions other than those constituting the basis of the organization's exemption or invested in a manner which jeopardizes the carrying on of its exempt purpose. The sanction with respect to this provision is as follows:

(a) A private foundation violating the provisions set forth above would be subject to a tax equal to 100 percent of the amount improperly used or invested. Court review would be available here as in the case of self-dealing. This sanction can be doubled for repeated violations. Where there have repeated or grievous willful violations of this provision the foundation can be required to make the same payments to the Government which it would were it to voluntarily withdraw from section 501(c) (3) status.

(5) *Tax on Investment Income.*—The Committee tentatively decided to adopt a 5 percent tax on the net investment income of private foundations. The net investment income for this purpose includes capital gains (but not gains arising from dispositions required under the act at the time this provision is enacted) and is computed without a dividend received deduction. If the net investment income of the foundation is less than 5 percent of the fair market value of the assets held for investment purposes then this tax is to be based on 5 percent of this fair market value.

(6) *Other Limitations.*—The Committee tentatively decided to place limitations on certain activities of private foundations. These are set forth below:

(a) No private foundation is to be permitted to directly or indirectly engage in any activities intended to influence the outcome of any election (including voter registration drives) or to influence the decision of any governmental body (whether or not such activity is substantial). However, a direct appearance before, and communications to, governmental bodies with respect to the existence of the foundation, its powers and duties, its exempt status or the deductibility of contributions to such foundation are to be permitted.

(b) **Private foundations** are to be denied the right to make grants directly to individuals for purposes of travel, study or for other similar purposes. Such grants may, however, be made by private foundations through tax-exempt schools, or colleges or public charitable or religious organizations where the latter select the grantees.

(c) It is to be the responsibility of any private foundation making a grant to other than a public charitable organization, school or college, or religious organization, to take full responsibility to see to it that the funds are spent for the specific purpose, to check on how the funds are spent, to obtain reports from the donee on how the funds are spent, and to make a full report of such expenditures to the Internal Revenue Service.

(d) If a private foundation's income or corpus is used in a manner which violates any of the above provisions or is outside the allowable activities of a section 501(c)(3) organization the private foundation is to be subject to a tax equal to 100 percent of the amount improperly spent. Court review will be available here as in the case of self-dealing. A tax of 50 percent of the amount improperly expended is imposed on the foundation management. This sanction may be doubled for repeated violations. While there have been repeated or grievous willful violations of the prohibited type of activities the foundation may be required to make the same type of payments to the Government which it would be required to make were it to voluntarily withdraw from section 501(c)(3) status.

(7) *Disclosure and Publicity Requirements.*—The committee tentatively adopted certain changes in the publicity requirements for the returns of private foundations and also other organizations required to file Form 990-A. These changes are set forth below:

(a) The entire annual information return, including all attachments, is to be open for public inspection.

(b) The Treasury Department is to be authorized to require other information to be submitted beyond that permitted by existing law to the extent useful in evaluating the charitable, educational, et cetera, operations of the organization.

(c) The names and addresses of the directors and trustees and significant contributors would be made available to the public.

(d) A provision for a free interchange of information between the Internal Revenue Service and State regulatory agencies will be provided.

(e) Private foundations would be required to prepare reports and make reasonable distribution of them to the public.

(f) Where a private foundation fails without reasonable cause to file a timely and complete information return the foundation is to be subject to a penalty of \$10 for each day beyond the prescribed filing date. The maximum penalty would be \$5,000. A similar penalty with a similar maximum would be imposed on officers charged with the filing of the return if after notice they fail to remedy the omission.

(8) *Change of Status.*—A private foundation would not be permitted to abandon exempt status under section 501(c)(3) without paying to the Government an amount equal to the tax benefit derived by all significant contributors from contributions to the private foundation (income, estate and gift tax deduction) plus interest date to date. In addition the private foundation would also be required to restore the tax benefit derived by it from income tax exemption for all prior years plus interest. In no event shall the amount required to be paid to the Government under this provision exceed the fair market value of the assets of the foundation. The tax under this provision may be abated if the private foundation distributes all of its assets to one or more organizations eligible to the 30-percent charitable contributions deduction.

(9) *Changes in Definitions.*—The Committee tentatively agreed that a private foundation be defined as any organization exempt under section 501(c) (3) except the following:

- (a) a church or convention of churches;
- (b) a school or college;
- (c) an organization testing for public safety;
- (d) an organization which normally receives a substantial part of its support from a governmental unit or from contributions from the general public.

A non-exempt trust which spends or sets aside income or assets for charitable beneficiaries will be treated as a private foundation with respect to the portion so spent or set aside.

(10) *Private Operating Foundation Definition.*—The Committee tentatively agreed to define a private operating foundation as a private foundation substantially more than one-half the assets of which is devoted to, and substantially all of the income of which is expended for the active conduct of the activities constituting the purpose for which it is organized and operated.

Prohibition of Private Grants

Mr. COHEN. This goes much further than what we had suggested. If the Ways and Means Committee's tentative conclusion is enacted, there would be no possibility of private grants to any person in Government, whether during the time he was in Government or within 2 years thereafter or at any time. To that extent S. 2075 would thus be necessary.

The CHAIRMAN. That is a grant. But suppose it is a payment for a service?

Mr. COHEN. I wanted to point that out. It does not deal at the moment with payment for services rendered or reimbursement for travel expenses but only with private grants.

I might add that we have been discussing the possibility of not making the tentative Ways and Means Committee prohibition so severe. For example, one might think that it is entirely appropriate for a private foundation to make a private grant in connection with a nationwide competitive scholarship contest or a private grant to undergraduates for scholarships or for those still studying for their graduate degree.

Travel Expense Reimbursements

We are also exploring the matter of travel expense. If one thinks of the travel expense of junkets around the world, one becomes justifiably concerned. On the other hand, one might feel differently about a foundation paying the travel expense of someone who is not highly compensated in some Government position to attend a conference publicly held with other persons who are not Government officials.

Senator CURRIE. Does the Treasury permit that now?

Mr. COHEN. Pardon?

Senator CURRIS. Are Treasury officials permitted to accept travel reimbursement from outside sources if they go to any foundations or otherwise in their capacity as Treasury officials or employees?

Mr. COHEN. Treasury Department regulations provide that, if travel is undertaken as an official duty, expenses will be borne by the Treasury Department, and the employee may not accept compensation or permit his expenses to be paid by the person or group under whose auspices the activity is being performed, except as "authorized by law." One of the circumstances in which the acceptance of reimbursement for travel expenses is permitted by law is set forth in 5 U.S.C. section 4111, which authorizes, under regulations of the President, the payment of travel, subsistence and other expenses incident to attendance at a meeting by an employee as part of his official duties, if the payment is made by an organization determined by the Secretary of the Treasury to be tax-exempt under section 501 (c) (3) of the Internal Revenue Code of 1954. Despite the existence of this exception, it is my understanding that Treasury Department policy is to pay official travel expenses of its employees in all cases. However, it should be noted that the proposed bill would repeal specific existing authorization for the payment of travel expenses of Government officials by private foundations.

Senator CURRIS. That was my understanding and I think it is quite widely adhered to in Government.

Distinguishing Between a Private Foundation and a Public Charity

Mr. COHEN. Another difficult question that you might consider is how to draw the distinction between a private foundation and a public charity or educational institution. This is a matter with which we have been much concerned in connection with the proposals before the Ways and Means Committee.

At the present time the distinction that is in the statute between a publicly supported charity and one that is not publicly supported arises in relation to the ceiling on charitable contributions. The normal ceiling on deduction of charitable contributions is 20 percent of the adjusted gross income of the donor. But that is raised to 30 percent with respect to contributions to churches and certain educational organizations that have faculties and student bodies and with respect to an organization which normally receives a substantial part of its support from a governmental unit or from direct or indirect contributions from the general public. I think that is the test that is used in S. 2075.

We have checked with the Internal Revenue Service as to the rulings policy on this subject. Regulations have been promulgated which are designed to ascertain which organizations receive a sub-

stantial part of their support from direct or indirect contributions from the general public. This is a rather generalized test, and there is no mathematical formula for determining it. The regulations include a mathematical test, but then they state that an organization may nevertheless qualify if under all the facts and circumstances it is reasonable to conclude that it is enjoying public support.

Since S. 2075 is keyed to the distinction between private foundations and public charities, the committee might want to consider whether some more specific test that can be mathematically applied might be desired in view of the fact that there is a 100-percent tax on the recipient here.

The recipient may not know whether the organization giving him a grant or reimbursement for his travel expenses is public or private.

The Internal Revenue Service currently publishes a list of organizations to which contributions may be made and deducted for Federal income tax purposes, but I don't believe a list is published as to those organizations which are publicly supported and, therefore, qualify for the 30 percent ceiling.

If this bill is enacted, the committee may want to consider whether it wants a more specific test or whether it wants the Internal Revenue Service to pass upon the nature of an organization as public or private, so that the individuals who receive amounts of this kind may know whether they are subject to the 100 percent tax or not.

Senator WILLIAMS. Mr. Cohen, if you have any suggestions to make this easier to understand on the part of the public and the Treasury, I am requesting that you submit such language to clarify it in whatever manner you think it would make it easiest to administer.

Mr. COHEN. Well, we are considering that, Senator, in connection with the proposals that are before the Ways and Means Committee. We have been—

Senator WILLIAMS. I am trying to separate this from the Ways and Means Committee. But if you think of any additional language that would help make this easier to administer, you could submit the same language here and we could take it and put it in, and then if and when the bill comes over from the House dealing with these other problems which you have been discussing for the last half hour, and if we have duplicated some of the work, we can take that into consideration then.

So I would like to keep this on just this particular bill.

Mr. COHEN. Yes.

Senator WILLIAMS. But as far as any clarification of the language—of you can make any suggestion which would make it easier to administer and understand, please do so.

Mr. COHEN. Yes.

We are concerned whether we can devise an automatic rule that is easy to apply but at the same time is fair, or if we have to leave the test in general terms, and whether there will be sufficient Internal Revenue Service personnel to give rulings in all these cases.

Senator CURTIS. May I ask you a question in connection with that?

Mr. COHEN. Yes.

Senator CURTIS. How could an amount received as reimbursement for travel if the travel actually occurred and the amount did not exceed the specific items of expenses paid, how could that ever become income regardless of the source from whence it came? If an individual went to a conference, participated, made a speech, was on a panel or whatnot, and received reimbursement for the amount that he paid out to get there, and his hotel and nothing else, under existing law that would never be income, would it?

Mr. COHEN. No; under existing law it would not be income.

Senator CURTIS. So the problem you raise here as to a government official not knowing whether it is a private or public foundation that paid his expenses to some place is not a valid point because if it was purely a reimbursement of expenses it is not income anyway.

Mr. COHEN. Senator, my comment related not simply to the receipt of reimbursement of travel expenses but to any other payment that he or his wife or his minor child might receive within 2 years thereafter.

I am not quite clear what base the 100-percent tax applies to; the bill does not seem to incorporate the same concepts of taxable income that exist under the income tax laws. There is a definition in S. 2075 of taxable income on page 6 starting at line 14, which includes "all contributions or gifts of money, property, services, or facilities." Gifts, for example, would not normally be income under the income tax law. Gifts would be exempted from income, so we do have here a special definition of what income is for this purpose.

Gift Tax Exemption

Senator WILLIAMS. Mr. Cohen, gifts by an individual to another individual are exempt up to \$3,000; that is correct, is it not, under existing law? But can a corporation—can any corporation in America make a gift to John Doe and get that tax exempt? A man who is not connected with the company in any way, can he receive a tax-exempt gift from the company under existing tax laws?

Mr. COHEN. Let me distinguish, Senator, between the gift tax and the income tax. You mentioned \$3,000, and that applies only under the gift tax law.

Senator WILLIAMS. That is correct.

Mr. COHEN. Now, is your question to me whether a gift tax is applicable or whether the payment is exempt from income tax because it is a gift?

Senator WILLIAMS. Both. You brought the question up. I do not think it is at all related to the problem that is before us, and that is the reason I ask you to explain how Corporation X can start making gifts throughout the country. It cannot do it, and is not this the situation under existing law? If any individual receives reimbursement for gifts, I mean for travel expenses, he can include that under his taxable income and then itemize travel expenses and if they exceed it, he pays tax on the extra. If the reimbursement for the travel exceeds the amount that he spent, then he is taxable on that part as income under existing law; is that not correct?

Mr. COHEN. My understanding, Senator, is that if an employee expends money for travel and submits an expense account detailing the expenditures to his employer and is reimbursed by the employer for the submitted account, that is not considered gross income to him, and it is not a deduction.

Senator WILLIAMS. That is correct. But if he did put it on his income as income, his deduction would offset it; it is just merely a mathematical job, but the answer is zero either way.

Now, on this travel expense, we both know what we are trying to seek here. There have been—I think you are aware of them—examples where the travel expenses have included worldwide trips for the man and his wife. Now, under existing law if Corporation X gives to Mr. A and his wife a trip around the world, the value of that trip is taxable to him as income, is it not?

Mr. COHEN. Yes, it would be under existing law, Senator.

Senator WILLIAMS. That is correct?

Mr. COHEN. If you assume the circumstances that you have given.

Senator WILLIAMS. Yes, that is what I am driving at.

Mr. COHEN. It is subject to tax now.

Senator WILLIAMS. Yes, sure it is. So we are not disturbing that point.

Now, if it is a bona fide business expense for one of the corporations going abroad, that is not income to him and that is not taxable. We are not hitting that at all, in this bill. I just think that there is a little shadowboxing here, or maybe a misunderstanding.

Tax-free Awards by Foundations

I want to ask this question: Is it not true that under existing law these foundations can give a grant—call it a grant or an honorarium or special permit badge similar to a Boy Scout badge or something, but they give him a special merit badge—and with that goes a check

of \$10,000 or \$20,000, to this public official for the outstanding job he has rendered as a public official—it is not only considered eligible for counting in their computation as charity, but in addition to that it is not even taxable to the recipient, is that not true under the rulings of your department?

Mr. COHEN. That is true under the statute.

Senator WILLIAMS. Yes, I say. He can make these tax exempt distributions and they have been making tax exempt distributions in cases to some public officials where they were not taxable to the recipient, is that not true?

Mr. COHEN. Yes, sir. If they make an award in recognition of public service or civic achievements or the like.

Senator WILLIAMS. And is that not far fetched on the definition of charity?

Mr. COHEN. Well—

Senator WILLIAMS. Do you think that should be continued where, for example—and let us carry this to the extreme—I am not saying there has been anything vicious done, but we pass laws to prevent things that are wrong. If we all would abide by the Ten Commandments, we would not need any criminal laws at all, but we do not, so we pass them.

Now, is it not a fact that there has been quite an abuse in that particular area?

Mr. COHEN. Senator, I do not know of abuse in connection with awards of this kind. The genesis of this provision, I believe, was in relation to the Nobel Peace Prize, the Pulitzer prizes and other prizes. There was a case involving the Ross Essay Prize offered by the American Bar Association which went to the Supreme Court, and I think in 1954 Congress enacted a provision stating that "gross income does not include amounts received as prizes and awards made primarily in recognition of religious, charitable, scientific, education, artistic, literary, or civic achievement" under certain prescribed conditions. Those are the exceptions.

Senator WILLIAMS. Since that time the Treasury has ruled that Government service can come under that definition.

Mr. COHEN. I am not aware of the ruling, Senator, but I know that there have been awards to persons in Government service.

Senator WILLIAMS. And this would stop it?

Mr. COHEN. Pardon.

Senator WILLIAMS. And this would stop it; this bill would stop it, would it not? It would make it almost prohibitive because a foundation that made the payment to the individual would lose their tax exemption and it would become taxable.

Mr. COHEN. Yes; I think that would be true, because I would assume—

Senator WILLIAMS. That is what creates a lot of disturbance.

Mr. COHEN. If your intent is to prohibit such awards, I might suggest that you add to the list that precise words used in section 74, which are "prizes and awards," rather than the words "contributions or gifts" used in the draft bill.

Senator WILLIAMS. I do not care about the language, the words. I just wanted to cover all of it, of every type and description.

Mr. COHEN. I did not realize until you called my attention to it that this language would cover specifically payments of that kind but—

Senator WILLIAMS. It was intended to; yes, sir.

Mr. COHEN. It would make it clear if you used the same words as in section 74.

Treatment of Travel Expenses

I might return to one point. I think Senator Curtis asked me about the treatment of travel expenses here, and as I read the language again, I am not quite clear what the answer is about the treatment of travel grants. The language is, on page 6, lines 17 to 22, "all income received reduced by the deductions otherwise allowable."

Now, as Senator Curtis mentioned, if a Government official submits an expense account and is reimbursed item by item for his expenditures, that would not be income under present law, though Senator Williams might intend for it to be taxed under this bill. On the other hand, if an official were given a travel grant of \$5,000 to travel for the summer in Europe, for example, I think that that \$5,000 would be income. If it is concluded that this is not just a frivolous vacation trip, he would be allowed under the language in lines 20 to 22 to deduct against that amount the cost of his travel. So I am not sure that this accomplishes what you, Senator Williams, have in mind.

Senator WILLIAMS. That can be checked out to see if it needs clarifying because it certainly was not the intention, and I have been advised it was not. But anyway that would not—

Mr. COHEN. Excuse me, do you intend this to apply to a travel grant or a reimbursement of travel expenses whether or not the grantee accounts specifically for his expenditures?

Senator WILLIAMS. Yes. That was intended to stop the case which you and I know and two or three cases in particular—we have discussed them—where these grants were made for the individual or members of his family—

Mr. COHEN. Yes.

Senator WILLIAMS (continuing). To tour Europe, tour Africa, Asia, worldwide trips. As far as I am concerned that is the same as a payment of income, and it would be prohibited under this, and I think the language does it, but if it does not, it should certainly be examined. I can write this as a layman so it can be understood, if you want that. I can do it. We have some excellent draftsmen, and we can do it, but I find that every time an attorney—he always finds fault with the other fellow's language and everybody has suggestions.

If you lawyers can agree on the language that would carry out this objective, it is agreeable to me. If you cannot agree, I can assure you as a layman I can write it so you will both understand it. [Laughter.]

Mr. COHEN. I do not want to take up the time of the committee—

Senator WILLIAMS. So you need not worry about it. We both have the same intentions, and I just ask you to work with the staff and see if you can come up with language and if necessary correct it.

Treasury Department's Views on S. 2075 Forthcoming

Senator HARTKE. May I ask a question? Is the Treasury for or against the bill?

Mr. COHEN. As I stated initially, Senator—perhaps before you entered—I have not had an opportunity since the announcement of the hearings to clear an official Treasury or administration position on the bill so that I am just offering my own comments and questions.

Senator HARTKE. So we are having the expert advice of a Treasury official in his individual capacity; is that it?

Mr. COHEN. Yes, sir; if it is expert.

Senator HARTKE. Does the Treasury expect to have a position?

Mr. COHEN. We certainly would in the normal course advise the committee of the administration's position.

Senator HARTKE. When is the normal course? I thought that was these hearings.

Mr. COHEN. Senator, we were advised of these hearings only Monday afternoon, and I have to get not only approval of the Bureau of the Budget but also, I think, the views of the Department of Justice on some of the legal questions involved and the views of the Civil Service Commission.

Senator HARTKE. You anticipate a repeat appearance then; is that it?

Mr. COHEN. I would have thought that we would file a statement in writing, but I would be delighted if you wish me to appear again.

Senator HARTKE. That does not provide any opportunity for questions; is that right?

Mr. COHEN. I will be happy to return for questioning.

Senator HARTKE. I am not asking either one. I am trying to find out where we are.

Mr. COHEN. Well, Senator, my intention would be to file a written statement. This is my first appearance before the committee, and I hope you will forgive me for my lack of familiarity with the procedures and customs, but I understand the custom to be that the Treasury would file a statement, a written statement with the approval of the Bureau of the Budget which will clear it with any other Government agencies.

Senator HARTKE. I did not mean to reflect on your testimony at all. I think you are trying to do the best you can to give us good solid answers. I just wondered about the position the Treasury had come up with, and evidently it has not.

Mr. COHEN. No, it has not.

Senator HARTKE. All right.

Mr. COHEN. I will submit a written statement and would be glad to appear either in public or in executive session.

Senator HARTKE. I will come back next time.

Senator GORE. Senator Bennett?

Senator BENNETT. I have no questions.

Senator GORE. Senator Curtis?

Senator CURTIS. I have no further questions.

Senator GORE. I hope the committee and the Congress will enact legislation with respect to foundations during this session. I think my view of the pending bill is that it represents an effort to deal with foundations on a piecemeal basis. It might serve the untoward purpose of deadening more far-reaching legislation that is certainly needed. I will not explore that point of view further at this time, but when the bill is before the committee for action I would have some constructive amendments to offer.

Denying Tax-exempt Status to Labor Organizations Using Dues or Assessments for Political Purposes

Senator FANNIN. Mr. Cohen, on March 11, I introduced S. 1483, a bill to amend the Internal Revenue Code to deny tax exempt status to labor organizations which use membership dues or assessments for political purposes. It has been estimated that over \$100 million was spent in the last national election by labor organizations.

Are you familiar with this bill?

Mr. COHEN. Yes, sir.

Senator FANNIN. Do you know whether the Department or the Internal Revenue Service has had a chance to report on this proposal? Would you see what you can do about having them furnish me with a report.

Mr. COHEN. I'll look into it sir.

Senator FANNIN. Would you care to give me your reaction to this proposal or to advise me whether it is a proposal which might properly come under the bill we are considering today.

Mr. COHEN. You have asked for my views with regard to the bill you have introduced, S. 1483, which would remove the tax-exempt status of labor organizations using membership dues for political purposes.

Study Needed on All Tax-Exempt Organizations

As you know, the Treasury Department's current proposals relate principally to private foundations. Senator Williams' bill is also limited to private foundations. However, we consider that the provisions of the tax law affecting all other exempt organizations need to be given thorough study. Thus, we plan to re-examine both the criteria by which exemption is granted and the requirements for continued tax-exempt status, as well as the proper sanction to be applied in the event of violation of these rules. We would be glad to consider your bill in connection with this study.

I note that your bill would deny tax exemption to any labor organization which uses membership dues directly or indirectly to support or oppose any political candidate. At present, the Corrupt Practices Act makes it unlawful for any labor organization to make a contribution or expenditure in connection with certain specified elections, primary elections, and political conventions. Moreover, the Committee on Political Education (COPE), which is supported by labor unions, is not a tax-exempt organization. Hence, the problem of tax-exempt labor unions participating in political activities is confined to those organizations which are violating provisions of current Federal statutes.

Before I conclude, I would like to note for the record one or two final points that I think the committee will want to consider. Senator Williams' bill might raise questions in regard to pensions. For example, a person who might have worked for a foundation and then for the Government might have a pension that would commence at age 65, and he might be prohibited by this bill from having that pension for 2 years after his Government service ceases.

I also think you might want to consider whether the prohibitions of this bill should apply only when the payments are made knowingly in contravention of the rules. There could be cases where payments are received without any awareness as to the consequences.

In addition, Senator, I understand that you are willing to exclude some minor categories of expenditures, such as lunches.

Senator WILLIAMS. The bill provides the same rules that are existing law as it relates to business expenses as defined under the section you are familiar with, and it carries that same definition. Here is the language:

Subsection (a) is amended to read as follows:

* * * * *

"Paragraph (2) shall not apply to any gift or contribution of property to, or services or facilities made available to, a government official or a member of his family, if the aggregate value of such gift or contribution to, and of services or facilities made available to, such official or member during the taxable year does not exceed \$25."

Mr. COHEN. Yes, sir.

Senator WILLIAMS. And we are not trying to get what a man puts in his stomach. It is what he puts in his hip pocket.

Mr. COHEN. I understand that. You may also have to consider the possible problems of existing contracts in connection with the effective date of this draft legislation.

Senator WILLIAMS. All of these things will be considered, and, of course, as you say, you mentioned some hypothetical cases.

I am going to ask you this: I understand that the administration is anxious to get action on the bill dealing with the accelerated payment of the unemployment tax, and I am just as anxious as they are. So in order that we may get down to business and get it done as expeditiously as possible, I am going to ask you that any suggestions you have relating to this bill, that you get them back to our committee so that we can work them out, because I do not want to delay that bill any more than is absolutely necessary.

Mr. COHEN. Yes, I am confident that we can, Senator, and I look forward to the opportunity.

Senator WILLIAMS. We are all riding together, and let us both keep it in our minds.

Mr. COHEN. Very good.

Senator WILLIAMS. Yes, sir.

Mr. COHEN. Thank you.

Senator GORE. The committee will now hear Mr. Alan Pifer, Carnegie Corp. of New York.

**STATEMENT OF ALAN PIFER, PRESIDENT, CARNEGIE CORPORATION
OF NEW YORK***

Mr. PIFER. Mr. Chairman, my name is Alan Pifer. I am president of the Carnegie Corp. of New York, a philanthropic foundation established by Andrew Carnegie in 1911 for the purpose of advancement and diffusion of knowledge among the people of the United States and of certain British Commonwealth countries.

I welcome the opportunity to testify on Senate bill 2075. The reputable, long-established foundations such as Carnegie Corp., which throughout their history have operated with absolute propriety, full disclosure, and no other purpose than complete benefit to charity, have in recent weeks wrongfully and unfairly become objects of public suspicion as the result of the disclosure of certain instances of bad judgment, lack of propriety, and abuse on the part of a limited number of foundations. We are concerned about the undeserved tarnishing of our image and appreciate any opportunity, especially one before such an important body as this committee, to be heard.

You will, however, understand, Mr. Chairman, that having had only 1 day's notice of these hearings, there has been little time to prepare testimony. I must, respectfully, question whether on a matter of such vital concern to leading private institutions, they could not have had more notice than this.

I would like to commend Senator Williams on calling attention to the fact that some public officials at the Federal, State, or local level may be seeking or accepting improper payments or gifts for themselves or their families from private foundations.

Senator GORE. What is the essential difference in principle between a county or State official and any other citizen receiving an improper gift from tax-exempt funds? Do you see any distinction in principle?

Mr. PIFER. I am sorry, I do not understand the question, sir.

Senator GORE. What is the distinction in principle between a county official or a State official, on one hand, receiving improper payment from a foundation's funds and any other citizen receiving such improper payment from foundation funds?

Mr. PIFER. Well, I think this comes down to a question of conflict of interest. If there is conflict of interest involved on the part of the official, then I would regard that as improper.

Senator GORE. The bill makes no such provision. You are assuming something that the bill does not provide.

Mr. PIFER. Well, the bill assumes that all payments of any sort are improper transactions. That is the wording of the bill, and I had planned to go on in my testimony and comment on that very point.

*In addition to oral testimony, the committee has received a written communication from Mr. Pifer which appears at page 109.

Senator GORE. But if a payment is improper, the fact that it is made to a man holding public office does not increase the crime, does it?

Mr. PIFER. Well, I think the point here, if I understand your question, is that there may be impropriety involved in a public official accepting a direct payment from a foundation or many other kinds of private bodies, profitmaking or nonprofit, which would shed doubt on his capacity to make objective decisions in a certain regard. But the bill goes considerably further than that and suggests that all payments are ipso facto improper, and I thought it might be helpful if I did comment on that point at some greater length.

Senator GORE. I suppose my essential point is that the committee should be dealing with the basic impropriety of tax exemption for any funds used improperly. I see no reason for confining the action to a public official whose receipt of funds may or may not be improper. If we are to adjudge impropriety, it seems to me that it should apply to one citizen as well as another. But you may proceed.

Mr. PIFER. Yes, sir.

It is clear that the public interest lies in preventing such relationships not only between government officials and foundations but also between government officials and any outside agency, private organizations of all kinds, trade associations, business firms, labor unions, or whatever. Conflict of interest on the part of public officials has long been a concern of many thoughtful people, both inside and outside government, and it is widely believed that additional measures to prevent this may be needed.

I would, however, like to take issue with two major premises of the bill the committee is now considering. The first is that the best approach to the problem is by means of a blanket prohibition on foundations, and other organizations classified as foundations by the bill, to prevent them either directly or indirectly from making payments of money "in any form whatsoever, for any reason whatsoever, to a Government official."

It seems to me a better approach would be for each branch of Government at each level to consider the specific problem it faces of prevention of conflict of interest including conflict of interest involving foundations and take measures appropriate to that problem. For example, I understand that Executive Order No. 11222 of May 8, 1965, sets up standards of ethics for executive branch appointees which prohibits the receipt of gifts and makes mandatory a declaration of financial holdings of appointees. It would seem to me that if a new problem is found to exist relating to foundations, this Executive order could be amended by a further Executive order.

The merits of this approach I have just outlined would, it seems to me, be the following:

1. It would place the responsibility for prevention of conflict of interest squarely on public officials themselves.
2. It would provide remedies designed to get at conflict of interest more broadly and yet, at the same time, more specifically tailored to a particular branch or level of government.
3. It would be consonant with the traditional pattern of distribution of responsibilities between the three levels of Government, whereas the actual effect of S. 2075 would be a Federal preemption of respon-

sibility in this area insofar as relationships between public officials and foundations are concerned.

4. It would avoid some broad and, in my opinion, quite damaging consequences implicit in S. 2075—consequences to the public service at all three levels, and consequences to some excellent private organizations which with foundation support conduct important educational programs in which public officials have for many years been accustomed to participate.

With regard to the last of these points, I am informed that the classes and numbers of officials that would probably be affected by S. 2075 are the following: 30,000 postmasters, 500 presidential executive appointees, 500 members of the Federal judiciary, 535 Members of Congress, several hundred thousand military officers, all U.S. marshals, attorneys and Foreign Service officers, 7,500 State legislators, 800 other elected State officials, 50 Governors, 2,000 officials appointed by Governors, several thousand mayors, and many thousand city councilmen, elected school board members and elected county officials.

I realize that in private session the committee has agreed, according to Senator Williams this morning, to exempt the local level officials, but, of course, we did not know that when we prepared our testimony.

In short, a very large number of American citizens and their families not only while in office but for 2 years thereafter would be subjected to a wide range of special disabilities not suffered by other Americans and denied access to important educational opportunities enjoyed by other citizens. The latter would hold true because most public officials could not afford to pay their own travel and living expenses in connection with these opportunities. In this connection S. 2075, if enacted into legislation, would tend to discriminate against public officials of moderate means and in favor of those who happen to have private sources of income.

A further effect of this bill, and one which strikes me as particularly unfortunate, is that it would deny many of our finest young people, the sons and daughters of public officials, the right to compete in scholarship programs financed in whole or in part by foundations, and here I have in mind not simply the nationally prestigious National Merit Scholarships and the Woodrow Wilson fellowship programs, which apparently would be exempted according to Senator Williams this morning, but also a lot of scholarship programs run by universities.

Now, whether these would be considered to be available nationally, I do not know. That would have to be decided, but I think that is a point which the committee would perhaps want to consider.

It seems to me these special penalties are perhaps an unreasonably high price to ask Government officials to bear in exchange for the privilege of Government service. Would this measure not therefore have a seriously inhibiting effect on the ability of all levels of Government to attract and recruit able employees?

The second premise of this bill with which I would strongly disagree is implicit in the words "improper transactions" used in its title used to describe all financial relationships, either direct or indirect, between foundations and Government officials. In my opinion, there is nothing intrinsically improper in various types of Government officials

taking part in activities of reputable organizations supported by foundations, for example in a judge accepting travel expenses to attend a foundation-financed meeting of a major bar association; or in a State legislator accepting travel expenses to take part in a university seminar; or in a Member of Congress getting travel expenses to attend an international meeting of parliamentarians.

Nor is there anything intrinsically improper in a Government official, on leaving Government to return to a university or other private institution, applying for a foundation grant for research and writing; or in the son of a State commissioner of agriculture, a postmaster, a school board member, or a county supervisor applying for a foundation-financed scholarship for undergraduate or graduate study. But all of these activities would be prohibited under the proposed legislation.

In closing, I would like to comment on the two basic reasons why I believe it is clearly in the national interest for Government officials to take part in the educational activities of private, nonprofit organizations.

In the first place, these activities, being educational, enable officials to enhance their competence and therefore their ability to serve the American people. They are simply better officials because they have acquired additional understanding or special knowledge.

Secondly, they provide indispensable forums, such as the American Assembly, the Southern Regional Education Board, and the Council on Foreign Relations, for the exchange of ideas between the public and the private sectors of American life. This exchange of views and the public-private cooperation growing from it is not something to be suspicious of but to welcome. Indeed, it is fundamental to the American system.

Realistically, however, it takes money to finance special activities of this kind, and uncommitted funds available for such purposes are always scarce. Inevitably foundations must be a major source of these funds. I see nothing dangerous or improper in this.

I am, of course, aware of the rightful public concern aroused by the Wolfson Foundation case. I share this concern. Like all classes of organizations in American life, public and private, foundations are unfortunately susceptible to misuse and abuse. It is something we in the bona fide foundations deplore perhaps more than anyone.

But the overall record of foundation supported activities in which Government officials have participated is, I would assure the committee, one that has produced wide public benefit. I urge the Congress not to penalize hundreds of thousands of deserving public officials, many fine organizations supported by foundations and many well-managed, public spirited foundations by a massive and hasty overreaction to the problems created by a tiny handful of officials and foundations.

The answer to these problems may lie in the alternative approach I have proposed, or it may lie in the full disclosure requirements for foundations presently being considered by the House Ways and Means Committee, plus full disclosure requirements for all public officials. But whatever the answer is, I earnestly hope it will not be based in the principle of collective punishment of guiltless individuals and organizations. Such an approach would in the long run, I am convinced,

not be in the national interest and would be profoundly contrary to the long-standing tradition of legislative fairness of the United States Congress.

Thank you.

Senator GORE. Senator Bennett.

Possibility of Foundation Funds Controlling Results of Meetings

Senator BENNETT. Mr. Chairman, I have enjoyed the testimony very much. There is one particular point on which I have suddenly developed an interest. You talk about the propriety of foundations supplying the necessary money for Members of Congress to attend international meetings of parliamentarians of various groups in the United States.

I never attended any of those meetings on foundation funds, but I have observed some of those operations in action, and don't you think you run the risk of allowing the foundations to load those meetings so as to control the reports and the reactions that come out of the meetings? If the foundations are allowed to pick the parliamentarians who attend the meetings to represent the United States, can't you forecast in advance the results of those meetings will demonstrate or will carry out the political leaning of the foundation?

Mr. PIFER. I suppose there there might be such a danger, but my testimony perhaps wasn't entirely clear there. I was referring to foundation support through intermediary organizations such as a university, for example, or some reputable well-known private organization where no bias would be admitted of any sort. Members of Congress would be picked according to a wide distribution of background and outlook.

Senator BENNETT. Well, the Members of Congress are not picked by their fellow Members of Congress. It seems to me that is the only way you can avoid the charge of bias.

If the foundation or the agency supported by the foundation is going to make the selection it seems to me you lead right into the problem that concerns Senator Williams, that foundation money is used indirectly to support particular political philosophies, and that, as I say, the reports, the results, the decisions made at those meetings could be prejudged. I recognize the difficulty of setting the limits of this thing, but this is one of the things that even the House bill was trying to get at, the use of private foundation funds to support particular political programs or philosophies, and Senator Williams is trying to get at it, too. I think this is one of the problems that concerns him. That is the only comment I have to make, Mr. Chairman.

Senator GORE. Senator Curtis.

Senator CURTIS. I am not sure that I understand all of this. Would you give some concrete examples of foundations financing educational activities where Government officials took part and were reimbursed?

Mr. PIFER. Reimbursed for their expenses?

Senator CURTIS. Expenses or any compensation, either one.

Mr. PIFER. Yes.

I would think that the American Assembly, which was the organization started by President Eisenhower when he was President of

Columbia University, and which I believe is going to testify today would be a good example of this.

Senator CURTIS. Who financed it?

Mr. PFEER. A number of foundations have contributed the funds for particular American Assemblies. There are a number of these assemblies in the course of a year, and the custom has been for the organization to go to a particular foundation and say "Would you be willing to put up the funds for an assembly on the subject of," whatever it may be.

Senator CURTIS. Who attends the American Assembly?

Mr. PFEER. A large selection of businessmen, and some Government officials, university people, lawyers, well-known citizens of all kinds.

Senator CURTIS. Now, if I understand the testimony of the witness prior to your testimony, if an official of the Treasury Department was invited to participate in the American Assembly the Treasury Department would pay his expenses and would not permit him to receive expenses from any other source.

Mr. PFEER. That is the way I understood his testimony, yes, sir.

Senator CURTIS. What this would do would apply that rule across the board in Government. Do you think that is a bad rule?

Mr. PFEER. I think it may depend on the level of government. I think it is quite a complex question, and I think if it applied broadly throughout all levels of government, all branches of government, I think there would be many officials who would not be able to attend because they would come from units of government which were simply unable to afford such a matter as this. Of course, government funds are in very short supply at all levels, as you know, and I think that the net effect of this would simply be that a number of officials would not be able to attend these activities.

Tax Exemption Carries Responsibilities

Senator CURTIS. I want the record absolutely clear on that. I think we have wonderful foundations in the country. I think the contribution they have made to the public good is just beyond what we can enumerate. At the same time I regard the privilege of being totally exempt from taxation as quite a privilege, and I do not think it is unreasonable to take a position that the recipient of such a privilege of total exemption from taxation, shall not in any manner have its benefits flow to people in Government, because they are the ones who grant the total income tax exemption.

It seems to me that what the Treasury Department does is a sound practice. Government officials and Government employees shouldn't be traveling all over the country at non-Government expenses to meetings that are molding public opinion, that are formulating policy, and if there is a contribution to be made by Treasury Department officials or employees or if the Treasury Department itself is going to benefit from it that should be an expense of the Treasury. Now, as you come down to the very local minor officials, I shouldn't have used the word "minor" because local government is exceedingly important, it might well be that the provisions of this bill should be limited to officials drawing a certain dollar amount so that it reached the policymakers and decisionmakers and people who can grant or deny, approve or disap-

prove the acts of foundations—frankly, I feel very strongly that I do not want this legislation to destroy or hamper or harass good foundations.

I think non-tax-supported education in this country might have a fatal blow if tax exemption foundations are damaged to any great extent, but it seems to me that this dealing with personnel that make up Government itself is in quite a different category and that it would be to the interest of the general public and the foundations themselves to have something along the line of the Williams bill, and I am sure that he would be the first person to accept amendments that make it very clear exactly what abuses we are trying to reach.

Mr. PIFER. I respect that point of view, Senator, very highly. I think perhaps the difference in our approach is that I would tend to regard this as a responsibility which should fall on Government bodies themselves at all levels in all three branches.

Senator CURRIS. I don't think that can be done in the judiciary. I can't find anything in the Constitution, and they are all constitutional officers, that gives one Federal judge the authority to police the conduct of another Federal judge. Now, the Congress has legislative power. In the executive, the executive hires its own people, even to a limited degree those that are under civil service. They can, as has the Treasury Department, lay down certain rules but I do not believe the Chief Justice of the United States is a superior officer over a Federal district judge in my State. I do not believe that the Chief Justice of the United States is a superior officer over an Associate Justice. He has certain duties as Chief Justice, but I don't think we can leave this to the departments of Government. I think this proposal will play a role in preventing some bad legislation that might have far-reaching effects beyond what the advocates of other legislation could possibly anticipate or realize.

Mr. PIFER. I would assume from that comment, Senator, that if tax exemption is the operative point here, that such a bill really ought to be extended then to include all tax-exempt organizations, not simply foundations; that is, universities, churches. There is a vast range of tax-exempt organizations.

Senator CURRIS. Not entirely. I know of no instances where hospitals have put Justices of the Supreme Court on their payroll. I do not know of any abuses of colleges. I never heard of it with respect to the Red Cross. It might be all right and maybe I wouldn't have any objection, but I put private foundations in a different category than an institution that was created for the purpose of higher education or running a hospital or the like. I don't believe we have a problem with those.

Mr. PIFER. I was referring specifically to the practice of public officials accepting lecture fees and honoraria, expenses, and so on, from private educational institutions which are tax exempt, and I believe this is quite a widespread custom.

Senator CURRIS. I couldn't quarrel with that. There is nothing wrong with that.

Senator GORE. Senator Williams.

One Alternative Solution to the Problem

Senator WILLIAMS. Well, Mr. Pifer, I apologize for having to step out a moment. I had a constituent I had to meet. I can assure you that in line with what Senator Curtis just said, this is not an attack on foundations as such. We are trying to deal with a problem and I think we are both aware of what has called it so sharply to our attention, this problem of foundations putting public officials on their payroll or the necessities of having them on it and we are trying to correct and make sure that that doesn't happen, and it could be approached in various manners.

One suggestion was made that you put criminal penalties on it. They are always harder to enforce, and so we developed this procedure that we thought would maybe be self-policing. You notice there is no criminal penalty in this bill. It just merely states that if the foundation puts a public official on its payroll it loses its tax exemption. That in itself is an extreme penalty, as you know. We didn't think we could put all of the responsibility on the foundation and say: "It would be all right for me to accept your payment but it would be wrong for you to give it." So, to balance it we state that the recipient of the payment would turn it over to the Government in the form of a 100-percent tax.

Public Officials Not Restricted From Cooperating With Foundations

We are trying to correct this situation and I think if we can get this corrected, it will serve a useful purpose both from the Government standpoint and from the standpoint of the foundations. There is nothing in the bill, and nothing intended that would restrict, even if enacted, any public official cooperating with your foundation, giving to them the benefit of his advice if he felt he was doing something that was a worthy cause, providing they contributed their services just the same as you and I may be members of the board of our church. We are on the board of trustees, but we are not paid trustees, and this just merely states that you can't pay them.

And I would ask you this question: In what way would it handicap the operation of your foundation if it was restricted that you couldn't put public officials on your payroll? Does that in any way handicap you from operation? That is all we are trying to get at.

Before you answer, I want to state that we are only covering those top positions, those public officials in policy-making positions. We are not covering the school board and the postal clerks, et cetera. With all due respect to them we have a definition that covers schedule C appointments by the President and the supergrade, and when we hit congressional employees we use the same definition that has already been used several times, \$15,000 and over. Maybe it needs further limitation or clarification, but the objective is what we are trying to seek. But public officials in policy positions, making policy decisions which affect foundations—in position to affect the legislative proposals that are being presented by the Ways and Means Committee, we will

just use that as an example or maybe render a decision in the court that would have an effect on the foundations or some of its sponsors—why shouldn't they be restricted? Would it handicap the operation of your foundation? And if so, I wish you would cite just how it does.

Direct and Indirect Payments

Mr. PFEK. Well, I would like, if I might, Senator, to draw a distinction between the two words used in the bill, "direct and indirect payments," and it seems to me these are two quite different matters. A direct payment by a foundation to a government official for services or for membership on a board of trustees or something of that kind is, in my own personal opinion, a far more questionable matter than the indirect ones.

Now I think I can state, although I really haven't had the opportunity in the short time available to check the record completely, but to the best of my knowledge, I do not think our foundation has ever made a direct payment for services to a government official. We may well have reimbursed expenses directly to such an official for attending some meeting which we were organizing ourselves. But it is the indirect payments that I think would work the great hardship because there the judgment and discretion and public spirit of not simply one board of trustees but two come into question. That is, the very fine private organizations which run educational programs, which feel that these programs are better if some public officials can participate because this brings the point of view of government into those discussions and deliberations. These indirect activities would be proscribed by the bill, that is, it would be impossible for the government official even to collect expenses.

I feel there would be many government agencies, particularly at the State level, that simply would not be in a position to pay expenses for their officials to attend meetings of this kind, and it really is in the public interest that there be this interplay of public and private. This is very basic to the American system, that we do have this kind of cooperation, and this is why our system, in my opinion, is superior to most other countries because we do have a viable private sector and because that private sector is able to play its part in helping to develop public policy. We don't put it all over on the public side the way other societies do, and I, therefore, philosophically, am concerned about any kind of measure which limits the ability of the private sector to play its part. Travel is expensive in this country. If you live in California and the meeting is in New York or Washington, it costs more than the majority of officials could afford out of their own pocket to make that trip, even one trip a year. Such officials live on very tight budgets, and foundation funds passed through a responsible intermediary organization, like the American Bar Association, or whatever it may be, are necessary. It seems to me this is an important consideration, the travel costs, and I would, therefore, suggest that it might be wise to consider a modification of your bill to exempt any kind of indirect payment of this kind and to exempt educational activities, because I would submit, respectfully, that quite a powerful case can be made that it is in the national interest that public officials be enabled to take part in these educational activities.

Public Officials Not Restricted From Cooperating With Foundation

Senator WILLIAMS. Well, I don't want to delay this because I know the chairman is very much interested in proceeding. I repeat again, there is no objection on my part, and nothing in this bill to prevent a public official taking part if he does it for nothing. It is the payment we are talking about. You mentioned these conferences and travel expenses. I had a gentleman with the best of intentions raise that same argument yesterday in conference with him, and he cited a specific case he had in mind, and, in fact, he convinced me even more after listening to him that I was right. The case he cited was they wanted to underwrite a conference that would be held in Greenbriar or somewhere of all of the States' attorneys, and underwrite the expenses of the attorneys general of the various States.

Possibility of Criminal Elements Forming a Foundation

I said this: Suppose the racketeering elements of this country formed a foundation. Can I think of a more constructive contribution that they would want to make than to underwrite the expenses of a conference for the attorneys general of the respective States and give an honorarium of \$10,000, \$15,000, or \$20,000 if they could get the Attorney General of the United States? I don't say they would, don't misunderstand me. But I say these are the problems that could raise questions and, after all, if foundations are supposed to pay a part of this operation, if it is proper--and we won't go into that; that will be discussed in another bill--let us do it in the form of taking taxes from them the same as other people and let the State or Federal Government use that money to pay the expenses.

I think it would be much better if I as an employee of the Government am on the payroll of the Government alone than it would be if I were on the payroll of both the Carnegie Foundation and the Government. Those are the points I am raising. I appreciate your problem and I know that the suggestions you made are made with the best of intentions. They will be considered by the committee.

But as I stated, and I will close with this, all we are trying to do is to stop the abuses which we have known about and the ones which we can think of that may develop. Beyond that, we want to do it in a manner that will in no way handicap any foundation from conducting its legitimate business as it was intended, namely to carry on its work in various fields of charity. But I don't think by any stretch of the imagination added compensation to a public official should come under the definition of charity. I assure you that we appreciate your testimony and it most certainly will be considered as we mark up the bill.

Senator GORE. Thank you, Mr. Pifer.

The next witness will be Mr. McGeorge Bundy.

Private Family Foundation Abuses

While Mr. Bundy is coming up let me say while my colleagues are making some very interesting, generalized statements, I would like to suggest that I have noted the proliferation of private family foundations and have given the matter some attention. It occurs to me that in

an overwhelming percentage of the cases the term "charity and education" is used to conceal two motives that are involved: (1) an escape of taxation, and (2) continued control and use of wealth.

Now the pending bill doesn't go to this fundamental problem at all, and I propose to go to it.

I know of nothing that was either educational or charitable in the Wolfson Foundation payment to Justice Fortas, or in the foundation that I read about making payments to Justice Douglas. In fact, I know of nothing educational in what we have recently learned about a foundation making a \$5,000 award to a former counsel of this committee upon whose advice this committee depended for technical matters relating to taxation of foundations and other things. There is a big, very fundamental problem here.

Mr. McGeorge Bundy directed an award to employees of a former Senator because they were heartbroken at his demise, and I certainly sympathize with their sorrow. But did you consider giving an award, a trip around the world, to any of Senator McCarthy's supporters? I saw them out in Chicago. They were not only brokenhearted but broken-nosed. They were disappointed and beaten up.

I wonder if you would address yourself to that? Did you give them a trip around the world, Mr. Bundy?

STATEMENT OF McGEORGE BUNDY, PRESIDENT, FORD FOUNDATION*

Mr. BUNDY. No, sir.

Senator GORE. Well, now, there has been a big anti-Democratic tide sweeping the border States area. Should I seek reelection next year, I will certainly have to swim against the stream, and the current is rather swift. Were I to be defeated my employees would be very brokenhearted. Would you consider giving them a trip around the world?

Mr. BUNDY. Senator, we didn't give anyone a trip around the world. That wasn't the purpose. I would be glad to discuss those grants, of course, and we do certainly consider in all seriousness the opportunities and needs of many kinds of persons, including persons who have served in other staffs than those in that case.

Senator GORE. I understand. Some of them may be very worthy, but the fundamental point is that you are using wealth that has escaped taxation for the purpose of rewarding friends, or people of your own choosing, and for purposes of your own choosing. This is the basic error that is involved in tax exemption for foundations, and it is a question to which I have been trying to persuade this committee to give its attention for a long, long time. I am glad it is now receiving some attention, although I regret that this has been brought about because of indiscretions that have been brought to public light.

Well, you may proceed.

Mr. BUNDY. Thank you, Senator.

I would like not to make a formal statement, gentlemen, I associate myself closely with what Mr. Pifer has said. His view of these matters and my own are very close.

I would like to begin with the question which Senator Williams addressed to him a few minutes ago: Do we, in the foundation, want

*In addition to oral testimony, the committee has received a written communication from Mr. Bundy which appears at page 106.

public officials on our payroll? The answer to that is, I think, fundamentally no, we don't.

When I served in the executive branch it seemed to me very important that officials holding Presidential appointments should avoid relations, activities, or reimbursements of any kind which would interfere with their independence of judgment and their ability to devote themselves entirely to the service of those who had trusted them by that kind of appointment.

It seems to me that that principle is of very high importance. We do not in the Ford Foundation make direct payments, so far as I know, in the form of honoraria. We do pay occasional travel expenses to persons holding the kinds of office in executive and legislative and judicial branches of the Federal Government to which your proposed bill is addressed. It is a little more complicated in State and local governments, as I think some of the discussion has already suggested, because there are part-time employees sometimes holding office and this is not the center of your concern.

Local Level Employees Excluded From Coverage of S. 2075

Senator WILLIAMS. Mr. Bundy, you were here when we said we were not trying to hit the local lower level employees of the States. They are not included, or at least they would be excluded. But in our instance, we elect our attorney general, so it would include him. It would include all of our State judges because they are appointed by the Governor. In some areas they are elected by the people or by the legislatures. It would include those and it includes the top policymaking positions of the Federal Government, and the top policymaking people of the Congress likewise.

Mr. BUNDY. I appreciate that. What I am trying to say is that on this basic question of whether you wish to divide the interests or in any way invade the independence of a public official, it is perfectly clear to me that you don't, but it seems to me that it is sensible, as someone suggested, to address a bill of this kind to the relatively more senior and the more responsible.

The only case that I am aware of, of any significant honorarium to an officer of the Federal Government in which we are currently engaged is that we do pay a \$5,000 a year fee to our trustees.

We have for a long time had a rule that no officer of the executive or legislative branch of the Government should be a trustee because of the importance of separating ourselves from that kind of active engagement in political life. We do have, however, one Federal judge on our board, Judge Wyzanski, a man who has served on our board for some 17 years. His situation is very much the same as the one in which Judge Burger found himself last week, and I am quite sure that in his case the honorarium is not important. He has in fact increased his charitable contributions by more than the honorarium during the years that he has had it, and he will abide, I am sure, by the Judicial Council which is now reviewing these cases.

I mention this because I want the record to be clear, I do myself want to say I distinguish it very sharply from the kind of case which has given rise to concern.

Senator WILLIAMS. Mr. Bundy, if I may interject here, there would be nothing under this bill if enacted and signed which would stop the same gentleman from continuing to serve on your board. He would just serve for nothing.

Mr. BUNDY. That is correct, and I think if this were either an enactment of the legislation or an opinion of the Judicial Conference, and the Judicial Conference is reviewing these matters now as I understand it, he would gladly accept that judgment. This is not a problem.

I mention it, as I say, because I think it is important that it should not be neglected in this discussion.

Senator WILLIAMS. Yes.

Grants to Former Employees of Senator Robert F. Kennedy

Senator CURTIS. What was this that Chairman Gore talked about a grant for travel about former employees of the Senate?

Mr. BUNDY. That is another case.

As I say, they were not—it is a different one and the difference is an important one. At the time when those travel and study awards were made, these men were no longer in any way on the payroll of the Federal Government.

Senator CURTIS. Who had they been employed by?

Mr. BUNDY. They had been employed by Senator Kennedy. I can't tell you—

Senator CURTIS. On his private payroll or on Government payroll?

Mr. BUNDY. I can't tell you, sir.

Senator CURTIS. How many were involved?

Mr. BUNDY. There were eight in all, and I must tell you that looking back on that decision, I now believe it was not a wise one, and I regret it. I regret it particularly because it seems to me to cast an unfair light on the individuals, and on foundations. As Senator Gore suggested, our reasons here were concerned with the feeling that these were men who could make effective use of the kind of award which we had found very valuable educationally, men who had been uniquely stricken in a moment of terrible tragedy, and that the results of these studies would justify the expenditure involved.

I should add parenthetically that insofar as these awards carried stipends those stipends were taxable to the individuals. But I do say that they have given rise to misunderstanding. That misunderstanding is my responsibility. I have explained this in writing to the Committee on Ways and Means some weeks ago and I am glad to repeat it here.

Senator CURTIS. What was the basis of making these awards?

Mr. BUNDY. We have had, if you will—excuse me.

Senator CURTIS. What was the basis of making these grants or awards to these particular individuals?

Mr. BUNDY. We have had for a considerable time a program which we call travel and study awards in which we do from time to time—they are not enormously numerous, there may have been 200 or 300

in each of recent years—made to individuals grants for travel and study when their interests and abilities seem to us likely to make them able to make good use of such time, both in terms of what they learn and of what they report to us and in terms, if you will, of their own advanced education, and it is in that category, and in that framework when we were considering in the aftermath of that terrible pair of tragedies a year ago, the assassination of Martin Luther King and the assassination of Senator Kennedy, whether there was anything that we could responsibly do.

Now, I should say in behalf of these individuals that they have worked, that the reports so far submitted are impressive, that we feel that they are discharging their part of the bargain. Nevertheless, as I say, I think this action for which I bear the responsibility as given rise to misunderstanding, and for that reason I regret it.

Senator WILLIAMS. And since actions like that will not be taken again, this bill won't affect it at all in your future operations because it won't happen.

Mr. BUNDY. It certainly won't happen while I am in charge, Senator.

Senator WILLIAMS. Surely.

Mr. BUNDY. And as you say, the bill does not in fact reach the employees of Members of the Senate and the House.

Senator WILLIAMS. Well, the bill is being phrased to cover positions in the House of Representatives or the Congress of the United States held by an individual receiving gross compensation at an annual rate of \$15,000 or more so it has been added, so it would cover it. Here is the language:

(Subsection (c) is amended to read as follows:)

(c) GOVERNMENT OFFICIAL.—For purposes of this section, the term "government official" means, with respect to a transaction described in subsection (a), an individual who, at the time of such transaction, holds any of the following offices or positions, or who has held any such office or position at any time in the preceding 2-year period:

(1) an elective public office in the executive or legislative branch of the Government of the United States,

(2) an office in the executive, legislative, or judicial branch of the Government of the United States, appointment to which was made by the President,

(3) a position in the executive, legislative, or judicial branch of the Government of the United States—

(A) which is listed in schedule C of rule VI of the Civil Service Rules, or

(B) the compensation for which is equal to or greater than the compensation of positions classified in GS-16 of the General Schedule under section 5104

(4) a position under the House of Representatives or the Senate of the United States held by an individual receiving gross compensation at an annual rate of \$15,000 or more,

(5) an elective public office in the executive, legislative, or judicial branch of the government of a State or of the District of Columbia, and

(6) an office in the executive, legislative, or judicial branch of the government of a State or of the District of Columbia, appointment to which (or election to which) was made by the Governor or legislature of the State, or by the Commissioner of the District of Columbia.

Mr. BUNDY. Having said, if I may continue——
 Senator WILLIAMS. Sure.

Independence of Public Officials Necessary

Mr. BUNDY (continuing). That our basic view of the importance of the independence and integrity of public officials and their absence of dependence upon or indebtedness to any institutions for that matter, I would say that this is as important for taxpaying institutions, for other tax exempt institutions, namely, universities, publicly supported foundations, as it is for private foundations. The independence of a public official is something important in its own right, it seems to me.

We do have questions about the particular sweep of this bill because it seems to us that it goes considerably further than is necessary or desirable to meet the real objective you have in mind, and that it does some damage along the way.

Former Government Officials

Now, in our own case, for example, if I may talk about the direct part of the bill, and then the indirect part, because the two adverbs "directly" and "indirectly" are, I think, important as to what the range of the bill will be. The most difficult part of it really is the 2-year rule, because the provision that none of these officials could have any relation with the foundation, direct or indirect—but let's stick to the direct for a moment—would severely limit us and would, I think, also limit the Government in the movement which has occurred between foundations and Government just as it occurs between colleges and the Government, universities and the Government, business and the Government, or law and the Government.

I will leave my own case out because the statute of limitations has run. I have been out of the Government 3 years now but I did come straight from the Government to a foundation. Our vice president for international affairs, a man whose integrity and quality are, I think, well known here on the Hill, is David Bell, and he came to us straight from a post with a Presidential appointment as Director of the AID.

Dean Rusk, to go back some 15, 18 years, went straight from Assistant Secretary of State to the presidency of the Rockefeller Foundation and when he left the office as Secretary of State he received a senior appointment again at the Rockefeller Foundation. There has been, as far as I know, no whisper of criticism of these moves, and it seems to me much too sweeping to prohibit, and it is also true and we have had that experience, both in my time, and in the Johnson administration, and now in the Nixon administration that Cabinet officers seek out some of our program officers or vice presidents and ask them if they are available for service. One or two have gone.

We had a representative in one part of Latin America who accepted an appointment as an Ambassador under the Johnson administration. He would not have been willing to do that if he had been debarred by that acceptance from returning to foundation life.

Senator WILLIAMS. That is the point that bothers us. Instances where men accept public position, high position in the Government—and these are policymaking positions—with the intention and understanding that he will go back to the foundation later. That is what we are trying to get at.

Mr. BUNDY. Senator, intention and understanding is not quite what is involved. We would not be able to say and would not say to someone going to the Government that we could guarantee to take him back. Universities do that very often; I used to have that responsibility for such arrangements in a university, and it happened a great deal. But it is a quite different thing from saying “We don’t put a lien on you or you on us,” by saying “if you take this job, you alone, you alone, foundation officers alone, in all the country, are forbidden to come back to a foundation,” because this would be a unique application. You aren’t saying this about universities. You are not saying it about business.

Senator WILLIAMS. Are you suggesting that, would you support that, we extend this—

Mr. BUNDY. No, sir; I think it is too much.

Senator WILLIAMS. I know that during the administration of World War II and prior to that there was a restriction about going back into business, you know. That was suspended and it has never been reinstated. You could go back in business, but you couldn’t represent the company with which you were affiliated before the agency with which you had been connected in Government. But this Congress is going to deal with a question which is over in the Ways and Means Committee—and it will soon be over here before us—as to what extent a foundation should be taxed. The decisions that we make on that are very, very important as far as the foundations are concerned. We recognize that, and I am not suggesting that any Member of Congress or any member of the executive branch, the Treasury Department or in policymaking positions of the executive branch, would be in any way influenced in making that decision as to his hope of a chance of reemployment. But shouldn’t we remove ourselves from any semblance of suspicion?

Mr. BUNDY. Well, Senator, as I think Mr. Cohen pointed out, this problem of there being a relation between services as a Government officer and service in another perspective or working in another perspective appears up and down the line. The truth of the matter is, I think, that the consideration and judgment of this particular business of foundation legislation will be completed this year. That certainly is the general expectation as I understand it and I don’t believe that a provision of this kind is going to be more than really locking the barn door after the matter is decided in this particular case.

I have to tell you that what I do not understand is why if there should be a rule of this sort there shouldn’t be a rule that a man coming from business is forbidden to come back to his own firm, why a man coming from law is not similarly limited, why a professor is not told he must not go back to his university. I honestly don’t understand. It seems to me the application is much wider than is necessary for your purpose and it is unfair.

Senator WILLIAMS. Well, one distinction is the tax-exempt status that the foundations enjoy which private industry does not, and maybe that needs to be dealt with. But in employing *x* Government officials, and I cast no reflection on those that you have named; I want to make that clear. We are not dealing with personalities at all, but in selecting the men that you are going to employ as they leave Government service, it is only natural, and I think you would agree, that we select men who agree with our particular political philosophy or the political philosophy of those who are running these large foundations, and does that not open up the possibility of perpetuating and keeping in reserve men of that political philosophy so that when the administrations change later we have got men ready to move in and out of either administration? I don't say that is the motive but doesn't that raise the possibility? Won't you agree with me that you didn't select the applicants to award these trips from a senatorial office with whom you disagree in most of their decisions? You know that is just human nature. I don't criticize it.

Mr. BUNDY. I will admit there is a hazard there, Senator, but I have to say, having said what I have said about regretting those grants, that the reason for doing them was human feeling not political agreement. I don't happen to have political agreement with those individuals.

Senator WILLIAMS. I am not suggesting that, but I am just saying that in selecting a former Cabinet officer you wouldn't select one or the board wouldn't select one with which they disagreed. It is human nature.

Mr. BUNDY. Well, sir, I really don't know that that is so. We have had officers come in and out of the Ford Foundation from all administrations.

Senator WILLIAMS. That is the point.

Mr. BUNDY. All administrations.

Senator WILLIAMS. Yes, all administrations, that is what I am saying.

Mr. BUNDY. Of all parties.

Senator WILLIAMS. Yes.

Mr. BUNDY. I should have mentioned one more who would be forbidden under this law and that is Paul Hoffman who was the first president of the Ford Foundation who came to that position as administrator, of the Marshall plan, under Eisenhower; no, President Truman first. He was, of course, a supporter of General Eisenhower.

The point is, I don't think it is partisan or ideological. If a foundation were run, and I don't think a foundation should be run, on ideological grounds, but if it were, there are plenty of hard-boiled ideologues of any point of view outside government. The quality of the men for whom we are competing is such that many of them will over the years turn up in the government. I think that it is fundamental that there should be a separation between their governmental responsibility and their service in a nonprofit organization. But I think it is really highly discriminatory to impose a 2-year rule of this sort on only one kind of American institution.

Senator BENNETT. Will the Senator yield for a question at this point?

Senator WILLIAMS. Surely.

Foundation Pressure on Government

Senator BENNETT. In order to accomplish what I think Senator Williams is really getting at, which is to eliminate the political pressure of foundations on Government—we are very careful on the separation of church and state, and the churches enjoy the nonprofit exemptions—can you suggest any approach which can get at the basic problem of making sure that foundations in their programs are not in a position to operate as political agents of either party or any group?

Mr. BUNDY. Well, I think that this is, I think, you are right, the heart of the problem and I believe also the heart of the problem of what is being considered over in the Ways and Means Committee, how do you sustain the freedom and responsibility of institutions which are not in that sense political when it is clear that they are concerned with issues which do have certain relations to the life and work of government?

The current proposals in the Ways and Means Committee while we haven't studied them seem again to me to again clear away too much of the forest while shooting at a few trees but I would rather not comment in detail on that partly because we have not studied them and partly because that matter is in that other forum right now.

I think that there is a very big distinction, general distinction, to be made between fair studies, analysis, work upon a problem, even position on an issue and a partisan political approach.

Let me take one example in which we have had perhaps as much experience as in any one field, and that is this very difficult and important and complex business of population, family planning, and research on reproductive biology.

Now, in one sense we have a position on this matter, we think it is terribly important. Our trustees believe that it deserves study. We have committed a number of millions of dollars, tens of millions of dollars, to the field. We do consult both abroad and at home with governments, the National Institutes of Health, with members of committees and others who are concerned with this same problem.

I don't know, sir, whether you would feel or would not feel that this is what you call political pressure or the weight of a foundation, certainly we are in the field of population. Under our charter as our trustees read the shape of human problems, we could not be there. It is too important a question, and needs attention too much. We try not to, and do not, as far as I know, and I think these are very conscientious and careful officers, engage in any activity which is currently offensive to the law or the common practice of the Government. But we are present in the field of population. Now, I can't help you much more than that.

Senator WILLIAMS. Well, Mr. Bundy, on that particular project, I think we are pretty much in agreement on your objectives and everything and I commend you on it. But if, as a public official, I felt or feel very strongly about it, I not only have a right but a responsibility as a citizen to cooperate with you, both as an official and as a citizen, and this bill doesn't stop me. It merely states that you couldn't put me on your payroll.

Now, if, as a public official, I feel and agree with you that is one point. But suppose I am just on the borderline. Doesn't it open the possibility that--and I am not suggesting that it has ever been done--a foundation might want to give them a grant somewhere, and perhaps that might help them see things a little differently.

We are not trying to condemn what you have done or your motives at all, and as long as the motives of everybody are in a spirit of generosity and public service, this bill doesn't interfere with it. But all I am suggesting is that if public officials--and we are defining these only as the higher paid public officials--as a public service wish to work with you that is fine. We have a right and a responsibility, if we are in the Government in that particular area to confer and work with you, too. Whether we agree with you or not. In this instance we agree. But I find no fault with what you are doing. I just say I don't think that in order to accomplish this, you don't have to put us on your payroll.

Mr. BUNDY. As I think I have already expressed my sympathy with that point, I agree with that.

Senator WILLIAMS. I don't mean to say you didn't. You made that clear. But as I say and since we agree on that, this won't affect that relationship, is what I am trying to say.

Paid Travel Expenses

Mr. BUNDY. Suppose we do, as we do from time to time consult with interested parties on population problems. I think the difference between you and me on this one may be quite narrow. In a direct arrangement of this sort, our current practice would be to offer the man expenses, if he were willing to come and talk with us. Now, you are saying that that could not be, the bill would knock that out obviously.

Senator WILLIAMS. Well, the reason we knocked it out was that we were unable to come up with a formula that we wanted. If you have something to suggest I have an open mind. The allowances and awards were called expenses for a couple or three trips that were over to Africa and Europe, and I am not referring to the ones to which you referred either. I think we are both aware of these. There was nothing that we could see that was accomplished except the man and his wife get a worldwide tour, and those were the points that we tried to get at. It was done under the guise that it was an expense payment and that is what we are trying to get.

Mr. BUNDY. Well, sir, I think one thing that consider--

Senator WILLIAMS. I think you would be in agreement on what we are trying to get so that is the point.

Mr. BUNDY. I think one thing that would be worth considering at least is whether you don't want to exempt travel expense for the individual, I think wives are another matter, and I think that is quite different. But travel expense for an individual for professional participation where there is no honorarium and where the man is, as most of the time I can assure you our people have to work very hard at these conferences, I think it is a very heavy rule that says you can't do that.

Now, what Mr. Cohen said about the Treasury is as far as I know true about the Treasury. It is not true throughout the executive branch. We have records which we have had to prepare for the Ways

and Means Committee at their request, and in sampling them in preparing for today, I don't have them all with me, but in sampling them it is clear there are many areas in the executive branch where a \$60, \$70 or \$100 reimbursement for expenses for travel can be very important even to a GS-16 because these are men who live on tight budgets, and they also have tight time schedules and if they are asked to give up a weekend and pay \$100, and the tightfisted bureau or branch of Government hasn't got travel money, the amount of travel money in the executive branch varies greatly. It is much easier to get a three-star general from the Pentagon than it is to get a junior official of the Department of State who may nevertheless be hit by your bill just because of the way travel money turns up under the processes of the Government.

So I think it is at least worth considering whether you meet a substantive danger and don't simply interfere with some relatively straightforward and ordinary work by prohibiting travel expenses.

Senator WILLIAMS. I gather in making that suggestion which will certainly be considered that you are not referring to this example that was called to my attention yesterday where a foundation might wish to underwrite a conference of attorneys general of the States or a Governors' conference, I don't think they have ever underwritten a Governors' conference. You are not talking about that, are you, in general broad terms?

Mr. BUNDY. Well, sir, here is one I did pick out because while you were raising that question, this is not a direct one, it is an indirect one, and again I think there is a quality about indirect, the indirect grants which raises a grave question as to whether you really want to do that because you will find that you are hitting the bar association, the law institute and all—

Senator WILLIAMS. Well, I respect the bar association. I am not a lawyer, I have often wished I were. Perhaps I could understand a lot of things better than I do. But it is my recollection, and it has also been my experience when I have had the occasion to employ lawyers that they make enough money that they can pay their own expenses without being subsidized by a foundation. I just want to know in what instance do the members of the bar need this subsidy, and how would they be handicapped. I don't understand it.

Mr. BUNDY. Well, I don't have that example handy although you will have witnesses in the course of the day who can testify.

Senator WILLIAMS. I hope so because I may be wrong on that but it was my impression that they did make enough so that they could pay their own expenses.

Mr. BUNDY. May I give you an example in another area? The Council of State Governments applied to us and did receive a grant, part of which was used to support a program of the National Association of State Budget Officers to train State budget employees, and thumbing through this, I don't want to go to names and I am sure you don't mean that, I see nothing but travel and expenses and an occasional \$100 honorarium, one \$50 honorarium. Most of these are State officials but a number of them come from the U.S. Bureau of the Budget and surely a meeting of budget officials is strengthened by having men from the strongest budget agency in the country.

Senator WILLIAMS. I will agree with the benefits that can be derived both by the States and by the Federal Government from such a conference. But why should the State and Federal Government not pay for the transportation of their employees? Why should they have to go outside and get some organization to underwrite the expenses of State and Federal officials on the basis that they need a little charity—that is the point that I am making, and I know this bill would hit that.

Mr. BUNDY. Senator Williams, just as the world is, and as the processes of the appropriations subcommittees work there are a great many public officials who do not find it easy to get that kind of travel money.

Senator WILLIAMS. Well, if the constituency or if the legislature of the State of Delaware feels that it is important that our budget director attends a certain conference, then let them provide the method of paying it. If the Federal Government wants to send our budget director, I think we should pay it direct. Pay it and let him be a true 100-percent representative of the taxpayers. I don't question your motives, I want to make that clear, I don't question that at all. But I do question the necessity of this, and I will grant you the bill does hit that point, and it was so intended. Maybe I am wrong but that was so intended.

Mr. BUNDY. That is where I really find myself in agreement with Mr. Pifer, that we are talking about many different kinds of public officials and only one kind of reimbursing or paying organization. Now, the fundamental problem you are trying to get at, it seems to me, is the problem of the behavior of public officials, and I was very much impressed by, Senator, what I took to be Senator Gore's view that if a foundation activity was improper it would be improper with any class of person, and if the activity is proper then the participation of the Government officials is proper.

Senator WILLIAMS. I think we agreed that there is a distinction on that point. You, as I understood it, said if you had to do it over again you would not have subsidized these trips abroad for the gentlemen that were referred to as former congressional employees.

Now, there is nothing wrong with their going abroad, there is nothing wrong with them paying their own way. There is nothing wrong with their fathers or mothers, brothers or anybody else paying their way. There is nothing wrong with Joe Doak as a private citizen in making him pay his own way. But, I think there is a distinction in this and I think you will agree with that.

Mr. BUNDY. Bad cases make bad law but the distinction I was trying to make, I would go further and say there was nothing wrong about what we asked them to do and what they did. What was wrong was that it was open to misunderstanding. That is clear, but I don't want to linger on that point because it seems to me that the real difficulty is that in the major question, for example, in the judiciary is surely not the question whether there are payments of unusual and special and distressing kinds from one or more foundations to particular individuals. The question is the independence and integrity of the judiciary, it would be just as serious at least if there were such payments from other sources.

The question with the legislature, and we have made, I should say, we have made grants, mostly indirect grants, to institutions which have reimbursed expenses and occasionally paid honorariums to Rep-

representatives and to Senators, and in each case either we have had careful discussion beforehand with the institution or the institution using our funds has applied its own standards and rules as to whether it will invite the Senator or Representative to lecture at a seminar or to participate in a meeting or whatever it may be. The question there is not fundamentally a question of the practices of the foundations, it is a question of the general sort with which the Congress has been concerned itself of its own rules about payments, honoraria, and expenses I would say there as in all of these areas. Senator, and I should have perhaps emphasized this earlier, that I think the first remedy and the most powerful one is really going to turn out to be disclosure. If things are fully recorded and publicly announced, and if people know what is going on, then people can make a fair judgment as to whether in a particular case an individual in any branch of government, a private institution, a foundation or other, has gone too far, and public opinion has very considerable power in this country, and we see that operating now in the deliberations of the Judicial Conference, we see it in the reactions to the filings which Senators and Representatives have made, and Senators and Representatives look to their own behavior.

So I would think that kind of disclosure which the Treasury has recommended in the case of foundations, that it be strengthened, and the Ways and Means Committee has tentatively agreed to that and that bill will presently be before you, that will do at least as much, and without damage.

It seems to me that the difficulty here is not a difference in purpose between you and me anyway, but that in trying to meet that purpose you impose unusual limitations on freedom of movement in and out of foundation employment, you impose a very sharp restriction on access to expense payments, direct or indirect, in all kinds of American institutions, and that there isn't really a shown need for that.

Senator WILLIAMS. Well, I appreciate your views. You have been very helpful as a witness, I want to say, and I agree with your statement as to these additional remedies that are being—as I understand it—accepted by the Ways and Means Committee and will be in another bill. I certainly shall support them. Of course, we are dealing here in only one phase of the operation. The question is, Is it needed in the situation? My own personal opinion is it will help and, as you state, if these things are not going to happen again anyway, then the enactment of the law may be an unnecessary action, but nobody is hurt.

On the other hand, if there are instances where somebody in the future may be tempted to go beyond this we would have a remedy in the law for preventing it and that is the reason we specifically took the approach away from the criminal end and just put it on the tax-exempt status which I agree is a very severe penalty. But on the other hand, all we are trying to do is get a complete separation between a group of these foundations which are enjoying tax-exempt status, and Government officials.

I do appreciate your views and they will certainly be considered.

Mr. BUNDE. Thank you.

Senator BYRD. May I ask Mr. Bundy a question before we recess?

Senator WILLIAMS. Sure.

Foundations Involvement in Political Matters

Senator BYRD. Mr. Bundy, I had to leave this hearing for another public hearing of a committee of which I am a member and I came back to the room, and I ask this for the purpose of clarification. As I was coming into the room I thought I heard you say that you felt under certain conditions, circumstances, that a foundation had an obligation to participate in partisan political matters.

Mr. BUNDY. No, sir; the opposite.

Senator BYRD. I misunderstood you, then.

Mr. BUNDY. Perhaps I didn't make myself clear.

Senator BYRD. It is my fault, I am sure, because I came through the door when the statement was made and I wonder if you would clarify your statement.

Mr. BUNDY. I would be glad to make it very clear in the record in case I misspoke myself earlier, that in my view a foundation should not be involved in partisan political matters.

Senator BYRD. Can you recall what you cited just prior to giving as an example the population control issue? I was under the impression that you stated that it would be necessary to take a partisan political approach and cited as an incident a population control issue.

Mr. BUNDY. No, sir; I cited population as a case or I intended to do so, as a case in which there could be differences in Government and in the processes of Government as to one side or another of the issue. There certainly have been, historically, strong feelings as to whether there was any right of activity at all on the part of any authority, public or private, in family planning or in research on birth control, and so on. I was saying that our board of trustees has reached an honest and sustained judgment over a long period of years that this is a field in which we should be engaged, and engaged very actively, and we are, both here and abroad, and there is a sense in which this is a political issue and that we could not avoid that, but it is not, in my view, a partisan political issue.

Senator BYRD. Then it was, it is your view, then, that in matters that could be construed as political, not necessarily partisan in the sense of political party, but matters of a political type that the foundations should become involved and indeed are obligated to become involved?

Mr. BUNDY. Well, sir, I would put it another way, that a foundation's involvement comes from its concern with whether there is an issue which is up on which there are scientific, educational, charitable activities of great importance.

Perhaps I can give you another example out of our history. We have spent on the order of \$300 million over the last 15, 18 years, on an effort to strengthen research and training in the United States in international studies and in all kinds of area studies by endowment, research grants to colleges and universities, by conferences and by discussion and by a very wide range of kinds of charitable investments.

Now, I was not there at the time but I think this was done out of a conviction on the part of our trustees that the involvement of this country in the world, and the involvement of the world with this country made it a matter of great importance that the United States should have stronger understanding of Soviet studies, of Latin America studies, European, African, and Chinese studies.

Now, in the process of doing that, a whole wide range of scholars and students and politicians, too, have been engaged in one way or another in these activities, and books have been published, and articles written, and arguments made on varying sides of varying issues. We have not had a view as to what the Soviet policy of the United States should be or the Chinese policy of the United States should be. We have had a view that these issues were of such importance that charitable action to advance understanding of them was desirable.

Now, what Senator Bennett and I were wrestling with was this question whether that constitutes political pressure and I was trying to say if that is what he meant I thought we could hardly avoid it in the range of our activities but if he meant partisanship or lobbying on a particular issue or fighting for our way in a political contest, then clearly we ought not to be doing that.

Senator BYRD. Thank you, sir; that clarifies it.

Mr. BUNDY. Thank you.

Senator WILLIAMS. I understand from the staff that there is one gentleman who wished to incorporate his statement in the record—Mr. Ballard, I believe it is. He has to leave this afternoon, and would like to get his statement in at this time. Am I correct in that?

Mr. BALLARD. Thank you very much, Senator.

Senator WILLIAMS. Then after that we will recess until 2:30, if that is all right.

Senator BYRD. After Mr. Ballard's statement, the committee will recess until 2:30.

STATEMENT OF FREDERICK A. BALLARD, ATTORNEY AT LAW

Mr. BALLARD. Thank you very much for your courtesy and I shall indeed be brief.

My name is Frederick A. Ballard. I am engaged in the private practice of law in Washington and I am a member of the Council of the American Law Institute, and I want to take this opportunity to advise the committee that this bill, as presently drafted and particularly with reference to the question of payment of expenses which has already been discussed at some length, would have a potentially serious effect upon the operations of the American Law Institute.

This is because of the way the institute operates and I will just take one very quick moment.

The institute is engaged, as you may know, in the preparation of the restatements of the law and the model acts of proposed legislation. This process takes place by the appointment of a reporter who works along with an advisory committee composed of distinguished lawyers and judges, and their product then comes up to the Council of the American Law Institute, and after it has been approved by the council goes to the floor of the annual meeting of the Law Institute.

Now, on these committees and advisory committees of the institute are many judges, and the practice has been uniform to pay their expenses to these meetings. Occasionally a Government lawyer would be involved also, Senator. But our problem is mainly involving the judiciary.

If we could not call, could not feel free to call on judges from all over the country to participate in this process the quality of the work

of the institute would seriously suffer, in my judgment. I regret that the institute has not been advised of this hearing sufficiently in advance to prepare a really thorough statement for you. We just heard about it yesterday, and we do want to advise you that as a factual matter the bill as currently drafted would have a potentially serious effect upon the quality of the work of the institute.

Senator WILLIAMS. Mr. Ballard, speaking of the Federal courts or State courts—could they not make provisions or do they not have methods whereby the chief judge could assign judges to work with you and pay their expenses out of appropriations? If not, maybe we can have legislation to provide for it. Couldn't we work out a procedure where we could pay them instead of their being paid by a foundation?

Mr. BALLARD. Well, I assume, Senator, that some procedure could be, would be possible, whereby the Judicial Conference or somebody could make these payments. But there has been nothing of that sort suggested to my knowledge, and then in the current state of affairs nothing like that would seem to be in prospect.

Senator WILLIAMS. The purpose of this bill certainly, and I know you will agree, was not to disrupt the orderly processes of government or the orderly processes of these studies. I think we are both aware of what we are trying to hit.

Mr. BALLARD. Certainly.

Senator WILLIAMS. Maybe this alone won't do it and maybe there are other methods. I am not at all sure that they don't have the facilities even now but if not, I think they could be made available.

Mr. BALLARD. I don't think so.

Senator WILLIAMS. Now, in the cases you have mentioned, by whom would they be paid? By some outside foundation?

Mr. BALLARD. They are paid by the American Law Institute out of funds typically received from the Ford Foundation or the Mellon Foundation or some other foundation interested in the improvement of the administration of justice.

Senator WILLIAMS. That is what I mean, the Ford, Rockefeller, Carnegie, or some other one that will give you the money to hold these meetings.

Mr. BALLARD. Yes, sir.

Senator WILLIAMS. That would be affected under this bill. As stated earlier, it would seem to me that to the extent that Federal officials' presence is required, the Federal Government—and the same thing would be true of the State government—should provide for the transportation and the costs of their own representatives attending these necessary functions. By the same token, members of the bar could likewise take care of their own. Of course that is not covered under this, as you know. But this would hit that particular problem, there is no question about it. I would hesitate very long, quite awhile, before we modified that because I can see a little danger in that, not in the particular case you outline but if you let them do it only they'll go further next time. A case that was called to my attention yesterday did more to persuade me that I was right than that I was wrong because they cited the example they wanted to underwrite of a national conference of all the attorneys general of all the States. I said, "Suppose X Foundation was started by the underworld, they cer-

tainly would be delighted to underwrite such a group." That is what we are trying to hit.

Yet I think these conferences are important, don't misunderstand me. I am not questioning it, and at some point they have to be paid for. The question is should they not be paid directly and openly by the taxpayers through the States, through the Federal Government and through the various agencies. I think they should.

But I wonder if we wouldn't remove ourselves from the suspicion. I say that without casting any reflection whatsoever on the example you state.

Mr. BALLARD. I understand that entirely, Senator, and certainly commend your conscientious purposes in this bill but I would like to just say in closing that the work of these advisory committees and other committees of the American Law Institute is not conducted at the Greenbriar but they are hard-working sessions.

Senator WILLIAMS. I know. You cited a good example, I must say, but it is the others that we were afraid of. I realize that, and I want to say further that if in the study you have suggestions on it, feel free to make them to the committee because you realize, the objective we are trying to achieve under this bill.

Mr. BALLARD. I do.

Senator WILLIAMS. And we are approaching that objective with no thought in mind of saying the first draft of the bill is perfect and that you can't change a comma or anything else. We want that understood. But as long as we can keep the objective in mind and accomplish it we want to do it in the most orderly manner—at least I do, as the author of the bill—that we can work out. I appreciate and need the support of all of you in helping to work that out.

Senator BYRD of Virginia. Thank you, Mr. Ballard.

The committee will stand in recess until 2:30.

(Whereupon, at 1 p.m. the committee recessed to reconvene at 2:30 p.m. of the same day.)

AFTERNOON SESSION

Senator WILLIAMS. The committee will come to order.

Is Mr. George Harrar here?

Mr. PATTILLO. It is my understanding, Mr. Chairman, that Dr. Harrar will not be here this afternoon.

(The chairman subsequently received the following letter from Mr. Harrar:)

THE ROCKEFELLER FOUNDATION,
New York, N.Y., June 5, 1969.

Hon. RUSSELL B. LONG,
U.S. Senate, Washington, D.C.

DEAR SENATOR LONG: I learned from one who attended the hearings of the Senate Finance Committee yesterday that during the afternoon session my name was called as a witness before the Committee. This being the case, I want to take this opportunity to inform you, for the record, that I had no message of any sort from the Committee or staff to the effect that I was invited to or would be welcome to testify before your Committee. Thus it came as a surprise that in some fashion my name was listed among those who would be testifying.

I think I should add to the above the fact that had I known that the Committee wished to have me testify, I would of course have accepted the invitation.

Sincerely yours,

J. G. HARRAR.

THE ROCKEFELLER FOUNDATION,
New York, N.Y., June 5, 1969.

HON. RUSSELL B. LONG,
U.S. Senate,
Washington, D.C.

DEAR SENATOR LONG: We learned from Mr. Vail of your staff yesterday morning that, although I did not receive an invitation to testify before the Senate Finance Committee at its hearings on June 4, it would be appropriate for me to file a statement for the record on the contents of S. 2075, introduced by Senator John J. Williams. I have now studied the material from the Congressional Record—Senate of May 8, 1969, on this subject, and would like to make the following comments:

First, I would fully agree that as a matter of principle and proper practice public officials should not seek and private foundations should not make available grants, honoraria, stipends, or other payments for purposes which could in any way be described as improper or at self-interest. It is my position that each foundation has the obligation to assure that its funds are never used in any way that might lead to accusations of intent either to affect the political fortunes of a public official, to influence his exercise of his official power on political issues, or to bring him personal benefit. This would mean that in all normal circumstances there would be avoidance of the use of foundation funds for the support of activities of public officials.

On the other hand, I consider that the majority of our public officials in Congress and elsewhere are able, intelligent and responsible individuals, and that in many circumstances they would be in position to be exceedingly helpful in exchanging ideas and experience with others in other sectors of the society. Therefore I would be saddened to know that these gentlemen would automatically be excluded from participating in foundation-assisted panels, round-table and other sorts of quasi-public discussions on important subjects, such as environmental pollution, city planning, and education, on which by nature of their responsibilities individual Senators, Congressmen, and other public officials have much to offer and undoubtedly could also gain from the interchange. If under such circumstances these individuals were ineligible for travel assistance and related support for such conferences, they would either have to utilize their own resources or, if possible, obtain funds from Government budgets. And even if public funds were used for an individual public official's travel and subsistence, the fact that the general costs of a conference were borne by a foundation might make that official's mere participation a violation of this bill. It does not seem to me that conferences either directly or indirectly supported by foundations should be forced to forego the expertise of carefully selected public officials, or that public officials should be forced to forego the benefits of such conferences.

I think also that the proposed extension of the prohibition to the two-year period following an official's departure from office imposes undue hardship. When a man is no longer in office he should, I think, be free to seek other employment or other activities for which he is qualified. A curious point in the present proposal is that probably the number of individuals who might be employed or assisted by foundations after leaving office is minuscule, and that there is no suggestion that any other, more likely, immediate post-retirement employment—by commerce, industry, or any agency other than foundations—is improper. My firm conviction is that each public official leaving office should be totally free to seek employment wherever available unless there is conflict of interest.

I think it would be exceedingly unfortunate if any law were promulgated that would penalize the children of a public official during and after his term of office. It is well known and applauded that grants for scholarships, fellowships, assistantships, and other forms of educational assistance are made available by private philanthropy. It seems to me that to deny access to these benefits to children of public officials would have two effects: (1) to deprive them of the opportunities they should have in competition with their peers, and (2) to make a good many people think twice before accepting public appointment.

In conclusion, Mr. Senator, It is my judgment that the proposed legislation is unreasonable, difficult to enforce, and certainly ultra-severe in exposing foundations to the risk of inadvertent violation—should a public official participate in a conference supported by a foundation though arranged by a university—and in imposing a harsh penalty for such violation. It quite clearly is a bill aimed at a particular episode which, in attempting to assure that similar episodes will

not occur in the future, would burden the total body politic as well as foundations with severe sanctions unwarranted by the record either of private philanthropy or of our elected and appointed officials.

I hope these comments will prove helpful to you and your Committee.

Sincerely yours,

J. G. HARRAR.

Senator WILLIAMS. Mr. Pattillo?

Mr. PATTILLO. Yes; I am he.

Senator WILLIAMS. All right.

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

Mr. PATTILLO. Mr. Chairman and members of the committee, I am Manning M. Pattillo, Jr., president of the Foundation Center. You have before you, I believe, a copy of my brief statement, together with a description of the center.

You will note that our organization was established to provide reliable information on foundations to the general public and to raise the standards of management in the foundation field.

This hearing has come up quickly, and there has been little opportunity for study of the proposed legislation. I shall not, therefore, attempt a technical analysis of the bill but shall confine my remarks to four general comments that I hope will be useful to the committee.

1. The intent of the bill, which is to prevent financial relationships between governmental officials and persons or organizations seeking favoritism or preferential treatment, is certainly laudable. It is in the public interest that governmental officials not be tempted by payments of money to confer special benefits which are not available to citizens generally. Quite apart from any corruption, there is the risk that public servants, who accept honoraria for perfectly legitimate services, may allow too much of their time to be diverted from their primary governmental responsibilities.

2. In some respects the bill seems too sweeping. For example, it rules out speaking engagements for which a Senator or Congressman or other officials might be reimbursed for expenses or paid a reasonable honorarium by a wide variety of organizations. I wonder whether it is really in the public interest to restrict Government officials so narrowly. It should be emphasized that the definition of the organizations affected by the bill is very, very loose. This would lead inevitably to inadvertent violations and litigation on a massive scale. I would urge the committee to have a list of these organizations compiled before it takes action; I believe you would be surprised to see what is included in the bill as it is now drafted.

Let me pause here to dwell on this point a moment. I have in my hand a directory of organizations meeting, I think, the criteria of this bill. This list was prepared for a committee in the other House, and it includes a tremendous range of organizations. If one peruses it he sees that all kinds of organizations are included, not only philanthropic foundations in the strict sense, but a great variety of other institutions as well.

Senator WILLIAMS. Are they all private foundations listed; is that a listing of the private foundations?

MR. PATTILLO. Yes, this purports to be a list of the private foundations.

SENATOR WILLIAMS. Do you know of any of those that are in that list that would be handicapped if they were precluded from hiring public officials?

MR. PATTILLO. Let me give you a personal illustration, if I may. My 19-year-old daughter, who is a college student, recently called home to say that she had accepted a position for the summer with an organization called Harvard Student Agencies. I assumed that this was either an agency of Harvard University or a commercial firm in the city of Cambridge.

Now, if the present bill were enacted, and if I were a member of the legislature of my State, it would be a violation of the law for my daughter to be employed by Harvard Student Agencies, because this organization, which hardly sounds like a foundation, is one of the organizations listed here as a private foundation. One could cite hundreds of similar cases.

Only Officials in High Policy Positions Covered by the Bill

SENATOR WILLIAMS. Could I reply to that one in just a moment? The definition—of course we were trying to get the bill to cover just those people who were in high policy positions. I had already agreed on amending it, as the sponsor of the bill, to cover positions in the executive, legislative, or judicial branch of the Government which are listed in schedule C of rule 4 of the civil service rules, that is, the so-called political appointees of the President, "or those who were drawing GS-16 salaries or higher," and when you come into congressional employees, it is only those who are receiving in excess of \$15,000 per year. So they would not be affected in that unless—

MR. PATTILLO. But my daughter would be affected, Senator, as a member of my family. That is the point I am making.

SENATOR WILLIAMS. Unless she was a minor child, and you were a public official in this category, and if that were true—

MR. PATTILLO. Yes.

SENATOR WILLIAMS. If that were true why shouldn't she be covered?

MR. PATTILLO. But my point is, Senator, is that no one would ever suspect that Harvard Student Agencies was a private foundation. It doesn't sound like one, but it is technically a "private foundation" by this bill's definition.

SENATOR WILLIAMS. Do you suppose the foundation itself knows that it is?

MR. PATTILLO. I don't know whether they even know whether they are listed. I just don't know. But—

SENATOR WILLIAMS. If there is an organization in this country that is enjoying tax exemption, a hundred percent tax exemption, and doesn't know what kind of an organization it is, maybe it would do them good to get caught under it and find out so they would understand and know what is going on. I can't conceive of an organization having intelligence enough to apply to the Treasury Department under the regulations and the rules and gain its tax-exempt status and not know under which section it has got its tax exemption or know it is a private

foundation. I mean, I don't conceive of that. Surely it knows how it got its tax exemption.

Mr. PATTILLO. Well, Senator, it would certainly know whether it was a 501(c) organization.

Senator WILLIAMS. That is the point.

Mr. PATTILLO. Let me give you some other illustrations, if I may, of organizations that would come within the definition.

Senator WILLIAMS. Surely.

Mr. PATTILLO. The Andover Historical Society of Andover, Mass. The Andover Serviceman's Memorial Scholarship Fund.

Senator WILLIAMS. Are they hiring public officials?

Mr. PATTILLO. I do not know whom they are employing, but the point is that they would come within the terms of the proposed bill, and they are probably not the kinds of organizations that you have in mind at all. The bill would include local scholarship funds, visiting nurses' associations, a host of organizations.

Senator WILLIAMS. Well, to save a lot of trouble, one of the earlier witnesses this morning spent a considerable time talking about school boards and mayors and city councilmen. As I've amended it they could not be covered under the bill, and so neither are these.

Mr. PATTILLO. Well, Senator, I think there are two questions of definition here. One is which public officials would be included, how you define the term "government official," and that is not the issue that I am speaking to at the moment. I am raising a question about what is meant by the term "private foundations and organizations," and I wish to bring to the attention of the committee the range of organizations that seems to be included. I am not sure that the committee is fully aware that the definition as set forth here includes such a variety of organizations.

Senator WILLIAMS. I don't think that it does, but if it did it was the intention, and the record of the committee shows, at the time, the other day when they thought it was reporting out—this was the language supposed to be put in the draft: "except that such term does not include a church or a convention or association of churches, an educational organization referred to in section 503(b)(2) or a hospital referred to in section 503(b)(5)."

And so they are not covered, they were not intended to be covered, and it will be spelled out in the report that they are not intended to be covered.

We are confining it, narrowing it down to just this particular type of private foundation, and if it needs additional language, that will be included to do it, so if that is what is worrying you—

Mr. PATTILLO. Yes.

Senator WILLIAMS. So rest at ease.

Mr. PATTILLO. I guess, Senator, the question I am raising is what kind of language could be devised to define the term more precisely. This is something on which I myself have some expertness, and I know that it is a very difficult question.

Senator WILLIAMS. Well, this is the language that the staff had suggested be put in and if anybody has different language it wouldn't make any difference. We are not dealing with just a matter of words, but the intent, the clear intent, of it, and it will be so stated and clear that it does not cover all that type operations. It does cover private

foundations. We can mention them, Ford, Carnegie, and various foundations, and the Rockefeller foundations, the Wolfson, Parvin foundations, they would be covered and they are intended to be covered. It does not go into the hospitals and all these other educational institutions. Maybe something needs to be done in that area but we are not touching that in this particular bill.

Mr. PATTILLO. Well, Senator, as I understand it, the bill as written at the present time, would cover this full range of organizations, and I just bring this to the attention of the committee. The members may not be aware of it. The great majority of organizations covered by this legislation are not like the Ford Foundation or Carnegie Corporation.

Senator WILLIAMS. That question has been raised, and there are others who felt that the language was not clear. Some think it is, but to remove any doubt, it will be spelled out very clearly. So that puts your mind at ease on that point.

Mr. PATTILLO. In my prepared statement, I mentioned as my second point that I thought the bill was too sweeping in some respects. My third point is that in other respects it seems to me to be too narrow.

If it is wrong for exempt organizations to make payments of any kind, even travel expenses, to public officials, should not the legislation also include business corporations and trade associations? Surely, the abuses on the part of the latter organizations are at least as great as the abuses in the exempt field. Why are exempt organizations singled out for special attention? Is it more reprehensible for a public official to accept a payment from a nonprofit organization than from a profitmaking business? Is it really worse for the son of a public official to accept a well-deserved scholarship financed by an exempt organization than for the official himself to accept a gift from an industry engaged in lobbying?

Senator WILLIAMS. I think that it is against the law already for a public official to accept a gift or a payment from anyone engaged in lobbying under existing law. Is that not correct?

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

Senator WILLIAMS. I think you will find it is a criminal offense for any lobbyist to pay it.

Mr. PATTILLO. This would cover any business organization or would it include only a professional lobbyist?

Senator WILLIAMS. No, but under what circumstances can a corporation *x* pay a public official legitimately under the law?

Mr. PATTILLO. I am sorry, sir; I can't answer that question.

Senator WILLIAMS. That is the point, and it is my understanding that they cannot.

Now, in this bill I think we are dealing with something that can't happen here.

Now they can, this bill does not move into the employment by a corporation after 2 years—

Mr. PATTILLO. That is right.

Senator WILLIAMS. After they leave Government service, there is that distinction.

Mr. PATTILLO. Yes.

Senator WILLIAMS. But they are tax paying organizations and you just can't stop a man from going back and making a living. The reason this is set up, here is a group that is not paying taxes, they have enjoyed tax-exempt status, complete on the premise that they are dealing with charity and after all public officials are not, at least are not supposed to be objects of charity. That is where you get the difference in there, and the same way with the employment. Now, personally, I think there is an area there that needs to be dealt with, and I have introduced legislation repeatedly about the reemployment by say, for example, defense contractors of somebody who is in the procurement division of the Government for a period of 2 years after they leave the Government or it would stop anyone connected with this committee of ours, tax writing committee or the Treasury Department from going to work for any company, or from representing that company before the Treasury Department or this committee for a period of 2 years. I think that is an area that does need to be dealt with.

There used to be a law against it, but it was suspended. But still I am in favor of extending it but that does not mean we don't have an area that needs to be looked at. We are not going to make a perfect area all around. Yet I appreciate your endorsement of this proposal of mine that we extend that law. You are endorsing it, are you not, that we extend the prohibition against the reemployment by anyone who leaves the Government representing that company—

Mr. PATILLO. No; I am not endorsing that, Senator Williams.

Senator WILLIAMS. You are not endorsing that either. I thought I was going to get your endorsement.

Mr. PATILLO. The point I was making is that this is specialized legislation pointed toward one sector of American life, and I was raising a question as to the logic of doing this.

Senator WILLIAMS. I apologize. I thought you were endorsing it because I was going to say as one who has wanted to move into that area I just thought I would have your endorsement.

Mr. PATILLO. I am sure my endorsement would not be very helpful.

Senator WILLIAMS. It would be very helpful; yes, indeed. So I thought I had your endorsement on it.

Mr. PATILLO. My fourth point is that the bill in its present form appears to have been prepared without careful scrutiny of all its implications or of the adequacy of the machinery for enforcement. If enacted, it would be a very difficult bill to enforce.

Starting from two or three recent disclosures of impropriety, the proposed legislation makes a sweeping indictment of tens of thousands of exempt organizations, most of which are engaged in or are helping to support essential educational, religious, scientific, health, welfare, and cultural activities. This is like using a machinegun to kill a rat. I wonder whether a more precisely focused bill, aimed specifically at serious abuses, and providing for adequate enforcement would not serve the purpose better.

Senator WILLIAMS. First, I notice you refer to this as making a sweeping indictment of tens of thousands of exempt organizations. I can assure you that it was not so intended. I recognize the validity and

the good job that is done by many of these organizations, and this is not in any way an indictment.

It is true that recent events have precipitated this question that we have before us, but for your information long before any of us or at least I ever heard of the most recent disclosures, I had been talking and raising serious questions about the propriety of Government officials while serving in the Government or for a period immediately following, going back on the payroll of these organizations, and I have had legislation introduced to that effect years back. So this is not a new idea. It is just a case that the iron looked to be a little hotter right now and it looks as if this is the time I can get the endorsements of some of you gentlemen who would recognize the need of it. But it is not intended in any way to cast a reflection on what has happened, the abuses that we have had, they are well documented and we have all expressed an opinion. I think we should prevent that from reoccurring.

Now, you raise the question that you think enforcement provisions are lacking. It is true there are no criminal provisions provided in this, but don't you think the fact that the foundation X knowing that it is against the law when he hires a public official, that if he hires that public official it loses its tax exemption, that it is almost self-policing?

Foundation Employment of Government Officials

Mr. PARRILLO, Senator, I would like to comment on this matter of hiring public officials and the expression I believe you used several times this morning of "placing public officials on the payroll." In my opinion we are talking here primarily about placing people on a payroll. Foundation staffs are very small and rarely are governmental officials placed on foundation payrolls. Usually the form in which any sort of payment of money is made is in a different context.

It has to do with the payment of expenses for meetings or of honorari for speeches, and the like. I am fearful that the use of the term "placing them on the payroll" may mislead us into thinking that this is being done on a wide scale. In the 15 years I have been in this field I have known of very few instances in which that has occurred. The more frequent thing is the payment of expenses or the payment of an honorarium for a speech or participation in seminars.

Senator WILLIAMS. That is correct. But nevertheless this bill covers both. This bill would also cover granting honoraria—I know there are many methods that are used for making these payments other than just a straight salary, although that has happened a time or two. But this does cover it just the same.

Mr. PARRILLO. I had the feeling this morning that an assumption was being made that foundations were supplementing the salaries, the governmental salaries, of officials on a broad scale. The form of receipt of funds usually is quite different and far more incidental than that.

Senator WILLIAMS. Government officials, the hiring of Government officials, shortly, immediately after they leave office is a rather common thing and sometimes they are placed on the payroll at salaries of \$50,000 or \$100,000 a year.

Mr. PATELLO. I beg your pardon?

Senator WILLIAMS. I say there are lots of Government officials, ex-Government officials that do go on the payroll.

Mr. PATELLO. Of foundations?

Senator WILLIAMS. Yes.

Mr. PATELLO. Relatively few I would say. Far more go into business.

Senator WILLIAMS. That is true. But there are quite a few that go into foundations and this would stop it for a period of 2 years. Now it will not stop them from working with the foundation, it would restrict them from being put on the payroll.

Mr. PATELLO. I wonder, Mr. Chairman, if I could make a comment or two here about the scope of the foundation enterprise. I assume that when the committee considers more comprehensive legislation later on, it will wish to look into the dimensions of the enterprise much more carefully, but I would say here, because I think it has a bearing on the points you are making, that there are probably fewer than 1,000 full-time professionals in the whole foundation field in the United States. There are, I am sure, fewer than 500 foundations that have any professional employees. So that we are talking here about a very small enterprise. If one includes all of the organizations listed in this directory, the number would be increased greatly, but for foundations proper, used in the strict sense, the number of employees is very small.

Senator WILLIAMS. Well, proceeding on that premise, then the enactment of this legislation will have but a very minimum effect on the operations of the foundations, because I will accept the fact that it is very small.

Mr. PATELLO. Well, I think the question is ----

Senator WILLIAMS. But if it only affects one, shouldn't we affect that one, that is the point. Isn't there a chance that through this reemployment, a large foundation is using its resources to, in effect, perpetuate a political philosophy of their own, by putting on their payroll as soon as we change administrations all of the promising young men of the outgoing administration? This is not a political suggestion--it could be done with either administration--they could pick a few of the most promising young men out of each administration as it changes over and they would perpetuate their philosophy.

Mr. PATELLO. Senator, I can assure you that this kind of thing is not being done in the foundation field. Let me mention this: It seems to me there has been the supposition made during the day that foundations represent a fixed ideology. The truth of the matter is the foundations reflect a broad range of values. Most of them are not interested in ideology at all, most of them have no ideology other than to assist programs that serve the public. The kind of thing you are worried about is extraordinarily rare.

Foundations Working in Cooperation With Government

Senator WILLIAMS. Well, some of the foundations, many of them, are operating in good projects, charitable projects abroad and, for example, I think the larger ones, Ford and Rockefeller both, are operating, in a lot of projects abroad that would be in cooperation with operations of our own Government, would they not? Don't they work with the Government on some of these projects abroad?

Mr. PATILLO. Certainly, I would say they work in harmony with Government officials.

Senator WILLIAMS. In harmony, and there are cases, are there not, where Government money is either with or following some of the operations of the foundations, particularly in our AID programs; are they not?

Mr. PATILLO. There are sometimes cases in which programs that were pioneered by foundations are subsequently supported by the Government.

Senator WILLIAMS. In the AID program.

Mr. PATILLO. Yes.

Senator WILLIAMS. And therefore a close relationship with the officials of the AID program and those responsible is very important to the success of the operation which they have in mind; is it not?

Mr. PATILLO. But, Senator, it is a mistake to regard the foundation enterprise as monolithic, that is, as representing only one kind of social value. The truth of the matter is that foundations represent a wide spectrum of values. Few foundations represent very extreme values, but in the middle range they represent a variety of values. There is no monolithic value structure to which they subscribe.

So, it seems to me that the public is protected by the very heterogeneous character of the foundation field. Foundations are a variegated group of institutions, and I think this protects the public interest.

Senator WILLIAMS. That is true to a certain extent, but these are enjoying tax-exempt status and to that extent a part of it is money that accrues to them as a result of the tax exemption. I think you will agree with me it is only human nature that in considering the employment of these public officials after they leave office, foundations employ and select those men who agree with the political philosophy of the sponsors of the foundation. I don't think there would be any disagreement on that.

Mr. PATILLO. Well, Senator, I think this kind of thing is very infrequent. I have spent 15 years with two foundations, and in those 15 years this question never arose in either foundation. I think that the problem you fear is rather unusual.

Senator WILLIAMS. Well, perhaps it is and perhaps it doesn't enter into their mind. I am only thinking about how human nature develops, how I would feel. I doubt if a foundation operated by Mr. Hunt would be employing Dean Rusk.

Mr. PATILLO. Now, Mr. Hunt doesn't have a significant foundation. He is often referred to as a major foundation figure. But may I explain that this is not in fact the case.

Senator WILLIAMS. How significant it is I don't know.

Mr. PATTILLO. I think you are referring to his broadcasting program which is really not a foundation program at all.

The CHAIRMAN. Did he not ask for tax-exempt status for Lifeline and for that publication of his? In fact, was he not enjoying a tax-exempt status at one time?

Mr. PATTILLO. Senator, this is a point I was emphasizing before you entered, which is that we have a tremendous number of exempt organizations in the country. Foundations are only one small part of the exempt field, and I am not sure that the bill makes sufficiently clear what kinds of institutions and organizations are to be included. There are literally hundreds of thousands of exempt organizations, but foundations constitute only a small fraction of the total.

Senator WILLIAMS. Well, do you want, do you object to the fact we just confine this to the private foundations? Would you feel better about it if we extended it to make sure it covered all of them; is that what you wanted?

Mr. PATTILLO. That would make the bill more equitable, Senator.

Senator WILLIAMS. You would support it then, would you?

Mr. PATTILLO. Beg pardon?

Senator WILLIAMS. You would support it then, would you?

Mr. PATTILLO. No; I think it still has aspects which would be bad for these organizations, but I do think that if it were designed to include all the exempt field, and the profitmaking field as well, it would be a fairer measure.

Senator WILLIAMS. Would you support it then?

Mr. PATTILLO. I would support some aspects of it then, yes.

Senator WILLIAMS. What aspects would you support and what would you say—

Mr. PATTILLO. I think what is needed here is some definition of improper use of funds. I would share the comments made by some of the witnesses this morning that not all of the kinds of transactions which are encompassed by the bill are in fact objectionable from the point of view of public policy.

Extracurricular Activities of Government Officials

The CHAIRMAN. Could I respond to something you say here? You ask a question, "Is it more reprehensible for a public official to accept payment from a nonprofit organization than from a profitmaking organization?"

Well, I would put the question to you the other way around. If you want to engage in extracurricular activities or immoral activities, don't you think you ought to use tax-paid money for that rather than tax-free money? If we permit money to be tax-free on the theory that this is for education and charity and stuff like that, and you want to bribe a public official don't you think you ought to take the money you paid the taxes on to bribe him rather than the money that was supposed to be for charity?

Mr. PATTILLO. Senator, I am not suggesting that public officials be bribed.

The CHAIRMAN. Why do you think the Supreme Court Justice resigned over there? Wasn't that a conflict of interest bordering on bribery?

Mr. PATTILLO. I don't know all the facts of that case. I would certainly regard it as a serious impropriety.

The CHAIRMAN. Immoral from a public service point of view. Why else did he quit?

Mr. PATTILLO. Well, Senator, I don't know all the facts of that case. My impression is the same as your own, but I can't really discuss that case in detail. I just don't know the facts.

The CHAIRMAN. Let's just call it extracurricular activity, something which is outside the general sphere of operation. If you want to do something that doesn't fall inside your sphere of operation why shouldn't you use tax-paid money for that rather than tax-free money?

Mr. PATTILLO. Well, Senator, I would make this comment. It seems to me that that transaction, as I understand it from press reports, would be objectionable whether it had been done by a foundation or whether it had been done by a business corporation or trade association. That is one of the points I am making. If Senator Williams' purpose is to be fully accomplished I am not sure he has chosen the correct group of organizations.

The CHAIRMAN. Here is the thing he is saying by his bill—and when I first heard it, it didn't impress me very much but the more I read it the more I liked what he is saying—if you want to pay a Senator or Congressman or a Justice of the Supreme Court for moonlighting, you ought to pay him with tax-paid money, it is about that simple, it seems to me. Why shouldn't—

Mr. PATTILLO. Senator, I would raise a question whether he should be paid at all by anybody under these circumstances, whether tax free or not. If this is an objectionable practice, and I would agree that it is, it should be prevented for all.

The CHAIRMAN. Let us just take a legitimate situation. You are going to get your people together and you want to get an impressive speaker. Here is a famous Senator or here is a Supreme Court Justice, and you want him to come speak to your organization.

Frankly you would kind of welcome the opportunity of handing him a nice big check because you think he would love you better if he picks up a nice big honorarium after he went home.

So that being the case, you invite him up there, he makes a speech, you have got 15 honorable fine people to hear that outstanding speech he makes, and he goes home and picks up a nice big check for it. You are not complaining about it, it might be very well worth your while, and he may have spoken with some people he is happy to meet. But he wouldn't have found the time or couldn't have bothered to do that if it wasn't for the nice big check given the man.

If that is what you want to do, why shouldn't you do it with tax-paid money rather than tax-free money.

Mr. PATTILLO. I don't think we should condone this at all, and I do not condone it. I think this is—

The CHAIRMAN. If it must be done, if it is essential for you to maintain your position and your association to arrange for an impressive speaker to be there, then why shouldn't you use money on which you had paid taxes—that is your money to do whatever you want to do—rather than use money which is supposed to be for charity and for religion and for education?

Mr. PARRILLO. This raises still another question, I think, about the bill. It is the use of the language "indirect payment."

The CHAIRMAN. Let us get something straight because just knowing what little I know about ethics, I have tried to do business in a way that would appeal to me. My usual rule is if I were going to make a speech inside Louisiana, I don't care to whom, nobody could pay me an honoraria. It might be that I might let them buy me an airplane ticket back and forth if I were supposed to be in Washington and had to leave my post to make the speech. But as far as paying me to make a speech in Louisiana my reaction is "The answer is no, you couldn't pay me anything."

But if you are trying to get a speaker to address some crowd up in New York City or something and you want to burden him by taking him away from his post—flying up there, making the speech and then leaving before daybreak to get an airplane to fly back down here, I would think it would be all right to accept an honorarium for that.

When the Senate passed a law that said you have got to report all honoraria it just occurred to me that there may be some suggestion or some other inference to the effect that if somebody paid you a honorarium that they may have influenced you or bribed you or something like that, so I made it my policy not to accept any honoraria from anybody. I just wasn't interested. If I didn't feel like going I would not go.

Now, prior to that time I would think the general rule among the Senators and Congressmen was that, "Well, I guess I will do it." But what I felt was if there was going to be some inference that somebody bribed you or improperly influenced you by paying you to make a speech then I am not going to accept any pay to make a speech anywhere for anybody ever, and that is my policy from that point forward.

But here is a situation where you think it is to your advantage to get somebody to come up there and if you are going to pay him to make a speech why shouldn't you use tax-paid money for that. So far as I know, no foundation ever paid me to make a speech and I will be content to make the Williams bill retroactive for 50 years to find out if somebody ever paid me tax-exempt money to pay me to make a speech. I would be surprised to know it happened, but why not?

Mr. PARRILLO. So far as foundations are concerned, I think this is rare. But for exempt organizations generally it is not at all rare at this season of the year for public officials to deliver commencement addresses at colleges and universities. If the speakers accept honoraria, that, of course, is tax-exempt money, since colleges and universities are also exempt organizations.

Some of this money probably comes indirectly from foundations though it reaches the recipient from the university. The bill, as I understand it, would preclude the payment to a speaker of an honorarium by a university if any part of that money came from a foundation or other similar organization.

Senator WILLIAMS. This doesn't touch universities. But, as I understand it, your main objection to this bill is you feel rather a little sensitive that it deals with foundations rather than deals with business organizations all in one package, is that correct?

Mr. PATILLO. I think that is part of what I am saying, Senator, yes.

Senator WILLIAMS. I have a very simple solution and you and I can both get on the same side. Do I understand you are suggesting if we just repeal the tax-exempt status of all of your organizations then this bill isn't necessary and you can pay taxes just like the others and go do like others do, is that what you want? Just repeal section 501(c) in its entirety, let you pay taxes just like everybody else and just treat you like everybody else. I think you made a pretty good point. Are you trying to persuade me all the way over on that side, is that it, and then the legislation would deal with you all together? You speak about, you feel sensitive because you are separated. You are separated because your organizations came before these committees and asked to be separated and treated differently as tax-exempt organizations.

Now, maybe we made a mistake in listening to you. But if that is what you want, let's—

Mr. PATILLO. Senator—

Senator WILLIAMS. We can soon put them all over here and we can solve this problem in a minute.

Mr. PATILLO. Senator, it seems to me that the question of exemption is a matter of public policy which can properly be argued. But I would emphasize the fact that foundations are only one part of the total exempt field. Educational institutions, churches, social agencies—all of these are exempt organizations, too. They enjoy tax exemption. This bill is pointed toward one segment of the exempt field. If one took the position that exemption was bad for universities, was bad for churches, was bad for united funds and so forth, then he could also properly take the position that it would be inappropriate for foundations. But here we are singling out one part of the exempt field for special treatment.

The CHAIRMAN. May I suggest to you that if it would make you feel any happier about it I would be glad to put a 100-percent tax on any honorarium that a Senator or Congressman or any public official accepts for speaking to a university or to a church group. Would that make you happier?

Mr. PATILLO. I think, Senator, it would make it—

The CHAIRMAN. Frankly, when I spoke to a church group I put money in the till rather than taking money back. If we broaden it out so as to include the other people, the other tax-exempt organizations that if a man makes a speech to a tax-exempt organization then there is a 100-percent tax on anything he accepts in payment for his speech—

Mr. PATTILLO. Well, I would think that this—

The CHAIRMAN (continuing). It wouldn't bother me. I never have accepted an honorarium like that, the only time anybody ever offered me to make a speech at commencement or a speech like that, I endorsed it over to the university anyhow. It wouldn't bother me if you would make it retroactive for 50 years. I doubt if it would bother John Williams or any members of this committee.

Mr. PATTILLO. Senator, you follow a very fine policy and I applaud it. And I would say that the organization I represent is not involved in this question either. We are not sponsoring conferences or seminars to which we invite governmental officials.

The CHAIRMAN. Do you think you could support the bill if we would broaden it to put it on that basis?

Mr. PATTILLO. As far as the fairness of it is concerned I would say if it were expanded to include all types of organizations, one could endorse it more readily; yes.

The CHAIRMAN. Well, to be specific, would you endorse it, if we expand it to include all tax-exempt organizations?

Mr. PATTILLO. There are other aspects of it that I think would be very unwise as matters of public policy. But I would say it would be a fairer bill if it were expanded to include all types of organizations.

Senator WILLIAMS. And you would not oppose it?

Mr. PATTILLO. I would question the wisdom of doing this, but I would say it was fairer.

Senator WILLIAMS. Well, you wouldn't want us to be—

The CHAIRMAN. Here are your objections: Point No. 1 has no problem, you say it is laudable.

Point No. 2, it seems, in some respects it seems to be too sweeping. Well, now, we are going to take care of that so it won't be too sweeping. In other respects it is too narrow. OK, we will broaden that and take care of it.

Now, having taken care of all your objections why can't you support this bill?

Mr. PATTILLO. We have been speaking, I think, Mr. Chairman, primarily to item 3 in my statement.

The CHAIRMAN. Item 1 I take it as an endorsement. You say the intent which is to prevent this is laudable. Certainly you can't quarrel about your endorsement of that paragraph. In that paragraph you endorse the bill.

In paragraph 2, in some respects it seems too sweeping. All right. Now, it rules out speaking engagements for which Senators and others might be reimbursed or paid a reasonable honorarium. I think you and I have agreed that we would just as soon not pay it.

Point No. 3, in certain respects it seems too narrow. We broaden it out to take care of that. Now, having met your objections why can't you support the bill?

Mr. PATILLO. I think the effect this would have would be of insulating governmental officials from American life. I wonder whether you really wish to do that. Do you wish to insulate governmental officials and their families from full participation in American life? This is perhaps the basic question.

The CHAIRMAN. You didn't put that in here; did you? Where did that come in your prepared statement?

Mr. PATILLO. It is not stated there.

The CHAIRMAN. You mean that is a new objection that you are coming up with now. Is that in your prepared statement?

Mr. PATILLO. This is a more basic kind of question.

The CHAIRMAN. You didn't have that in here when you came. Where is that in your statement?

Mr. PATILLO. It is something that came up this morning in several of the presentations.

The CHAIRMAN. Yes.

Senator WILLIAMS. Mr. Pattillo, I don't see how it is insulated. We made it clear that public officials can participate in the functions of any foundation. He just can't get pay. Just a few minutes before we both agreed or I thought we agreed he shouldn't be paid. So now how are you insulating them? As the Senator points out, I am a member of a church, and I am on the board, I am not insulated from my church, I just don't get paid. As he says, I contribute but that doesn't mean I am insulated.

The CHAIRMAN. People in some religious orders take a vow of poverty; we don't do that. But it is just a matter of saying that—I see somewhat differently from Senator Williams. I voted for every pay raise bill that ever came up here, my thought being that you ought to pay these people well, treat them good, and expect them to do what is right. We ought to move in the direction of paying a guy enough to where he can afford to do the job and shouldn't hear him kicking that he has to go hat in hand asking for outside help.

Now, having done that, why should we have you fellows paying them?

Mr. PATILLO. Well, I think, Senator—

The CHAIRMAN. Especially with tax-exempt money, foundation money, which is supposed to be for charity, education.

Mr. PATILLO. Senator, I have been trying to point out that foundations are not alone in being exempt. There are all kinds of exempt organizations. I think there are many perfectly defensible programs in which governmental officials participate, where expenses are paid, or where a modest honorarium is provided, which I would not find objectionable.

If on the other hand, this is to be prohibited, then it seems to me it should be prohibited across the board for all types of organizations. Can one really justify singling out a particular kind of exempt organization and saying "We are going to apply different rules here from the rules that we apply to others"?

The CHAIRMAN. What bothers me after we agree with you, you won't agree with us. If I went before a committee and explained my objections and those people who bother to sit and hear me through and consider my argument and offer to amend the bill to take care of my objection, I would go home a happy man supporting the bill saying that is great.

Mr. PATTILLO. That is only one of the objections I raised, Senator.

The CHAIRMAN. I wouldn't be dreaming up some new objections after I got through explaining and they meet all of my objections.

Mr. PATTILLO. That is only one of the objections I have raised, you see.

The CHAIRMAN. Thank you very much.

The next witness is Mr. David Freeman, president of the Council on Foundations.

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

Mr. FREEMAN. Thank you, Mr. Chairman.

Let me tell you briefly about the council. I have no prepared statement for reasons that you heard something of this morning. We did not have much notice, any of us, of the public hearings today.

The council is composed of roughly 400 foundations of what Manning Pattillo would agree were the grant-making type of foundation I will go into this if it seems useful as we go along.

There are members, associate members. They pay dues to the organization.

The organization's purposes are to improve the quality of the work of foundations, to provide some opportunity for foundations to exchange information.

We hold an annual meeting of this type of foundation, the grant-making foundation, and we attempt, particularly in the last 2 months, to keep the members abreast of the developments in the regulatory field.

I, of course, cannot speak for the individual members of my council on this particular bill because most of them, unfortunately, do not yet know of its introduction. We are sending out a copy of the bill to them so that they will be informed and, therefore, I am under the somewhat difficult handicap of having to speak from my own relatively long experience in grant-making foundations without being able to say that every position I take is the position of the Council on Foundations.

I would like to start off by saying that I, too, agree with the desirability of the general principle which is behind Senator Williams' bill.

I think that the problem of ethics and conflict of interest is a very, very acute one, both in the private sector and in the public sector. It is one that I, as a member of the bar, have of course been aware of. I have seen some of the efforts of bar associations and other groups to wade into this very tricky field and try to spell out standards of performance and activity which will not so hamstring the particular pub-

lic servant or professional man involved that he cannot perform his functions, but will try to keep him on what most of us would agree would be a high moral plane.

I think the intent, therefore, behind Senator Williams' bill is one that I certainly personally would entirely support.

I have some difficulties as a lawyer, and some difficulties as a former practitioner in the grantmaking foundation field, with what I anticipate to be the outreach of the bill, and I should hasten to add that having heard in this morning's session of some of the amendments or modifications which have been agreed to or discussed by members of the committee, I am somewhat reassured on the outreach point, but I would like, if I may, to try to suggest some of the outreach which it does not seem to me has yet quite been taken care of within the overall bill, and which may, even if it is taken care of, still leaves in the bill the kind of very direct singling out of one small segment of the non-profit field which Manning Pattillo has suggested raises problems in his mind.

The sort of thing that we are talking about, it seems to me, falls into several different areas of activity. There was a good deal of discussion in this morning's session about the question of large travel grants or junkets around the world. But there was also a good deal of discussion about the payment of small travel expenses against vouchers for even those who are above the GS-16 line and would presumably still be covered within the prohibitions of this bill. I would like to suggest that the effect of the bill will be felt much more heavily in the areas of the lower income governmental officials who are encouraged by the availability of travel expenses to go to professional meetings than it will by the occasional and, in my view, and in my own experience, very rare, highly publicized situation, where there is a very large payment relatively speaking for an elaborate junket.

It seems to me, therefore, that the impact of the bill on the professional activities of public servants should be carefully scrutinized by the committee, and one way of ascertaining what that impact would be, I think, would be along the lines that Mr. Pattillo suggested.

If you were to receive, as I suspect you will, from several non-grant-making organizations statements indicating that they, too, are caught up in the bill as presently drafted, and that it is really going to affect some of their bona fide activities; activities which I think most of us would agree are helpful to the public good—

Senator WILLIAMS. Would you describe one of those that you have in mind?

Mr. FREEMAN. Yes. I do not want to be repetitive because I thought even though it was a very brief description, the representative of the ALI made a pretty good case for the kind of problem he saw this morning at the close of this morning's session.

Let me give you another example culled just yesterday afternoon, and you will remember, Senator Williams, what he was talking about there was the question of the judges who come to these meetings of the ALI Council, and their ability to come on travel expenses only, I take it.

Senator WILLIAMS. Why is that case—when you are having this meeting where it was important that members of the judiciary be present in working this out. Why could not they go from official Gov-

ernment travel expense accounts if it is important to the Government that they be there? If it is not important from a governmental standpoint, why are they there anyway?

Mr. FREEMAN. I cannot attempt to answer that fully. Let me try my hand at it, if I may.

I have never been in Government. You have had vast experience, particularly on the question of appropriations, and so forth, and my impression is that in Federal Government and, perhaps, more so in State government—of course, the State judiciary would be involved in these meetings, too—it is pretty difficult to get a line item budget adopted year-to-year—biennially in the case of the State legislatures—flexible funds for travel expenses that are not fully anticipated ahead of time.

I may be overemphasizing this, but my own experience has been that it does make a difference to a public official in his own availability with respect to a meeting which he himself wants to attend, at which the organization concerned wants him to be present for good and proper public purposes, if that organization can supply these funds.

Government Should Underwrite Expenses of Officials Attending Conferences

Senator WILLIAMS. But if we look at it from the standpoint of public policy. Is it good to have a situation where a representative, a judge or any other official, in a high policymaking position, where it would be of importance to the State, or to the Federal Government in carrying out the functions of his duties, of his job, that he attend a conference, would it not be far better that either the State or the Federal Government underwrite their expenses? If they do not want to underwrite their own expenses, maybe they should not go.

After all, that is what legislatures and congresses are for. It is far better than it would be for Congress to confer upon one group of our society, private foundations in this instance, tax exemption so that they will have more money to underwrite the expenses of a Government official which Members of Congress and legislatures themselves want him to do.

It just does not make any sense to me. If that is the only way they can get around to travel, there is something wrong with our whole legislative system.

To carry this a step further, why pay Government officials? Why not just create more tax-exempt organizations and let them pay them? I mean, it is all coming out of the system somewhere.

Mr. FREEMAN. Can I back up one step and not try to answer your last one?

Let me go back to the earlier one. I think in an ideal world, a strong argument could be made for very adequate flexible funding to permit Government officials at various levels to go to important meetings, important presumably not only in their own judgment but in the judgment of whoever it was who was controlling the expense accounts.

I think in the practical world that organizations such as the ALL, the American Political Science Association, and a number of others have found in dealing with the practicalities that it is very difficult to put on successful meetings from which all of the participants will profit in terms of learning, in terms of exchanging experience, unless there is available some stipend in the form of expenses, some provision for living expenses, although I gather at least some part of this

may have been cured by a bottom limit, and I think that the representatives of these organizations could speak to this point much more practically than I could, except that I have had the experience of looking at a number of budgets from these organizations presented to foundations where it appears to me that they have made a very valid case.

The CHAIRMAN. Well, Senator, pardon me, may I just say this: we have just had a Supreme Court Justice who was nominated by the President to be Chief Justice, resign from the Supreme Court because he had been accepting foundation money under conditions which suggested the greatest of impropriety.

Now, this bill would suggest that if we want to pay that Justice to attend one of these meetings of the ALI, which I assume you mean the American Law Institute—

Mr. FREEMAN. Right.

The CHAIRMAN (continuing). We ought to just vote the money and just put it in an expense account for him to go. Pay him directly, and not give you fellows who are supposed to be in the charity business tax exemption for you to be paying him, and have more Supreme Court Justices resigning when this thing is exposed, or to have some Senator censured by the Senate for accepting that kind of money under conditions which suggest that this borders on bribery or improper influence.

We are suggesting we take you out of that business.

Now, you referred to the ALI, American Law Institute. Well, I think, they are a fine group. The same people there are members of the ABA, the American Bar Association. Do they enjoy tax-exempt advantages?

American Bar Foundation

Mr. FREEMAN. The American Bar Association itself does not, so far as I know, Mr. Chairman. The American Bar Foundation does.

The CHAIRMAN. Don't tell me they are using a foundation. How do they do that? That is news to me. Would you explain that to me. For what purpose?

Mr. FREEMAN. I cannot explain it in detail. I can give you only the broadest general information outline of it, but the American Bar Foundation was established some years ago with its own tax-exempt status in order to conduct legal research, and it does this, and does not, as far as I know—and this is something that the Treasury would have much better information on than I would—in any way involve itself in any of the legislative activities of the American Bar Association.

The CHAIRMAN. Is it kind of like the Patent Law Institute? Isn't that a foundation, too, which is to direct its activities toward guaranteeing a 17-year patent advantage even to a guy who steals the research out of a Government laboratory?

Mr. FREEMAN. I do not really know about that one, Mr. Chairman. I would doubt if they would be able to fight hard—

The CHAIRMAN. It is sort of a tax advantage to advance your personal interests or your pocketbook.

Mr. FREEMAN. I beg your pardon?

The CHAIRMAN. It is sort of a tax advantage to advance your pocketbook interests, in other words. The Patent Law Institute—do they pay speakers to show up and applaud the patent law granting a 17-year advantage to the guy who showed up with the idea second instead

of first, but filed a paper, even though he had been holding the secret out for 15 years against the public interest—do they spend their money advancing those kinds of ideas and fighting for the right of having private patents on Government research? Do they pay speakers to come and speak for that sort of a program, and pick out guys that they think will advance that kind of a notion?

Do they sort of enjoy a foundation advantage in doing that?

Mr. FREEMAN. I just plain do not know.

The CHAIRMAN. Would you mind finding out? Don't you represent those kinds of people?

Mr. FREEMAN. No. The Patent Law Institute is not a member of our council.

The CHAIRMAN. What is their name, the what?

Mr. FREEMAN. The name of my organization is the Council on Foundations, and it is composed of grantmaking foundations of various sizes in various parts of this country, and three or four of them are in Canada.

The CHAIRMAN. Are they not private patent boys using a foundation to protect their pocketbook interests?

Mr. FREEMAN. Mr. Chairman, I just do not know. If it is as you describe it, I would sincerely—

The CHAIRMAN. Do they pay speakers?

Mr. FREEMAN. I would sincerely hope they are not using a tax-exemption shelter.

The CHAIRMAN. You would be surprised to find some of the people who are. You know, they are using foundation money to dig up dead bodies in violation of the law. Are you aware of that?

Mr. FREEMAN. No, sir.

Senator WILLIAMS. I would like to get back to this interesting comment before us that the bar association has a foundation, you say, of its own to underwrite certain research activities.

Now, do they also hold conventions occasionally where they will bring the members together for the purpose of discussing what the researchers have developed, and so forth?

Do they have a board meeting, a convention meeting?

Mr. FREEMAN. Senator, I cannot really speak with any confidence on this because I am not a member of the American Bar Association. I only know about some grants that have been made by foundations other than the American Bar Foundation, to the American Bar Foundation, for which I would consider were entirely appropriate tax-exempt purposes.

Senator WILLIAMS. And they would cover the expenses of attending the conventions for both the members of the bar as well as the members of the judiciary, whoever so desires; is that correct?

Mr. FREEMAN. It is conceivable. Again, I am sorry I cannot state this with reference to the American Bar Foundation which came up because the chairman asked me if the American Bar Association was tax exempt.

The CHAIRMAN. I have been contributing to the American Bar Association, and I was paying my money—

Mr. FREEMAN. Right.

The CHAIRMAN. I was not claiming any foundation advantage. I did not know I was on a foundation deal. Am I enjoying some foundation benefit without my knowing it?

Mr. FREEMAN. I doubt it, Mr. Chairman.

I think you will find that there is—I hope sincerely that you will find that there is—within the American Bar Association a clear understanding of the necessary dividing line between the activities of the American Bar Association and the American Bar Foundation.

I am very apologetic that we got into this because I do not know enough about the inner workings of the ABA to get into this problem. The CHAIRMAN. I attended a meeting of the API.

Mr. FREEMAN. API?

The CHAIRMAN. That is the American Petroleum Institute.

Mr. FREEMAN. Right.

The CHAIRMAN. And I made a speech up there and enjoyed attending their association meeting, and I was so impressed by them I offered to join the association and pay some dues. I thought they must be a fine bunch of people.

Now, are they in the foundation business, too?

Mr. FREEMAN. Let me take a chance on them, Mr. Chairman. I do not want to appear to be nonresponsive on this, and this is an area I am acquainted with. I would assume the American Petroleum Institute has a 501(c)(4) and is, in effect, a trade association.

American Pharmaceutical Foundation

The CHAIRMAN. Let me ask you this: here is the American Pharmaceutical Foundation. What are they in it for?

Mr. FREEMAN. I would assume that they are—

The CHAIRMAN. To protect trade names?

Mr. FREEMAN. No, sir. I would assume they were a direct analogy, if you will, to the American Bar Foundation in that they were created to do research work and to produce the results of research for the general public and not to promote the professional interests of the American Pharmaceutical Association.

The CHAIRMAN. Right now they have their back against the wall to try to keep from paying over royalty corruption they have engaged in, and making the public pay from three to 50 times what the product ought to be costing.

Could it be possible that some of this money has been funneled through that foundation to achieve that result? Are you familiar with that tetracycline conspiracy?

Mr. FREEMAN. I read something about it in the papers.

The CHAIRMAN. Are you familiar with the fact that those people are in the process of paying off \$120 million in treble damage to people who were able to prove they were defrauded and that, as a practical matter, they are very, very lucky because most of the people that they skinned and defrauded are either dead or not in a position to identify the fellow who sold it to them?

But now, what could this foundation be doing that those people were not doing with their own money?

Mr. FREEMAN. I cannot really say, Mr. Chairman, because I do not know the details of the programs of these kinds of foundations.

Senator WILLIAMS. Is not the difference this: if they do it with their own money through a trade association they would not get the same tax deduction they would if they make a contribution to the foundation which is a charitable organization, and then a charitable organization, in turn, could do all these things, and it gives them a little better credit that they do not have from a tax situation.

501(c)3 Organizations

Mr. FREEMAN. Could I try to restate that another way and see if we can agree, Senator Williams.

My impression is that when an organization which does not have the 501(c) (3) deduction, which, as you point out, is the deduction that is needed for a personal gift to be deducted on someone's income tax, sets up a foundation and obtains a Treasury ruling, which is necessary for this purpose, they have to make a clear showing to the Treasury that the purposes for which they are setting up the foundation fall within the existing law and regulations governing the 501(c) (3) group regulations covering a tax-exempt organization.

I think what you have stated is one of the reasons why these kinds of, if you will, somewhat allied foundations are created. But if they are properly created and if they are properly policed by the Treasury, a point I would like to come to in a couple of minutes, and if the organization itself is acting in the public interest—and I am not talking about the foundation—then they presumably are expanding the funds that have been given to them for which a deduction has been taken on an area which falls within the deductible area of activities where any foundation with a 501(c) (3) ruling is expected to conduct its programs.

So that I would hope the case would be that these organizations, even though we do not typically regard them as grantmaking foundations, would be abiding by the same laws, with the same spirit of public dedication that we feel the great mass of grantmaking foundations are.

Senator WILLIAMS. I join in that hope, and assuming they are, they would not be affected by this bill because they would not have public officials on their payroll.

Mr. FREEMAN. I would agree that they would not likely have public officials on their payroll.

I think we now come back to a broader field, Senator Williams.

Senator WILLIAMS. If they did have public officials on their payrolls they would not be quite so far removed from suspicion as they perhaps need to be under this bill.

Mr. FREEMAN. Could I come back to the broader field that I was getting at, and this goes to the matter which was discussed at some length this morning, and I do not want to take the time of you two gentlemen unduly on it, the question of direct and indirect.

What we are talking about here, it seems to me, are two different problems. The problem of the grantmaking foundation putting someone on the payroll, as it has been discussed, or making direct reimbursed payments to that person for travel expenses, or for whatever purpose, and in each case presumably if the foundation is living within the letter of the law, that person must either be engaged in the charitable activities of the foundation or must be engaged in attending a conference or a seminar or an in-service training program which, again, falls within one of the tax-exempt purposes. That is one area.

The other area is one that also causes some concern, which is what brought us into the foundations related to other organizations, and it is the area where a foundation makes a grant to a completely separate organization with no overlap typically on the boards, the relationship is that of grantor and grantee. The separate organization, in turn, which also has a 501(c) (3) ruling typically, and which itself reports

to the Treasury regularly on its activities, then organizes a meeting for the professional purposes which have some direct bearing on the activities of one or more public officials, let us say at the Federal level, and these officials are encouraged to come to this meeting by making it possible to have their lodging taken care of, the occasional stipend for preparation of a paper, payment of their travel expenses, if this is necessary.

In this area, I submit the risk of improper activity is removed further than it is in the case of the grant-making foundation which is dealing directly with a former or present Government official because you have got two levels of responsibility. You have got the grant-making foundation living within the laws that it is operating under, and you have got the next organization with its own separate board, making its own decision as to which public official and for what purposes, and so forth.

The CHAIRMAN. Mr. Freeman, I want to apologize to you that you were called on short notice and, frankly, one reason why you are there is because I did not want to vote on this before we had a chance to hear from people like you.

You know, this John Williams is a pretty tough customer. He has a way of showing up with an amendment, which is embarrassing to vote against, and yet it is hard to explain why you did not vote for it sometimes to people who think he was right about the matter. But many times he does not give you much chance to talk about it, but just to say, "Here it is, and vote," and you have to do one or two things, either vote or start talking if you are out there on that Senate floor, because when you quit talking he is going to call that roll. So before I voted on this I wanted to hear from people like you.

Now, maybe you can provide us more information, if you have more time, that would help us arrive at a better conclusion.

You say that you are president of the Council on Foundations. How many foundations do you represent here, how many do you speak for?

Mr. FREEMAN. As I indicated at the outset, Mr. Chairman, I hesitate to say that I speak for our entire membership because the membership has not had an opportunity to examine this.

The CHAIRMAN. How many do you have as members?

Mr. FREEMAN. We have 400 foundations which are dues-paying members in one category or another.

The CHAIRMAN. I am going to make a request of you. I want you to provide for the record--if you cannot provide for the committee hearing record, we will just put it in the Congressional Record whenever you can get it to us--I want you to poll your 400 members and find out how many Senators and how many Congressmen, and how many judges they pay money to and how much they paid, and what the problem would be with regard to each one of these. So if you are the Ford Foundation, okay, you just tell me who you paid your money to, and then we will talk to this fellow.

If it is John Williams that you pay the money to, to make a speech before the Ford Foundation, then we will ask Senator Williams whether he was willing to go without being paid, and then we will discuss who they would have settled for if they could not have John Williams.

Then if you are the Du Pont Foundation, we will just see who the Du Ponts paid their money to. If they paid that to Russell Long—which they did not, but that is assuming for the sake of argument that they did—then we will check out whether it was really all that important that Russell Long be at that meeting. We can check it out to see if your argument really adds up to where Senators and Congressmen, and the top-level fellows in the executive branch, we can all get them in here—whether it was really necessary for them to be paid by these foundations.

You seem to have some doubt about the distinction between an association paying a speaker to appear before the association and a foundation paying the money.

Foundations Used To Escape Taxes

Now, let me give you an answer that I think a person can understand more easily. If I am using the foundation route, I can start out by escaping inheritance tax, and from that point forward we escape the income tax also. If I am doing this by the association route, I can deduct it against my income tax, but only in the year that I do it.

Now, if I am using the foundation route any time I find I have a big tax year I can just plow some more money into my foundation and avoid paying taxes.

Now, are you prepared to concede at this point that the hearings held by the House Ways and Means Committee, not counting the hearings held over here, have disclosed the fact that this is a very inefficient way to achieve what we are trying to do as far as helping education and charity and churches—to give these fellows this tax-exempt foundation route—that a great deal of the money is just put in there and never used for the benefit for which we gave the deduction?

Mr. FREEMAN. No, Mr. Chairman; I won't for a moment concede that.

The CHAIRMAN. Well, we are going to give you some pretty good examples before we are through.

Mr. FREEMAN. I spent 18 years of my life in the grant-making field, and I found it extremely satisfying and remunerative, though not necessarily in terms of monetary reward, and I feel, as I am sure you gentlemen have felt, those years were spent for public service. I think what we tend to lose sight of, in looking at the abuses in the field, is that they are a very, very small fraction of the number of foundations that are in the field, of the dollar volume of spending which is actually going in the field, and that the great mass of foundation money that is being spent is being spent carefully for a variety of projects and in support of a variety of organizations which, I think, you, Mr. Chairman, and Senator Williams and I would all agree were well worth supporting.

So I would not say it was an inefficient way of channeling private money into public service. I would say it was a very efficient way, and one which has proven itself time after time over the years.

The CHAIRMAN. Well, how about the foundation that takes the money and never spends any of it on charity, never gives any of it to education, just declares charity to be its purpose, and piles the money up?

Mr. FREEMAN. May I address myself to that for a moment?

The CHAIRMAN. Yes. How about that?

Mr. FREEMAN. I do not want to move away from Mr. Williams' bill unduly.

The CHAIRMAN. If we had collected that tax money we could have put it into public welfare, we could have put it into health research, we could have put it into education, but we gave some fellow a 70-percent tax advantage, and he ends up by paying us zero. It's known that he piles that money in there, and his children manage it and pay themselves salaries and think about other matters than charity and education and religion. They never got into that.

How about that situation?

Mr. FREEMAN. Let me address myself to that situation. I think it is one that exists. It is one that exists on very rare occasions, and I think it is one under present Treasury law and regulations that can be taken care of and has, in fact, been taken care of in the Treasury's removal of exemption and, particularly, in certain instances where there is an active State regulatory agency, and that agency has been able to go in with the equity powers of the court and see to it that the funds, as you describe it, which are locked up and are not doing anybody any good, much less charity, go to appropriate charitable purposes.

The council which, for the first time, has taken a public position in regard to the hearings that were held by the House Ways and Means Committee, addressed a letter to Chairman Mills, which I would like very much to ask permission to add to the record here if it seems appropriate to you after you have examined it, which comes forth with some specific recommendations as to the kinds of regulatory measures which this group of foundations, at least, speaking through their board, felt were entirely appropriate and necessary, and one of those is the area of immediate payout, of immediate return, to charity, the thing we discussed this morning, where we got a little involved in 5 percent, as you may recall.

We are quite prepared to live with that kind of additive to the present regulations. The present regulations have some wording having to do with unreasonable accumulation of income, but it does not meet the problem obviously of a foundation, all of whose assets are tied up in something that produces no income, because there is nothing to accumulate.

The Treasury proposals in 1965, reiterated again in 1969, and reworded and toughened, if you will, in the House Committee press release of last week, would require in that situation that the foundation, whether in the form of one or two owners of a company whose stock was locked in or whatever, must pay out at least 5 percent yearly of the market value of those assets to charity, and the failure to do so carries with it a number of sanctions which have been added in both the current Treasury recommendations and the House Ways and Means Committee hearings, which go in some instances somewhat farther, I am afraid, than I would feel was absolutely necessary. but they provide a flexibility of regulation which has been lacking in this field.

One of the problems that many of us have recognized in the field has been that the only club available to the Treasury was the removal of the exemption. The successful efforts of California and New York

State regulatory agencies to move in with equity powers and to assure that assets which have been held away from charity get rededicated to charity and reach charity, suggests that some of the sanctions that have been discussed by the current Treasury recommendations may very well be appropriate in this field, and some of the other sanctions that are proposed, if straightened out in terms of the knowledge of the person who might get caught up in a very sizable dollar penalty, I think, could also be lived with by foundations.

What I am trying to convey is that the responsible foundations which we feel are doing a very important job in this whole public-private sector are conscious that there are problems in the area, and they are trying to do something about it. They are trying to say to the Ways and Means Committee, and if you will accept a copy of this letter to you gentlemen, too, here are the things that we are now prepared to say should be added in terms of additional regulations.

Let me just expand, if I may, for a moment on a couple of these because one of them at least does bear on Mr. Williams' problems.

We feel one of the great needs in this whole area is for much more required complete disclosure, and I do not just mean voluntary disclosure by the many excellent foundations that have been publishing reports, but required disclosure through an expanded form 990(a) which every foundation which is maintaining its tax-exempt status must make annually to the Treasury, and this disclosure, we suggest in our letter to Chairman Mills, might have attached to it in addition to the fuller information that we, and now the House committee itself, is suggesting, possibly an independent audit report which would mean that in addition to the lines of the 990 being properly filled out, there would be an audit by independent accountants which would be attached as an independent document to the 990(a).

This is aimed, if you will, primarily at financial abuses, but it bears on the kinds of things that Senator Williams is quite rightly concerned about and would, I think, put much more of a spotlight of publicity on all foundation activities, those of the foundations that we consider entirely responsible, and those about which we would share your concern.

The CHAIRMAN. All right.

Now, you have suggested that, and it is a good starting point. I made this request of you, that I want you to poll your 400 members and see who they did pay money to, to just see if this law, this Williams Act, as he proposes to amend it—you understand he has agreed to a number of Treasury suggestions, so now we are talking about more people than just Senators, Congressmen, and Federal judges. We are also talking about other officials of the Federal and State Government. If you will just go down through your foundations and see who they paid the money to, for various and sundry services, grants, and whatever else was paid for. Assume the Williams' act was law. Just see who they paid the money to in 1968 and in 1969, if their recollection probably goes that far back, and why they think that was necessary, in case there might be some question about any of this. Provide us with that from your 400 members, then we will have a starting point to see whether this bill might create some trouble.

If it is not asking too much, you have suggested that these foundations ought to be audited on an item-by-item basis, and any item that

an accountant would ask a question about should be queried, I would assume, by a question mark.

After we get through with that, I would like to ask your 400 foundations to provide that information for us, just get the independent audit—I would suggest that you get one or two of the big firms who are really well known, but it is all right with me if you want to suggest a smaller one, like Andersen, or Ernst and Ernst, to go down and audit it, just as though they were auditing for the people who owned a foundation to see that the man was running it right. Put a question mark by a particular item as to whether or not that was a prudent use of the funds or not.

After they provide that to us, then when the big tax bill comes, we can take a look at what it would show, and if we are just nitpicking—just picking out a few isolated examples rather than getting at the real meat of the facts—then we will be in position to know.

I do not think you can get it right away, but I think by the time that big bill gets over here in August, you can have it for us. Would that seem possible?

Mr. FREEMAN. Well, can I take the two suggestions in order, Mr. Chairman?

The CHAIRMAN. No. 1, that is not very difficult, is it, just poll your members and ask them—

Mr. FREEMAN. That is difficult, if I understand the request correctly.

The CHAIRMAN. Pardon me.

Mr. FREEMAN. Excuse me. It is difficult, if I understand your request correctly, and for a couple of reasons that occur immediately, and I am sure more will occur when we attempt to do this.

In the first place, as I indicated earlier, one of the problems that I see in this bill is the language which includes the words, "indirect as well as direct."

Now, what I think your request would involve, Mr. Chairman, would be an attempt on the part of the grantmaking foundations who are our members to ascertain from any or all of their grantees whether those grantees over some stated period of time had made any payments, whether for per diem or for travel or for lodging above a certain figure, if that turns out to be within the amendments, to any Government official, not stopping, as I understood this morning's discussion, with the Federal executives above a certain level or the Federal judiciary, but going down to the State level, certainly, and what I am concerned about is—

The CHAIRMAN. Let us just relieve you of some of that burden, let us just put it on this basis: You just ask your people:

"To which Federal official did you pay money in 1968 and 1969?"

"To whom did you pay money knowing him to be a Federal official?"

"How much?"

"For what?"

"Was it really necessary?" That is all, and let them just pick them out and explain why they thought it necessary to pay this money to that man.

The Williams amendment would suggest that you include State judges, Federal officials, and judges of State courts.

Mr. FREEMAN. This was one of the problems I had when we were discussing it.

The CHAIRMAN. Let us just hold it to Federal officials. Let us just see what the Federal Government is concerned with. If Senator Williams wants to ask for Federal and States judges——

Senator WILLIAMS. I am interested in that. We will get the State later.

The CHAIRMAN. Let us just look at the Federal officials.

Mr. FREEMAN. What I understand, Mr. Chairman, is what you are requesting our members to do because obviously we have no subpoena powers over our members——

The CHAIRMAN. You cannot make them do it, of course.

Mr. FREEMAN (continuing). Is that they volunteer this information in terms of the direct payments that they as grant-making foundations have made to these officials.

The CHAIRMAN. "What do you pay for a grant or a service?" "What did you pay this Federal official?"

Mr. FREEMAN. But at some point along the line they either wrote a check to the Federal officials or themselves, provided services.

The CHAIRMAN. Also indicate the official who received an indirect payment of which you have knowledge. If you do not know about it, we cannot hold you responsible, but if you have some knowledge of it, we would like to know about that.

Mr. FREEMAN. May I explore that one for a moment, too?

The CHAIRMAN. Yes.

Mr. FREEMAN. Typically on the indirect, the grant-making foundation would know in general the purposes, let us say, for which the receiving organization was to hold the meeting, perhaps the duration of the meeting, would have seen a budget for the meeting, but would not necessarily know which officials, whether public officials or ones below this category, or private businessmen, or anyone else were actually invited to the sessions.

The CHAIRMAN. If I recall, I think the ethics report that we Senators have to file requires us to request, if we are associated with certain people, and that we benefited indirectly, but we just do not know how the money came to us, that if we do not have the information we are asked to request it, and it would seem to me that those people could do the same thing.

Mr. FREEMAN. Yes, they could.

The CHAIRMAN. If we can do it as Senators, I think your members could request one another. We are not putting them in jail for this, we are just asking for information.

Mr. FREEMAN. I understand, Mr. Chairman. I want to cooperate. I just want to make it clear that the further removed we become from the grant-making foundations who are our members, the less speed can be expected in getting what may turn out in some cases to be fairly lengthy lists of people who will not necessarily be Federal Senators but will be local judges, States judges, et cetera.

The CHAIRMAN. That is not too difficult.

Mr. FREEMAN. I take it you do not want below the Federal judiciary at this point because you want it for sort of a sample?

The CHAIRMAN. Just Federal officials. Let us just see how it affects the Federal Government.

Mr. FREEMAN. But you do want it in terms both of the direct stipends or travel expenses that the foundations themselves have paid,

and in terms of grants that they have made which they have reason to know may have ended up in something like this, and where they can obtain this information from the grantee.

The CHAIRMAN. Just to avoid any wasting of undue time, finding out what we would like to know, let us just say that please send us, immediately what you have of your knowledge. Where you are going to have to request somebody to provide you the information, send that along later as an addendum. In that way we can have all the direct payments very soon.

If a foundation contributed to a meeting, and he does not know just who did go and who did not go to the meeting, then he will seek to find that out and provide that for us later so that he can send it in as part A and part B, and then we can see what we are looking at.

Then if, as you infer, this is just a minor problem, and it is not a substantial problem, we ought to begin to get evidence of it in a hurry.

Then when part B comes in, we will have further evidence.

Mr. FREEMAN. Right.

I would like to make it clear for the record, if I did not make myself clear, that I do not consider that the question of the scope of Senator Williams' bill in terms of the indirect support is a minor problem. Otherwise, I do not think you would have as many witnesses on such short notice as you have.

I think this is a serious problem, not in terms of the abuses, which I would agree with both you gentlemen are serious, as we learn of them in the press, but in terms of the very worthwhile activities which these various second tier organizations are conducting frequently with support from a number of different foundations, and which do in their judgment and in the judgment of the foundations that made the grants, serve very worthwhile public purposes.

It may be useful from your point of view, I take it you would want this information for this purpose, too, to see what some of these are as they may be available to you through the information that our members can furnish.

The CHAIRMAN. Part B information might support your argument more so than the part A information. But Senator Williams here has taken one of the administration's bills that, from the point of view of the Secretary of Labor is a very important bill and a very urgent item, and he has shanghaied that bill, and he is holding it captive until we vote on his amendment.

Senator WILLIAMS. I am ready to vote tomorrow.

The CHAIRMAN. The point is that some of us would like to have as much information as we can get. It might support your case, and if it does, we would like to see it. If it supports his case we would like to know it, too.

Mr. FREEMAN. I understand, Mr. Chairman.

I want to warn you, if I may, in anticipation of what I will run into, that many of the members of my council are spread far and wide throughout the land, they are relatively small foundations, and will have difficulty getting this material to you quickly, but we will do our very best to get the word to them promptly, and if I may I would like to clear with Mr. Vail the wording of our request to them so that he and I will know that we will have at least attempted to meet the committee's request.

The CHAIRMAN. You understand I am willing to give this committee's blessing to you, using tax-free money to go request this information because that is perfectly within the scope of your activities, I think.

Thank you very much.

MR. FREEMAN. Could I just make one more point, and I know that Senator Williams has one more point for me because I noticed the finger.

Would you like to fire first, Senator?

Senator WILLIAMS. No, I am just listening and interested in the way this is progressing.

MR. FREEMAN. I would like to reiterate the position which my council has taken in terms of the importance of disclosure and, of course, when we were addressing ourselves to the House Ways and Means Committee on this general area of disclosure of foundation activities, we were not immediately concerned with the problems of conflict of interest and their applicability to Federal officials, and so forth.

It seems to me without trying to differentiate—or not differentiate—as to funds that come to a public official from the private sector, between tax-exempt funds and non-tax-exempt funds, I would feel that the thrust of any new legislation in this terribly complex field of conflict of interest ought to be as evenhanded as the committee, in its wisdom, can make it, and by that I mean that if the disclosure route turns out in the committee's judgment to be a valuable one to follow, then the kinds of disclosure that are required of the private sector, even though it may in this instance be limited to grant-making foundations, ought in some comparable way to be required on the part of the public officials who are themselves involved, because it seems to me quite clear that, as was suggested earlier, this is a terribly important area where the policing problem has always been very, very tough, and I am not sure that it is going to be licked when only one relatively small portion of the private sector is put under the kind of prohibitions that Senator Williams' bill calls for.

The CHAIRMAN: Let me just read you this ethics resolution. I do not think we have any difference at all, and I think that we are in agreement on what we are seeking here.

Here is how we Senators do it one another. Here is a report that I have to file and Senator Williams has to file:

List each beneficial interest having the value of \$10,000 or more which you held in (a) a trust, estate, insurance policy, or other fiduciary and (b) each interest held by the trust or other fiduciary relationship in real or personal property at any time during the preceding year.

That does not say \$10,000, it says each interest held by the trust.

If you do not know the identity of the trust holdings in which you held a beneficial interest of \$10,000 or more, request the trustee or other fiduciary to complete this listing and submit it on your behalf.

So now the principle there, we ask one another, "Well now, if you do not know that information, please get it or ask for it and make it available." I suspect by the time we get through we are going to be asking not just you but other people as well. If you do not know we will find out. We can find out some on our end, we have the right to

ask Senators about these matters, and House Members, and I am not at all apprehensive about the reaction of that House committee about asking those Members of the House to disclose any interests of whatever payments they received from foundations.

Senator WILLIAMS. Just one question: Mr. Freeman, you are listed as president of the Council on Foundations, and that means the Council on Foundations, as I understand it, is the national association of all foundations in effect: is it not?

Mr. FREEMAN. Not exactly, Senator. I would like to think it might some day become such, but the fact is we have some 400 members, which do not include many of the largest foundations and which, of course, do not include the entire field because the best count is, even under our fairly strict definition, there are between 22,000 and 25,000 grantmaking foundations of one sort or another.

Senator WILLIAMS. I understand, but you do represent the 400 you are speaking of?

Mr. FREEMAN. Right.

Senator WILLIAMS. And you are the Washington representative?

Mr. FREEMAN. No, sir. I am actually based in New York City.

Senator WILLIAMS. What is your job?

Mr. FREEMAN. My job is as the president. I am the chief executive officer.

My functions include running a very small office, supplying information, as I indicated at the outset, to our members about what they themselves are doing and, at this point, of course, trying to—

Senator WILLIAMS. I was not trying to get at that, but you follow the legislation and the legislative proposals of the Congress. You keep current with what is going on as it would affect these foundations?

For example, if a person over in the House introduces a bill to tax foundations or to change the status or something, do you follow that and keep them advised of that?

Mr. FREEMAN. We attempt to find out about it, sir. In the case of your own bill, my associate happened to find it in the Congressional Record which we do subscribe to. We do not have a Washington representative, and we are somewhat handicapped.

Senator WILLIAMS. That is the point I wanted to establish because the bill was introduced May 8 and it is clearly stated it was going to be pressed for action, and those who were interested in it could start studying it, and I was sure that anyone as diligent in his duty as you were was aware of this bill.

When you say you were not aware of the bill until yesterday, it merely means that you did not do your homework ahead of time, as I have often not done, but the bill was presented, and it has been known for at least 30 days.

Mr. FREEMAN. Let me be completely frank with you, Senator. My organization's information came, as I indicated, from the Congressional Record, which we did not actually find for several days after it came into our office, because we have not quite licked the problem of screening the Congressional Record for these purposes.

We had seen an account, I believe, in one of the newspapers of the introduction of the bill, but because it was laid out in full in the Congressional Record we, of course, read the text of it, and we told

our membership within 2 or 3 days that the bill was in existence and gave them the number of it.

Senator WILLIAMS. That is all I wanted to establish.

Mr. FREEMAN. Yesterday when we knew for the first time there would be public hearings on it, we immediately took steps to get the text of the bill to our membership.

Senator WILLIAMS. I guessed at that, but I did not want the record to stand that this was something that was slipped in in the last 48 hours. I know some of the members of your association had been alerted and had received copies of it because I have had correspondence from some of them, so this is not altogether unexpected.

Mr. FREEMAN. Well, as I am sure you understand, some of our members do not rely solely on us, and wisely so, to alert them to anything that might affect their interests.

Senator WILLIAMS. I do not blame them for not seeing it in the Congressional Record, I do not blame them for that.

Mr. FREEMAN. May I ask that the letter to the House Ways and Means Committee be considered for the record?

The CHAIRMAN. Without objection, let us just print it.

(The material referred to follows:)

COUNCIL ON FOUNDATIONS, INC.,
New York, N.Y., June 5, 1969.

Mr. TOM VAIL,
Chief Counsel, Committee on Finance,
U.S. Senate, Washington, D.C.

DEAR MR. VAIL: In the rush of adjournment yesterday afternoon, I don't believe I gave you a copy of the enclosed letter from the Board of this Council to Chairman Mills of the House Ways and Means Committee. As I indicated to Senator Long, I would appreciate your considering whether the letter might not be included in the record of my testimony before your Committee, since it spells out some of the details on disclosure and enforcement which I could mention only briefly in my oral presentation, but which I believe would go a long way towards meeting the problems to which Senator Williams' bill is addressed.

As soon as I have had an opportunity to review my testimony, which I understand Mrs. Thompson will be sending me, I will be in touch with you on the phone about how best the Council can comply with Senator Long's request for information from our membership.

Many thanks for your courtesies yesterday.

Sincerely yours,

DAVID F. FREEMAN, *President.*

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

Hon. WILBUR D. MILLS,
Chairman, Committee on Ways and Means,
U.S. 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 1969 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 or 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 qualities 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 6034 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 F. FREEMAN, *President*.

The CHAIRMAN. The next witness will be Mr. Clifford C. Nelson, president of the American Assembly, Columbia University.

STATEMENT OF CLIFFORD C. NELSON, PRESIDENT, AMERICAN ASSEMBLY, COLUMBIA UNIVERSITY

Mr. NELSON. Good afternoon, Senator Long and Senator Williams. I have here a short statement I would like to read, if I may, gentlemen.

I am president of the American Assembly, a national, nonpartisan conference organization. The assembly is chartered as an educational institution by the regents of the university of the State of New York and is affiliated with Columbia University.

As stated in the charter of the American Assembly:

The purposes for which such corporation is formed are, in the field of adult education, to associate together administrators, scholars, and others to engage in research, the gathering of information, the publication of the results thereof, to conduct lectures, to hold conferences of scholars, government officials, and other individuals in all fields of endeavor including, but not limited to, labor, industry, commerce, agriculture and the professions, and by these and other means to arrive at and disseminate impartial and authoritative findings on questions of national and international importance, and thus to stimulate the

growth of informed opinion with a view to the preservation and strengthening of the democratic processes and principles of freedom.

In working toward these purposes, the assembly regularly holds educational meetings on a national, regional, State, and local—and sometimes an international level. The spectrum of participation is wide and with few exceptions includes government officials—Federal, State, county, and local and from the legislative, executive, and judicial branches.

When the assembly meeting place is remote from the working place of most participants—which is usually the case—it is burdensome, often impossible, for some of these participants to bear their own travel costs. The American Assembly therefore often provides reimbursement to those unable to pay all or part of their travel. Otherwise, it seems to me, we should lose the advantage of the thinking of some of our most intelligent, public-spirited citizens—in effect disqualified because they were without sufficient financial means.

Many educational organizations in the field of public affairs, including the American Assembly, emphasize the value of open dialog between public servants and private citizens. It is widely agreed that the exchange of ideas between Government officials and people of other pursuits in an educational setting has been mutually beneficial. To prohibit the payment of travel expenses of Government officials to privately sponsored educational conferences is to place an arbitrary barrier between the people and their representatives.

The success of democracy depends on enlightened public opinion which depends on continuous dialog among all sectors of the society. To the extent their dialog is reduced by the absence of public officials, to that extent is a source of democratic strength needlessly dissipated.

That is the end of my statement, gentlemen. Thank you.

Possibility of Government Paying Expenses of Officials Attending Conferences

Senator WILLIAMS. Mr. Nelson, don't you think that it would be possible to have these same meetings, and if it is important that the public officials be in attendance, that the State or the Federal Government for which they are working could pay their expenses. Would not that be better as a matter of public policy for them to be paid in that manner?

Mr. NELSON. Senator, I have no clairvoyance, I do not know what would happen in the future.

I strongly suspect, as I look at the remuneration of public officials, as well as academicians, I strongly suspect that were the travel advantage to be withdrawn, by that much would the participation be removed. I simply do not know because we have not tried it, but this is my fear.

Senator WILLIAMS. I do not question the service that is rendered by these meetings. It can be good. But I just question the wisdom as a matter of public policy of Congress' granting tax exemption to an organization in order that they could have more money to subsidize a public official carrying out something that he should be doing in the performance of his duties.

Would it not be better the other way around, for Congress to pay it, and if there is a shortage of funds as part of the legislative budget or the congressional budget, to levy some tax against these organizations and then have a little more money so that you can pay these

men and, at least, let those men attend those functions knowing that they are servants of the people? Maybe it would be a laxity on the part of the legislature or the Congress to meet the necessary expenses of what some people think are necessary, I realize that.

Mr. NELSON. I simply do not know the answer to that, Senator, because, as I say, I have had no experience in it, but it strikes me it is a great deal less expensive to pay the travel costs of one Government official to a conference of 100 people, that they might have the advantage of his thinking and hear what he has to say about what is going on in Government, than to reverse it and have them come to him.

Senator WILLIAMS. No, I was not speaking of that. Let the public official go to the group, just the same as he is going. But instead of your paying his expenses, or some foundation paying his expenses, let the Government pay the expenses of this official to attend this conference.

Mr. NELSON. Having absolutely no experience with this, Senator, I simply cannot say.

Senator WILLIAMS. But if Congress or the legislature, whichever it may be, would meet their expenses, the same objective would be carried out as far as your organization is concerned.

Mr. NELSON. If we can announce an assembly on some subject and get everybody there, Government and private people alike, on his own, Senator, I would be the happiest man in the world. It would save us our really hard-earned or hard-to-come-by money and, as I say, we make no distinction. To us it is a question of getting the spectrum of participation, and whether it is a clergyman or a Government official or a professor from wherever, we try to when we can, and when we have it, supply the reimbursement.

Senator WILLIAMS. I do not question the merit of what you are trying to do or what you have been doing.

Mr. NELSON. Yes, sir.

Senator WILLIAMS. There is nothing personal nor vindictive here on this point. But I was just thinking if this official is an official of the Federal Government, or if it is the Cabinet officer himself, he can certify his own expense account. We pay millions in expense accounts of public officials. If the officials, those who are responsible for administering the affairs of either the State or the Federal Government, do not think it is necessary that he go, maybe he should not go. But I think we should pay it directly, that is the point.

Mr. NELSON. I have two remarks on that, Senator.

First, as I said, however and by whatever means anyone might come to an educational conference and save me money, saves the organization money, so much the better.

On the other hand, I am thinking also of levels of government. I am not quite sure that the township or local government, with its limited resources—

Senator WILLIAMS. They are not included under this, and we have spelled out that they would not be included. The draft of the bill stated they would include it, but we had agreed, as we mentioned—I do not know whether you were here or not this morning—we would change that and make sure that the local officials would not be included now, and that has been agreed upon.

Mr. NELSON. Where does it, at what level does it, cease, Senator? Senator WILLIAMS. What do you mean?

Mr. NELSON. What level of government, that is to say, would it include State government then?

Senator WILLIAMS. It would include the State government, the elected officials at the State level. I will cite my own State as an example. It would include the attorney general, who is an elected statewide official, the governor, all the judges, all the members of our municipal court would be covered in our State because they are all appointed by the Governor. It would not include the mayors or city councilmen or the school boards down the line in any of the States. It is not intended to cover that.

Now, it may be necessary to spell it out more affirmatively, but it has been agreed that that would be spelled out so we can proceed on that premise.

Mr. NELSON. Well, the States not being equally wealthy, I am not sure that they would all respond affirmatively to this, there might, therefore, be some States in the Union in which officials might make very limited appearances, if any, in educational conferences.

Again the public would be thereby, I think, deprived of a source of information, an opportunity to exchange information and views between public and private might, therefore, be eroded, and the capacity for such intellectual exchange be eroded.

Senator WILLIAMS. This would happen if there is a State that was interested enough in what is going on to send a representative. That can happen anyway. Conceivably they could just not pay the man either.

I think we have got to proceed on the premise that the States will discharge their responsibility, and if they need a little more money maybe we can tax these same tax-exempt organizations and gain a little more money, and then they can pay the man.

Mr. NELSON. Senator, with all respect, I proceed on no such premise. We live in an everyday world, and I would not hazard a guess as to what might happen. I do know what does happen, that communication has been fostered, and well fostered among the segments of the society as the result of facilitating the means of communication, including travel, and that thereby not only those with means are made eligible to participate in the democratic dialog.

As to what is going to happen, I do not know.

Senator WILLIAMS. Well, I appreciate your testimony.

The next witness is Mr. Donald Canty, or is it Mr. John Bethea?

You are taking the place of Mr. Canty?

Mr. BETHEA. Yes, sir.

Senator WILLIAMS. Mr. Canty is the director of the urban center.

STATEMENT OF JOHN W. BETHEA, DIRECTOR OF PUBLIC AFFAIRS, URBAN AMERICA, INC.

Mr. BETHEA. I am J. W. Bethea, director of public affairs for Urban America, Inc., and am here today representing our executive vice president, Mr. William L. Slayton, who is away from Washington.

Urban America is a nonprofit educational group concerned with upgrading the quality of life in American cities. As such we operate and

concern ourselves in a variety of areas. We are, Senator, one of the second-tier groups that Mr. Freeman spoke of, in that we get a large portion of our funding from foundations.

We are active, obviously, in the field of housing through our non-profit housing center. Through our information center we do a considerable amount of publication work—getting out reports of developments in the urban field, and so on.

Our urban policy center concerns itself with the long-range outlook—most recently it was deeply involved in the publication of *The New City* which, perhaps, you received in your office in recent days.

Senator WILLIAMS. In what way would this prohibition against the employment or payment of public officials affect your operations?

Mr. BETHEA. Well, let me touch on that through a couple of paragraphs which we prepared prior to coming up here.

I would like to emphasize the role Urban America sees itself playing in regard to public officials. The attempt to solve urban problems is involving officials at all levels of government—Federal, State and local—in new and unaccustomed activities.

It is only in the past few years that these problems have begun to be diagnosed and their remedies have begun to be developed. The problems have been there for a long time, but our awareness of them and our beginning knowledge of them are new.

Those who are adding to this knowledge come from a wide variety of disciplines, from the social sciences, architecture, and development planning. Those who are actors on the urban scene are likewise of varied backgrounds, professionally.

It is intensely difficult for the public officials to draw together all of these pieces of knowledge, all of these diverse skills, and apply them directly in a coherent way to a given problem. Yet that is what the public officials are asked to do.

Essentially, Urban America attempts to be a bridge between public officials and the knowledge they need. We do so through undertaking research and disseminating the results of the research done by others, through technical assistance programs, through training sessions and conferences, and through publications, as I mentioned earlier.

Many of these activities are financed either directly or indirectly by foundation funds.

We would be deeply concerned about any restrictions placed on these funds which would limit Urban America's usefulness to public officials.

We are currently embarking on a program which we hope would be particularly useful to public officials. We have up now for consideration before our board a proposal that Urban America, in the next year or so, focus its attention on future urban growth through a national urban growth policy. We will be addressing ourselves to such problems as: What will be the dimensions of growth? What will growth require in the way of new development? How can this development be planned and organized so that it produces the best possible human environment?

We feel that these are highly significant questions, and that at present they are receiving insufficient attention. So far the Nation has been content to let growth just happen.

There is evidence that a continuation of this neglect in the face of impending population increases will create a severe strain on our society.

Our efforts in regard to future growth, will be to get a national discussion and debate underway and to service that discussion by gathering and developing needed data.

Our hope is to involve officials of the sub-Cabinet level of the Federal Government down to the mayors of small cities. They will be involved in two ways: As sources of information and as users of information.

We would draw on their experiences and ideas and, in turn, hope they would draw from the program the help they need in making decisions that affect patterns of growth.

We obviously expect to look to foundations for support of this program, and some of this support would be used to make it possible for public officials from all levels of government to participate. It is in this way, sir, that we feel we are directly affected by the proposed S. 2075.

Senator WILLIAMS. Your organization will be studying, and then after you reach a conclusion, helping push the enactment of certain legislative proposals which would correct these problems?

Mr. BETHEA. No, we are not permitted to push legislative proposals, and we do not lobby in any fashion. We are working in the educational area.

Senator WILLIAMS. You just try to educate public officials instead of lobbying?

Mr. BETHEA. That is true, but we also attempt to inform the general public.

Senator WILLIAMS. You educate them with your philosophy and your beliefs, rather than lobbying. But is it not a narrow distinction?

To get back to the original point, in carrying out your purposes, do you have a record—do you pay any public officials?

Mr. BETHEA. We do, indeed. We do not pay them a salary in the usual accepted sense. We do pay them for travel expenses, and we pay them for their out-of-pocket expenses.

Senator WILLIAMS. Do you pay them expenses, and do you pay them honoraria?

Mr. BETHEA. I am not certain that we have. As a general rule in the 7 months I have been with the organization we have not paid any of them honoraria. I cannot tell you that that has been the fact since 1965.

Senator WILLIAMS. You have heard the question of the chairman. Would you furnish to this committee a list of the public officials who are covered by this bill, and if you can get the definition so that you perfectly understand it, from Mr. Vail, the chief counsel, please do so.

Mr. BETHEA. We would be happy to. We have recently prepared such a list for a foundation which gives us support.

Senator WILLIAMS. A list of all of them so that we could see what public officials are involved, whose services you would be deprived of as a result of this bill.

Mr. BETHEA. Yes, sir.

Senator WILLIAMS. You will furnish all of that information?

Mr. BETHEA. Yes, sir; we will be happy to—State, local, and Federal officials.

Senator WILLIAMS. I appreciate that. Because we can get it, I personally do not see, as you all know, why it is necessary—and I do not question the propriety of these public officials talking with you and your talking with them—but I get back again to the point that I think it would be better if we, as a government, State, or National, paid our own public officials, so that they would in all sense be working, and know they were working, and representing government, rather than have this contingency fee paid indirectly by some tax-exempt organization.

We appreciate your testimony. There is no question that under the provisions of this bill even with its modification, you would be affected, and as one of the sponsors of the bill I would intend it that way, so we will proceed on that premise.

You furnish it to us and we will certainly study your problem.

Mr. BETHEA. We will be happy to furnish it.

Philosophically, we would agree that public officials should pay their own way and in fact in some of our activities, such as seminars for potential sponsors of housing for lower income families the Federal, State, and local officials participate and pay their own expenses to these meetings around the country; others do not have the travel budget necessary. Yet they too have a very useful contribution to make in discussing the manner in which nonprofit groups can serve as housing sponsors.

Senator WILLIAMS. I do not question that the public official can serve or render service. There is a service he can render, and there is nothing intended in this bill either before or after, assuming it is enacted, that raises any question as to the propriety of any public official at the National or State level cooperating with any of these organizations if they can make a contribution with their advice and wisdom.

But all we are dealing with is that they do it without their being paid, and that their expenses and their salaries be derived from their official positions and that they not be on the payrolls. So that is the only distinction, the question that we have between us at this point.

I have no further questions. Thank you very much.

Mr. BETHEA. Thank you, sir.

Senator WILLIAMS. The next witness is Mr. Hugh De Fazio, National Council on Crime and Delinquency.

**STATEMENT OF HUGH DE FAZIO, DIRECTOR, WASHINGTON OFFICE,
NATIONAL COUNCIL ON CRIME AND DELINQUENCY**

Mr. DE FAZIO. Senator Williams, I am director of our Washington office, of the National Council on Crime and Delinquency. Under normal circumstances, Mr. Milton Rector, our executive director, would appear and testify here today. Although Mr. Rector has the greatest respect for this committee and a deep interest in this bill, he cannot be with you today because he is coordinating a conference on crime and the urban crisis in New Orleans.

Some background on NCCD. The council is the only national nonprofit private agency working to prevent and control crime and delinquency by tapping both professional expertise and citizen action.

Our program is developed by the top professionals in the field. Its implementation is accelerated by key citizen leadership. We were founded in 1907, and we are the country's major nongovernmental agency dealing with the entire criminal justice field; that is, from police, to courts, to corrections.

Basically we agree in principle with your philosophy behind the bill, but because we receive money from foundations and because we are a 501(c) (3) organization we are concerned in particular about the language that would prohibit us from giving any money whatsoever to a government official for any reason whatsoever.

In making our comments on this bill, we are not opposing any of the needed supervision of private foundations in their relationship to government officials. The concern we express, however, is directed at the sweeping language of section 505 (a) (1). That section may be interpreted to bar private foundations from making contributions to charitable tax-exempt organizations that use such contributions from foundations for beneficial purposes.

Many charitable organizations which render services to the public depend, for part of their funding, upon contributions from the kind of private foundations described in this bill. The National Council on Crime and Delinquency and other charitable organizations undertake many public education programs. Almost out of necessity they must obtain the presence of government officials, from all branches of government, at these activities, such as institutes and conferences, in order to perform their functions. For example, the National Council on Crime and Delinquency on numerous occasions invites judges and officials in the executive branches to speak and participate at its conference and institutes.

As a citizen action organization, we believe that crime can be checked somewhat by total involvement of the citizen. As such an organization, we have tried to respond to the basic recommendation of the President's Commission on Law Enforcement and the Administration of Justice. That basic recommendation stated that private citizens on their own or through their organizations must interest themselves in the problem of crime and criminal justice.

To inform and arouse the citizens to the challenge of crime, we have been holding conferences and institutes throughout the country to disseminate information on crime and its impact upon our society. Our conferences and institutes are designed to educate the public to the problems of crime and delinquency that are plaguing our great Nation. To effectively communicate these problems to the general public, NCCD invites government officials to participate in these conferences and institutes because they are, in most instances, the most knowledgeable in the area. On numerous occasions it is necessary to pay the travel and living expenses of these government officials where the particular executive or judicial departments do not underwrite their participation. To deprive such organizations such as NCCD from the use of funds which are contributed by private foundations for public education purposes would seriously handicap our public educational effort.

Because S. 2075 precludes the payment of any money for a Government official in any form whatsoever, we feel that the public good and welfare would be jeopardized in the sense that these officials could not

express their knowledge of the problems, nor their opinions on what can be done, nor the gravity of situation.

We would have to curtail our conferences on crime where we are utilizing Government officials as participants. It would be the public good that would suffer through our reduced capacity to conduct such educational operations because of our inability to reimburse the officials for their out-of-pocket expenses.

That is it, Senator. Thank you for inviting NCCD to testify on your bill S. 2075.

Senator WILLIAMS. What type of public officials do you have?

Mr. DE FAZIO. Do we utilize?

Senator WILLIAMS. Yes.

Mr. DE FAZIO. Upper echelon executive branch people.

Senator WILLIAMS. All executive branch?

Mr. DE FAZIO. Yes; and some, I have to also say that one of the organizations that we fund is the National Council on Judges. They do meet to form guidelines on sentencing, and many other areas of the criminal justice area. When they do have a conference we will pay their travel and living expenses into town, but nothing else, and they will do that on their own time, and usually it is their vacation time.

Senator WILLIAMS. I am sure you are familiar with a description of those who would be covered. The judges would be covered. Those in the grade C positions of the judiciary, including the Attorney General, would also be covered, as you know.

If they attended your conference, and paid their own expenses, they could perform just as good a service, could they not if they were paid by the Federal Government?

Mr. DE FAZIO. Yes, sir. But would the money actually be appropriated?

Senator WILLIAMS. Well, I am just beginning to wonder, to be right frank with you, from the Federal level, if we have not missed a good opportunity to curtail the appropriations. In every appropriation bill we appropriate staggering sums to cover the travel expenses of various Government officials, and I am frankly beginning to wonder where they are going. I now find that all of these conferences they are attending, their expenses are being paid by somebody else, and if we are going to do that why not either one or the other of us stop paying them?

I think that if they are not being paid, then I think they should be paid. Don't you think from the point of view of public policy, if the State government or the Federal Government thought these were desirable conferences, and there is no question but what they are, and it would benefit both the State and the Federal Government by having X official attend, wouldn't it be far better as a matter of public policy for the State or Federal Government to allow them to go on their own expense account, or on the taxpayers' expense account?

Mr. DE FAZIO. Yes; I agree that would be the best situation. But I would think that when it came time to review the Federal budget that a particular agency of the executive branch, if they wanted to cut something from the budget, they would start cutting travel expenses for conferences and institutes such as NCCD sponsors. I would also imagine, that Congress, when they are examining the budget, would look at this area for excission.

Most of the people who are going to participate in our conferences do so on their vacation time. They are not using Government time. They actually use up all of their vacation time, and we merely pay their traveling expenses to come out during the vacation time.

Senator WILLIAMS. Well now, I am a Government official, too. Do you know of any unpaid vacations that any Federal officials are taking? They are all paid vacations. Sure you get time off. It is not a case that they are off the payroll.

Mr. DE FAZIO. No, no.

Senator WILLIAMS. They are on the payroll. They are drawing a salary.

We are not trying to handicap your operation. But if it is important that the public officials and that knowledgeable officials do attend, it is good for the Government, it is good for the State, it is good for the organization that is running it, then as one Member of Congress who is concerned about expenditures, I would rather pay them as a public official out of the Treasury than have it paid by some organization to which we grant tax exemption.

I think it is a wrong procedure.

But is it not possible that if we continue this practice that as Joe Doaks goes to Honolulu or wherever it may be that the convention is held, at his expense during his vacation, that it conceivably—I am not saying it has happened in your case or others—but conceivably this would turn into, in effect, paid vacations on the outside in addition to being on vacation.

Mr. DE FAZIO. This is an outside chance, Senator.

Senator WILLIAMS. Yes, and it is that chance, and it is that point we are trying to correct. We want to do it in a manner which will in no way disrupt the useful service that is being performed by you or anyone else. As I stated before there is nothing in this bill intended, and I do not think there is, that would even point the finger or raise a question of the propriety of any Member of Congress, government, State or National level, taking part in the forums that you are having just so he is not paid. Without any hesitation, as one Member of Congress pushing this, I would unhesitatingly appear anywhere with them at any time. We are not trying to suggest that there is a stigma attached to being associated with these associations, not at all.

Mr. DE FAZIO. No. But, at the same time, Senator, there is no guarantee that the money will be appropriated or be requested.

Senator WILLIAMS. And there is no guarantee that it won't be abused.

Mr. DE FAZIO. Right.

Senator WILLIAMS. I think we can both proceed on the premise we do have a great country and if we do not have elected representatives who are aware of the problem and are willing to perform the functions we can change them and put somebody in who would vote more travel expenses for the public officials, and I expect overall we have had an excess of travel expenses rather than a decline. Maybe we have not had them in the right place, but I know in every appropriation bill we vote a lot of money for travel expense, and it is necessary. I am not talking about that.

Mr. DE FAZIO. Yes. We could at the same time have the money go back to the Government, it could be written into the bill that way instead of taxing 100 percent on the corporation. In other words, if a

particular public official was granted expenses from a particular foundation instead of his being reimbursed, we reimburse the Government itself, and it would save the taxpayers' money.

Senator WILLIAMS. Let the foundation reimburse the Government, you mean?

Mr. DE FAZIO. Right.

Senator WILLIAMS. Well, that could be, but wouldn't it be better to just let each pay his own way and then the foundation is going to reimburse the Government, I expect, when we get this bill over from the House and get through with it, and they are going to reimburse us anyway, and maybe we will have a little more money.

Mr. DE FAZIO. I just feel uncomfortable about the fact that there is no guarantee.

Senator WILLIAMS. I do not think we will get a guarantee any more than you can get a guarantee that the foundations will continue to make contributions in the future. But I do appreciate your testimony.

Mr. DE FAZIO. Thank you.

Senator WILLIAMS. The meeting stands adjourned.

(Whereupon, at 4:55 p.m., the committee adjourned.)

(By direction of the chairman the following communications are made a part of the printed record:)

NASHVILLE, TENN., June 6, 1969.

TOM VAIL,
Counsel, Finance Committee,
U.S. Senate, Washington, D.C.:

I would welcome the opportunity to testify, in person or otherwise, in opposition to S. 2075. During and since my term as Governor, I have dealt closely with officers of at least two of the principal foundations. I feel I have relevant firsthand knowledge of their objectives and methods. S. 2075 would constitute an unwise and unreasonable restraint upon essential efforts to improve Government processes in this country. I would appreciate the privilege of elaborating my views at a time and place and in a manner of your choosing.

EDWARD T. BREATHITT.

THE INSTITUTE OF JUDICIAL ADMINISTRATION, INC.,
New York, N.Y., June 6, 1969.

Re Senate bill 2075.
RUSSELL B. LONG,
Chairman, Senate Finance Committee,
U.S. Senate, Washington, D.C.

DEAR SIR: The Institute of Judicial Administration is a non-profit corporation dedicated to improving the administration of justice. It was founded by Arthur T. Vanderbilt, former Chief Justice of New Jersey, former Dean of the New York University School of Law, and a leading proponent of court reform. Its membership includes many of the nation's outstanding judges, federal and state; most of the funds for its major programs come from foundations.

Among its activities, the Institute undertakes to promote judicial, procedural and administrative improvements in the courts, and to offer educational programs for appellate and trial judges and court administrators.

Many of the Institute's activities would be crippled by S. Bill 2075. Two examples should suffice for illustrative purposes. The first is the Appellate Judges Seminar and the second is the Minimum Standards for Criminal Justice Project of the American Bar Association.

Every summer, since 1956 the Institute has held an Appellate Judges Seminar. Twenty to twenty-five judges of State Supreme Courts and the United States Courts of Appeal attend each seminar for two weeks, together with a combined judicial and academic faculty to discuss common problems and keep abreast of new developments. More than half the judges of the highest appellate courts of the nation have attended these seminars. The travel and living expenses of

the judges who attend are paid by the Institute. Members of the faculty, many of whom are judges, receive a modest stipend for their teaching services.

The Institute conceived and now administers for the American Bar Association a program to formulate Minimum Standards for Criminal Justice. To date, 12 sets of Minimum Standards have been prepared. The drafting of these minimum standards is done by large and distinguished committees which include judges, practicing lawyers, and legal scholars. The Institute pays the travel expenses of these individuals when they meet to discuss proposed drafts.

It would probably be impossible to continue to hold the Appellate Judges Seminar if the attending judges were not reimbursed for their expenses. It is believed that this would be a regressive measure. Continued improvement in the standards and performance of the judiciary calls for more continuing educational programs for judges rather than their abolition. Similarly, if judges were forced by financial considerations to resign from the committees drafting the Minimum Standards for Criminal Justice, the drafting committees would be deprived of their invaluable practical experience and expertise.

It is the Institute's view that judges should not become monastic, but should continue to work with the organized bar and the law schools of the nation in efforts to improve the administration of justice. If judges should retire from outside activities, much of the motive power behind court reform would be lost.

I believe that S. Bill 2075 sweeps with too broad a broom. Under it some of the Institute's current activities would constitute "improper transactions with certain Government officials," activities which the Institute and many leading members of the bar and the judiciary consider not only proper but positively beneficial. If S. Bill 2075 or a similar measure is passed, it should be amended to permit the continuation of useful and socially desirable activities by government officials without penalizing these officials financially for undertaking them and without penalizing foundations for supporting them. It is suggested that this is a difficult task requiring very careful study. However, a measure requiring full public disclosure of all payments from foundations to public officials would be the most effective method for preventing abuses by the small number of foundations and public officials so inclined while it would permit the Institute of Judicial Administration and many other foundations and organizations to continue worthwhile activities in the public interest.

Respectfully submitted.

DELMAR KARLEN, *Director.*

INSTITUTE FOR EDUCATIONAL DEVELOPMENT,
New York, N.Y., June 6, 1969.

HON. JOHN J. WILLIAMS,
U.S. Senate,
Washington, D.C.

MY DEAR SENATOR WILLIAMS: I wish to caution against the present implications of S. 2075. While I applaud the intent to forbid improper disbursement of tax exempt foundation funds to government officials, or those recently separated from office, the bill could carry grave consequences to legitimate and wholly proper enterprises. For example, the important work being carried out by The Urban Coalition, under former Secretary of HEW John W. Gardner, could be jeopardized. There are many similar illustrations of possible unintended consequences.

In virtually all states the chief state school officer is either appointed by the governor or elected to office, and since city school systems are part of the political subdivisions of states, this legislation conceivably could prohibit any state or public school system or university from receiving foundation support. Such support is desperately needed in our search for solutions to the grave education problems especially in our big cities.

The question quickly arises as to whether a scholar in a publicly or privately supported university may be excluded from foundation support if he holds or has recently held an office falling within the broad categories which the legislation defines as ineligible. We may find that such scholars will be unwilling to accept temporary government assignments, if their future relationships with foundations are to be foreclosed.

I urge respectfully that this bill be modified to insure that its good intent does not "throw out the baby with the bath water."

Sincerely,

S. P. MARLAND, JR.,
President.

THE FORD FOUNDATION,
New York, N.Y., June 12, 1969.

Hon. RUSSELL B. LONG,
Chairman, Senate Finance Committee,
U.S. Senate, Washington, D.C.

DEAR SENATOR LONG: I write to you as Chairman of the Senate Finance Committee to provide a short written summary of the views of the Ford Foundation on Senator Williams' bill S. 2075. I am sending copies of this letter to other members of the Committee.

The Ford Foundation wholly supports the objective of Senator Williams' bill, which is to prevent "improper transactions" between government officials and the private sector. In part, existing legislation addresses this problem as, for example, 18 U.S.C., Section 203. To the extent that Congress believes that abuses exist in this area such legislation should be strengthened. We can see no harm and much advantage in a legislative rule that would prevent any direct payment in the nature of compensation by any private organization, including foundations, to a government official.

We believe, however, that it is a serious mistake to enact legislation exclusively directed at relationship between government officials and private foundations. Legislation of this sort is discriminatory and is simply not justified. We can see great harm and no advantage in a legislative rule that is confined to a small fraction of the general problem of the proper conduct of government officials.

In addition to our general feeling that Senator Williams' bill will diminish the value of a uniquely American institution, we believe that in four particular respects the bill creates serious problems.

First, S. 2075 would prevent all payments not only by foundations themselves but by beneficiaries of foundation grants, including a wide range of institutions doing important work in the public interest. The prohibition on "indirect" payments would extend the provisions of this bill to all kinds of institutions which receive foundation grants--to universities and colleges, to civic and professional associations (the U.S. Conference of Mayors and the Council of State Governments are two pertinent examples from our own records) and, indeed, to all groups which seek both the help of foundations and the participation of government officials. A college could not pay a lecturer's honorarium or reimburse the expenses of a public official invited to take part in a foundation-supported program. A program of studies in foreign affairs, if supported by foundation money could not include in the budget travel expenses or any lecturer's honorarium for governmental officials. We believe that reputable organizations should not be prevented from continuing their activities of these kinds merely because in any given case a program has foundation support.

But because the sanctions in the bill are very severe, the existence of a provision barring such use of foundation funds could also have effects well beyond those intended; and colleges, universities and similar organizations could become wary of all relations with government officials. We do not believe that such a sweeping prohibition is necessary to meet the abuses at which Senator Williams' bill is aimed, and we believe much good and fruitful exchange of ideas would be prevented.

Second, even when limited to the prohibition of direct payments, the bill goes too far by preventing reimbursement of expenses. Such a prohibition would virtually eliminate a range of activities which has kept the public and the private sectors in mutually beneficial contact. Public officials would have far less opportunity for broadening experiences, and philanthropic organizations would lose an important source of guidance in their deliberations. The Ford Foundation is currently concerned with a number of problems in which it seeks the advice of government officials along with others. When we invite a government official to come and join us in a discussion of agricultural research, or family planning, or research on welfare or manpower or civil rights, we currently offer that official his travel expenses.

I can see the force of the argument advanced by Senator Williams that the government should provide travel money for its own officials. But with conspicuous exceptions the government in fact does not do so. Senators and Congressmen, as well as public officials in other branches, very often simply cannot get to useful and significant meetings unless their travel expenses are paid. This bill would say that foundation money (and foundation money alone) could not be used by anyone for this purpose. Indeed when such payments are made by tax-

paying corporations, they are usually tax-deductible. Moreover, neither the Congress, in setting rules for itself last year, nor the federal judges in their new rules this week have seen fit to prohibit payments for travel by any source.

Third, the Williams bill would prohibit all payments of any sort by foundations to government officials for a period of two years after government service. In its *indirect* form this prohibition would prevent college teachers returning from public service from receiving any foundation help—a form of discrimination against them on account of public service. In many important fields of study the denial of access to all foundation funds is a severe penalty. And in its *direct* form, this 2-year rule would prevent any man leaving government from accepting any kind of employment with a foundation. That prohibition would have prevented Dean Rusk from joining the Rockefeller Foundation in 1951 and 1969: it would have kept Paul Hoffman from joining the Ford Foundation in 1951 and David Bell in 1966. It would have prevented John Gardner from returning to a consultant's role at Carnegie Corporation in 1968. If this bill passed this year it would require us to end the employment of younger men who have joined us from government within the last two years. It would also have made it harder for two of our younger men to accept important appointments in Washington this year, since they would forfeit the option of returning to foundation work—if invited—after their government service, and in this way I believe it would have a significant adverse effect upon recruitment of able government personnel—particularly at middle and lower levels. This provision would, in effect, single out one set of institutions in this country and make movement between those institutions and government much harder. Ironically, there is much *less* potential conflict of interest between foundations and government than between business and government or law and government. But in *no* field does it seem likely that the remedy for such possible conflicts lies in the abridgement of the American tradition of free and open movement in and out of all forms of work, public and private.

Fourth, (and now I go beyond the immediate concerns of foundations) we believe that Senator Williams' bill would set a bad precedent of sweeping regulation of the behavior of public officials by a drastic application of the tax power. We know of no precedent for the use of a 100% income tax to control the permissible conduct of federal and state officials. We believe that in the absence of any grave and urgent need, the enactment of such sweeping penalties (which also raise serious constitutional questions) would be most unwise.

Having identified these four points against specific provisions of S. 2075, let me conclude on a more hopeful note. I believe that the real object of Senator Williams' bill can be achieved—indeed is being achieved—by other measures. In introducing his bill, Senator Williams referred to the activities of the Wolfson Foundation. Recent actions of the Judicial Conference show that Federal judges are themselves alert to this problem. In other comments it has been suggested that one reason for urging legislation of this sort is the need to prevent awards like those of the Ford Foundation to members of the late Senator Kennedy's staff. I have explained elsewhere and at length the reasons for these awards and the honorable work these individuals have done. But I have also made it clear that I regret those awards because they were open to misunderstanding; this foundation will not repeat the action, and I think it is plain that foundations as a class will not do so either. (Here as elsewhere in our public affairs, we see the special corrective value of full public disclosure.) Thus the publicly stated aims of this bill have already been met. I have no doubt that energetic expression of concerns, like Senator Williams' bill itself, are part of the reason for this improvement. My point is that the results which Senator Williams seeks have already been largely attained.

If, nevertheless, the Senate Finance Committee believes it important to act in some way now to meet the ends stated by Senator Williams, then I believe that the prohibition of the bill should not be extended to foundations alone but rather to relations between government officials and the whole of the private sector. Within any wider framework I believe any such prohibition should be limited to *direct payments* to government officials and *direct awards* to men leaving office, that reasonable travel expenses should be allowed, and that the 2-year rule should be dropped.

There is one final point that I would like to emphasize. This bill focuses on one fraction of the large and complex problem of the relation between governments and foundations. Legislation designed to deal with this problem in a more comprehensive way is now beginning its course through the Congress, in the Ways and Means Committee. In the light of the corrections that have already occurred, in the absence of any evidence to show current abuses that now need immediate action,

and in consideration of the fact that the Senate Finance Committee itself has so far had little opportunity to examine the larger questions to which this bill is related, it seems reasonable to suggest that a better procedure now would be to defer action on S. 2075 until the House bill reaches your Committee. If further study and action are needed then, it will not be too late.

Sincerely,

McGEORGE BUNDY.

NEW YORK, N.Y.

Hon. RUSSELL B. LONG,
U.S. Senate, Washington, D.C.

I wish to register strong opposition of this foundation to sweeping provisions of Williams bill S. 2075. It would do severe harm to the Federal and State public service by making virtually impossible the participation of public officials in genuine educational activities and would serve to inhibit or prevent much fruitful cooperation between the public and private nonprofit sectors of American life. We suggest revision of the bill to exclude prohibition of indirect payments, to exclude State and local officials and to remove 2-year prohibition following cessation of Government employment. We have no objection to a prohibition of direct—repeat—direct payments by a foundation of salary, honoraria or other compensation to a public official during his active service with Government but would prefer no restriction on reimbursement of travel and living expenses for participation in educational activities. We also urge a tighter definition of the term "foundation" as the definition used in S. 2075 would seem to include many organizations like the Brookings Institution and the Council on Foreign Relations which are not properly foundations.

ALAN PIFER,
President, Carnegie Corp. of New York.

SANFORD, CANNON, ADAMS & McCULLOUGH,
Raleigh, N.C., June 9, 1969.

Hon. JOHN J. WILLIAMS,
U.S. Senate, Washington, D.C.

DEAR SENATOR WILLIAMS: I am writing with reference to S. 2075, which would prohibit any foundation from making grants to elected or appointed officials on the Federal and State level until they had retired from office or service for 2 years. While I share with you the concern of the Senate over the recent disclosures of indiscretion by some foundations, I would hope that the committee would not choose to deny to public service the talents of many officials who choose to remain active in public affairs after they leave public service.

I have been particularly interested in marshaling the talents and experience of former Governors to the improvement of the States. I know you are concerned with the growing imbalance in the Federal system, and desire to see the States restored as full partners and participants in American life. The former Governors are a little-used national resource in the efforts to help the States they once served, and many act as directors of studies, participants on national commissions and members of boards of trustees of many efforts to promote reform and improve our system of government. Former Governor Jack Campbell of New Mexico heads up the Institute for State Programing for the 1970's, under a grant of the Carnegie Corp. to the University of North Carolina. He is being advised by a distinguished panel of Governors, former Governors, State legislators, local officials and other citizens, all working, as I know many Senators have worked, to develop spaceage techniques for use in State planning, and helping aides to Governors, directors of finance, and department heads of highway departments, prisons, mental health, and urban affairs look far into the future in developing State programs for the people. Other institutes, modeled after Governor Campbell's, are being planned to encourage State action on State taxes, conservation, and personnel problems whenever a former Governor can be linked up with a State concern.

The record of service by former State Governors is clear and impressive. Former Governor Hulett Smith of West Virginia is chairman of the National Council for the Revision of State Constitutions; former Governor William Scranton of Pennsylvania is serving with distinction on the Carnegie Commission on Higher Education; Governor Robert McNair of South Carolina has followed Governor Charles Terry from your State of Delaware and former Governor John Chafee of Rhode Island as chairman of the Education Commission of

the States; former Governor Edward Breathitt of Kentucky is leading a major study of State action against rural poverty; former Governor Phillip Hoff of Vermont has agreed to direct the States Urban Action Center in Washington, D.C. to help States solve urban problems; former Governor John Anderson of Kansas since he left office has been chairman of the Citizen's Conference for the Reform of State Legislatures.

These are but a few of the public spirited men from both parties who are spending time on public concerns even though it takes them away from their private livelihoods. I assure you their personal wealth suffers from such efforts, and that these tough assignments demand their experience and skills.

I have no personal financial interest in the position I have stated in this letter, but when I left the governorship of North Carolina, I received modest grants from two foundations to do a study of the future of the States. I traveled across the country talking with Governors and former Governors, State legislative leaders and leading citizens. The opinion was widespread that the States are behind, and that we must do all we can to catch up fast. I urge the Senate Finance Committee not to cripple this effort by removing from the battle for State and local government reform the few leaders we have with the intimate knowledge of problems and the unselfish spirit to devote their time to this cause.

Sincerely,

TERRY SANFORD.

